

E-PROSIDING

DISKUSI
SYARIAH DAN UNDANG-UNDANG
Siri I 2019



Fakulti Syariah dan Undang-undang [FSU]
Universiti Sains Islam Malaysia [USIM]

E-PROSIDING

DISKUSI
SYARIAH DAN UNDANG-UNDANG
Siri I 2019

**Fakulti Syariah dan Undang-undang [FSU]
Universiti Sains Islam Malaysia [USIM]**

**Penyunting:
Haliza A. Shukor
Zahari Mahad Musa
Syaryanti Hussin
Norman Zakiyy Chow Jen T-Chiang**

**E-PROSIDING
DISKUSI SYARIAH DAN UNDANG-UNDANG: SIRI 1 2019**

Cetakan Pertama...2019

@Hak Cipta Terpelihara.
Usuli Faqih Research Centre PLT (UFRC)
(LLP0012329-LGN)

Tidak dibenarkan mencetak ulang semula mana-mana bahagian artikel, ilustrasi, dan isi kandungan prosiding ini dalam apa jua bentuk dan dengan apa cara sekalipun samada secara elektronik, fotokopi, mekanik, rakaman, cd atau cara lain sebelum mendapat keizinan bertulis daripada penerbit.

Penerbit:

USULI FAQIH RESEARCH CENTRE PLT,
PT12991A, Tingkat 1, Jalan BBN 1/7D,
Putra Nilai, 71800, Nilai,
Negeri Sembilan, Malaysia.
H/P: +6019-6440815
E-mel: usulifaqih@gmail.com
Facebook: Usuli Faqih Research Centre

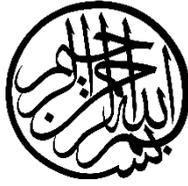
eISBN: 978-967-2114-10-9

ISI KANDUNGAN



ISI KANDUNGAN	iv
PRAKATA	vi
ISU BERSANGKUTAN TERMA PENYELESAIAN DALAM KES PERTIKAIAN KELUARGA DI MAHKAMAH SYARIAH Norman Zakiyy Chow, Hasnizam Hashim & Norsuhaida Che Musa	1
<i>MAQASID SYARIAH</i> : PRINSIP DAN PELAKSANAANNYA DALAM BERMUAMALAT ANTARA MUSLIM DAN BUKAN MUSLIM Setiyawan Gunardi & Siti Hajar binti Abdul Halim	11
NAFAS BARU KEPADA TAHAP PEMBUKTIAN QARINAH DALAM UNDANG-UNDANG KETERANGAN MAHKAMAH SYARIAH Muhammad Hazim Ahmad, Ruqayyah Razak, Nurul Syahirah Saharudin, Hendun Abd. Rahman Shah, Hasnizam Hashim & Ahmad Syukran Baharuddin	25
ANALISIS PERUNDANGAN BAGI UNDANG-UNDANG KETERANGAN MAHKAMAH SYARIAH BERKAITAN BUKTI SAINTIFIK DAN PENERIMAANNYA DI MAHKAMAH SYARIAH Muhammad Hazim Ahmad, Mohamad Anwar Zakaria, Noraishah Nordin, Siti Khadijah Ishak, Nurkhairina Othaman & Ahmad Syukran Baharuddin	40
LEGALITAS PENERAPAN HUKUMAN ROTAN BAGI NON MUSLIM DI KAWASAN KERAJAAN ACEH Rivanli Azis	56
HUMAN RIGHTS RESPONSIBILITIES OF MULTINATIONAL CORPORATIONS (MNCs) UNDER INTERNATIONAL LAW: A CRITICAL REVIEW Nisar Mohammad Ahmad	66
THE EFFECTIVENESS OF OUTER SPACE LAW: IS MONITORING BODY NECESSARY? Che Zuhaida Saari	83
THE IMPLEMENTATION OF SHARIA PRINCIPLES IN RESTORATIVE JUSTICE AND THE EFFORT OF MATERIAL PENAL LAW REFORMATION IN INDONESIA Muridah Isnawati	93
THE IMPLEMENTATION OF LEGAL AID MODEL FOR MARGINAL COMMUNITY IN SURABAYA CITY BASED ON JUSTICE Asri Wijayanti & Sri Winarsi	103
THE IMPLEMENTATION OF COMMUNITY ECONOMIC DEVELOPMENT PROGRAM THROUGH PROCUREMENT OF SNACK PRODUCTION MACHINERY AT THE JABON BAITUSSALAM FOUNDATION IN SIDOARJO BASED ON SHARIA MARKETING MIX. Asri Wijayanti, Slamet Riyadi & Siti Maro'ah	110
THE MODEL OF TRADE UNION ADVOCATION IN INDUSTRIAL RELATION DISPUTES BASED ON FORMAL TRUTH IN INDONESIA Asri Wijayanti, Slamet Suhartono & Mahsun	116

التعامل مع الخلاف الفقهي بمنظور الرأي المقاصدي: تأسيس الإمام الشَّاطِبي قواعد الأصول على القطع في كتاب الموافقات	121
Muhammad Najib Abdullah	
تأصيل الضوابط الفقهية وتطبيقاتها في باب البيع عند ابن نجيم الحنفي	132
Ismail Jalili	
عادات مجتمع جاوا بإندونيسيا ومدى موافقتها للشرع: دراسة تطبيقية لدليل العرف	163
Mualimin Mochammad Sahid, Amar Fettane & Mohd Faisal Mohamed	



PRAKATA

Dengan nama Allah Yang Maha Pemurah, lagi Maha Penyayang.

Segala puji dan setinggi-tinggi syukur dipanjatkan kepada Allah SWT Yang Maha Penyayang kerana dengan taufik dan inayah-Nya buku e-prosiding ini dapat disempurnakan dengan jayanya.

Buku e-prosiding ini merupakan hasil kompilasi artikel-artikel yang dibentangkan dalam program Diskusi Syariah dan Undang-undang; Siri 1 2019 yang dianjurkan oleh Fakulti Syariah dan Undang-undang [FSU], Universiti Sains Islam Malaysia [USIM] pada 25 September 2019. Penerbitan buku ini membincangkan pelbagai isu semasa yang meliputi isu-isu Syariah dan Undang-undang. Sebanyak 14 artikel dapat dikumpulkan yang terdiri daripada lima artikel Bahasa Melayu, enam artikel Bahasa Inggeris dan tiga artikel Bahasa Arab.

Sekalung penghargaan dan terima kasih diucapkan kepada para penyumbang artikel dan semua pihak yang terlibat secara langsung atau tidak langsung dalam menjayakan program Diskusi Syariah dan Undang-undang.

Akhir kata, diharapkan kompilasi e-prosiding ini dapat memberi manfaat kepada semua pembaca terutama pencinta perundangan daripada kalangan ahli akademik, para pelajar dan masyarakat awam di Malaysia. Semoga usaha kecil ini akan mendapat ganjaran sebagai sebahagian daripada amal soleh oleh Allah SWT. *Jazakallahu Khairan Kathira*

Sekian, terima kasih.

Sidang Penyunting,
Haliza A. Shukor
Zahari Mahad Musa
Syaryanti Hussin
Norman Zakiyy Chow Jen T-Chiang

THE MODEL OF TRADE UNION ADVOCATION IN INDUSTRIAL RELATION DISPUTES BASED ON FORMAL TRUTH IN INDONESIA

Dr. Asri Wijayanti, S.H., MHⁱ, Dr. Slamet Suhartono, S.H., MHumⁱⁱ & Dr. Mahsun, M.Ag.ⁱⁱⁱ

ⁱ University of Muhammadiyah Surabaya. asri.wijayanti@fh.um-surabaya.ac.id

ⁱⁱ Untag Surabaya. slametsuhartono@untag-sby.ac.id

ⁱⁱⁱ University of Muhammadiyah Surabaya. mahsunjayady@yahoo.co.id

ABSTRACT

The problem in this study is the incapacity of workers or trade unions to resolve industrial relations disputes that deprive of their rights. The unresolved industrial relation disputes could be a cause of strikes, lock outs, rallies, demonstrations, defamation, destruction the property of others, until the loss of lives. These negative impacts greatly affect the peacefulness and comfort of work, national security and stability. These problems can be overcome by giving the advocacy for workers or trade unions in dealing with industrial relations disputes. An appropriate model of advocacy on workers or trade unions in formal truth-based industrial relations disputes in Indonesia would be an alternative solution to achieve social justice for workers or trade unions. The purpose of this study is to develop an advocacy model for workers or trade unions in formal truth-based industrial relations disputes in Indonesia. The research method uses a research and development approach that is carried out on industrial relations legal subjects (employers, workers, government and community) in seven provinces; DKI Jakarta, East Java, West Java, East Nusa Tenggara, West Nusa Tenggara, North Sumatra, and East Kalimantan. The achievement was the advocacy models for workers or trade unions in formal truth-based industrial relations disputes in Indonesia. The results of this study was the advocacy model for workers or trade unions in formal truth-based industrial relations disputes in Indonesia which were conducted legal personal, network and structural. Legal personal advocacy models can be carried out through the provision of legal services or non-litigation and or litigation legal assistance. Training on material and formal labor law must be carried out to provide an understanding of the importance of formal truth as a basis for resolving industrial relations disputes. The network advocacy model can be carried out with a pattern of cooperation between industrial relations legal subjects (employers, workers, government) with universities and non-government organizations (NGOs). The structural advocacy model can be carried out through the active role of universities and or NGOs in the process of creating regulations or policies at the central, regional and or village level. The resulting recommendation was that it was necessary to regulate the active role of the community in the process of creating labor regulations, especially related to the solving of industrial relations disputes.

Keywords: industrial relations disputes, advocacy, legal personal, networking.

BACKGROUND

Work relations are the basis for industrial relations. Industrial relations cannot run well, when industrial relations disputes occur. Unfinished industrial relations disputes, can be a cause of strikes (Kennan, 2015), lock outs, demonstrations or blasphemy (Saiya, 2017), demonstrations (Donovan, Poole, Boyes, Redgate, & March, 2015), defamation (Mills, 2015), destruction of other properties, until the loss of life (Woodson, 2018). This negative impact greatly affects the peaceful and comfort of work, national security and stability. Unresolved industrial relations disputes can cause social conflicts (Grossmann et al., 2010). Industrial relations disputes are disputes that occur between workers or trade unions and employers. Law 2/2004 only limits industrial relations disputes in industrial relations disputes (including disputes over rights, interests, layoffs, between trade unions). Labor disputes must be resolved in order to create harmonious industrial relations. Harmonious industrial relations can be a factor of peaceful

and comfort work, security and national stability. One effort to resolve industrial relations disputes is through advocacy for workers or trade unions. An appropriate model of advocacy on workers or trade unions in industrial relations disputes in Indonesia will be an alternative solution to achieve social justice for workers or trade unions. From the description above, this study arises on the finding of what is the appropriate advocacy model for workers or trade unions in industrial relations disputes in Indonesia?

RESEARCH METHODS

The research method uses a research and development approach that is carried out on industrial relations legal subjects (employers, workers, government and community) in seven provinces (DKI Jakarta, East Java, West Java, East Nusa Tenggara, West Nusa Tenggara, North Sumatra, East Kalimantan). The achievements are in the form of advocacy models for workers or trade unions in formal truth-based industrial relations disputes in Indonesia.

LITERATURE REVIEW

Industrial relations disputes are defined in Law 2/2004 as industrial relations disputes, which include disputes over rights, interests, layoffs and between trade unions in one company. Industrial relations disputes must be resolved immediately. Providing correct information is very important in this era of globalization and revolution 4.0, it is very important to overcome the problems in society (Roblek, Meško, & Krapež, 2016).

The purpose of resolving industrial relations disputes is to achieve peaceful workplace, work comfortability and national stability. All of them are means to move towards an equitable Indonesian labor law system (Allen, 2016). The importance of harmonization of workers-entrepreneurs in industrial relations in the national interest (Cholette, 2017). Various labor cases have not been able to provide a sense of justice for their parties such as the case of PT BRI retirees and child labor (Wijayanti, Hidayat, Hariri, Sudarto, & Sholahuddin, 2017), the right of association, and so on. Industrial relations disputes then must be resolved.

The existence of evidence will highly determine the level of industrial relations dispute resolution. Various approaches can be taken as efforts to resolve industrial relations disputes, for example, based on restorative justice (Scriven, 2017) or formal truths. Advocacy is an action that can be carried out by a third party to workers or trade unions experiencing labor or industrial relations problems.

The advocacy model for workers / unions in industrial relations disputes can be done legally, networked and structurally. The personal legal advocacy model can be done by providing legal services or legal assistance in a non-litigation and or litigation. In the litigation process, the parties contradict each other, besides that the litigation dispute resolution is the final means (ultimum remidium) after the other alternative dispute resolution has not produced results.

Providing non-litigation legal services are in the form of consultation, conciliation, mediation or expert judgment. Consultation : an action that is "personal" between a certain party (client) with another party who is a consultant, where the consultant gives the opinion to the client in accordance with the needs and wants of client.(Mason, 2015). Negotiation: an effort to resolve disputes between parties without going through a court process with the aim of reaching mutual agreement on the basis of more harmonious and creative cooperation. Mediation : a way to resolve disputes through a negotiation process to obtain the agreement of the parties with the assistance of the mediator.(Mason, 2015)

The advocacy model for workers or trade unions in industrial relations disputes can be carried out by networking through a "tiered accompaniment" pattern. Starting from the smallest or lowest region to the larger or highest region or the center. Every case of industrial relations disputes is first handled by the company-level trade unions with the aim of the company-level trade unions to know more about the problem. If the company level cannot complete, it will

proceed to the federation or confederation level. An example using a network facilitation pattern is the Indonesian Confederation of Trade Unions (Konfederasi Serikat Pekerja Indonesia=KSPI).

The advocacy model for workers /unions in industrial relations disputes can be structurally carried out by the government. Assistance model conducted by the Regency or City Government by escorting and coordinating with the relevant government official. In other words, the model approach taken by the Regency or City government is more inclined to the bureaucratic institutional approach and not sociologically cultural. This structural approach to the bureaucracy will in fact be very rigid if applied when handling industrial relations disputes because there is no personal closeness between the companion and the troubled worker.

One of the settlements of industrial relations disputes can be overcome through advocacy based on formal truth. The emphasis on formal truth because industrial relations disputes are part of the field of civil law. Settlement of civil law is emphasized on formal truth. Formal truth is truth that is based on evidence

Evidence in civil procedural law consists of letters or writings or deeds, witnesses, allegations, confessions and oaths.¹ Deed is divided into two, authentic and under hand deeds. A witness is a person who sees, experiences or hears the case. However, the Constitutional Court has expanded the meaning of witnesses, including those who know something about someone else's events. To witnesses, there is the principle of *unus testis nullus testis* (one witness is not a witness). In this case if there were ten witnesses, it was also counted as one if the witnesses who met the material requirements were only one person.²

Estimation tools (presumptie, vermoeden) are among those minimally explained in the HIR, so that they require a more detailed explanation on the formation of civil procedure law in the future. According to Article 1915 BW (Civil Code), prejudice are conclusions which by law or by a judge are drawn from a well-known event towards an unknown event. There are allegations based on the law and some are not based on the law. Judges' presumption has free power. The freedom of the judge to do the suspicion is not without conditions,³ for example, regulates the way judges withdraw suspicion. This article, plus Article 173 HIR, gives a warning to judges to be careful about withdrawing suspicion.

Confession (Article 1866 of the Civil Code and Article 164 HIR) of value as evidence under Article 1923 Civil Code and Article 174 HIR is (i) a statement or explanation submitted by one party to another party in the examination of a case; (ii) the statement or explanation is made before the judge or in the hearing; or (iii) the statement is a confession that what the opposing party is doing is true in part or in whole. Confession can be done verbally or in written form. Confession delivered by the parties directly in front of the judge will be very powerful. But recognition through legal counsel is also justified. Article 174 of the HIR states: "Confessions made before a judge are sufficient evidence to incriminate the person claiming them, whether expressed alone or with the assistance of another person specifically authorized for this purpose."

In addition to the breaker oath, supplementary oaths are also known (suppletoire eed) and the estimator oath (aestimatoire eed). An additional oath is an oath ordered by a judge to one of the parties to make the oath so that with the oath the case can be decided or the amount of money can be granted.⁴

In line with the modernization, evidence has evolved, namely electronic evidence. Electronic Information and / or Electronic Documents and / or their printouts are legal evidence,

¹ See Article 164 of Herzien Inlandsch Reglement / HIR.

² See Article 169 HIR.

³ See Article 1922 Civil Code

⁴ See Article 1940 Civil Code.

which is an extension of legal evidence in accordance with the applicable Procedure Law in Indonesia. Likewise, Electronic Signature, has legal force and legal consequences as long as they meet the following requirements:

- a. the data on making Electronic Signature related only to Signatories;
- b. the data on the making of an Electronic Signature when the electronic signing process is only within the power of a Signatory;
- c. any changes to the Electronic Signature that occur after the time of signing can be known
- d. all changes to Electronic Information related to the Electronic Signature after the signing time can be known;
- e. there are certain methods used to identify who the Signer is; and
- f. there are certain ways to show that the Signatory has given approval to the related Electronic Information

The provisions in the Civil Code and the ITE Law show that agreements made electronically have the same strength as agreements signed by the direct parties (with the direct presence of the parties). Likewise with the strength of proof, electronic and record agreements will have the same proof of strength with agreements signed directly by the parties.

ANALYSIS

The advocacy model for workers or trade unions in formal truth-based industrial relations disputes in Indonesia is based on civil evidence and its development on electronic information evidence. The ability to know, understand and possess civil evidence is often not yet important for workers or trade unions. Labor cases that arise in the community often begin with the absence of evidence in an employment relationship. Training on material and formal labor law must be conducted to provide an understanding of the importance of formal truth as a basis for efforts to resolve industrial relations disputes. The obligation to register work agreements with the local labor office has not yet been fully implemented. The absence of sanctions for violations has resulted in suboptimal performance of labor inspectors.

The advocacy model for workers or trade unions in industrial relations disputes in Indonesia can be done through legal personal, networking, and structural. The personal legal advocacy model can be done through providing legal services or legal assistance in a non-litigation and or litigation. The provision of legal services or legal assistance on a non-litigation basis consists of consultation, conciliation, mediation or expert judgment. Providing legal services or legal assistance in litigation in general courts, state administrative courts or industrial relations courts.

The network advocacy model can be carried out with a pattern of cooperation between industrial relations legal subjects (employers, workers, government) with universities and Non-Government Organizations (NGOs). Dissemination of assistance in the size of the case can also be considered. In small cases, efforts can be made to resolve industrial relations disputes at the level of the union work unit (PUK) leader. Increased to middle scale is handled by the Federation of Trade Unions. Large scale covering national issues are handled by confederations.

The structural advocacy model can be carried out through the active role of universities and or NGOs in the process of making regulations or policies at the central, regional and / or village level. The process of making regulations can involve all elements of society, including trade unions.

CONCLUSION

The advocacy model for workers or trade unions in industrial relations disputes in Indonesia can be done through legal personal, networking, and structural. The advocacy model for workers or

trade unions in formal truth-based industrial relations disputes in Indonesia is based on civil evidence. The personal legal advocacy model can be done through providing legal services or legal assistance in a non-litigation and or litigation. Training on material and formal labor law must be carried out to provide an understanding of the importance of formal truth as a basis for efforts to resolve industrial relations disputes. The network advocacy model can be carried out with a pattern of cooperation between industrial relations legal subjects (employers, workers, government) with universities and Non-Government Organizations (NGOs). The structural advocacy model can be carried out through the active role of tertiary institutions and or NOGs in the process of making regulations or policies at the central, regional and / or village level.

Recommendation

The resulting recommendation is that it is necessary to regulate the active role of the community in the process of making labor regulations, especially related to the resolution of industrial relations disputes. Revision of labor legislation is on the additional sanctions for violations of legal liability.

Acknowledgment

The writer would like to thank Kemenristekdikti for providing moral support and funds for this community service program.

REFERENCES

- Allen, E. R. (2016). Analysis of Trends and Challenges in the Indonesian Labor Market. *Asian Development Bank (ADB) Paper on Indonesia*.
- Cholette, G. (2017). Industrial and Labor Relations Review. *Relations Industrielles*. <https://doi.org/10.7202/1023274ar>
- Donovan, C. L., Poole, C., Boyes, N., Redgate, J., & March, S. (2015). Australian mental health worker attitudes towards cCBT: What is the role of knowledge? Are there differences? Can we change them? *Internet Interventions*. <https://doi.org/10.1016/j.invent.2015.09.001>
- Grossmann, I., Na, J., Varnum, M. E. W., Park, D. C., Kitayama, S., & Nisbett, R. E. (2010). Reasoning about social conflicts improves into old age. *Proceedings of the National Academy of Sciences of the United States of America*. <https://doi.org/10.1073/pnas.1001715107>
- Kennan, J. (2015). Strikes. In *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*. <https://doi.org/10.1016/B978-0-08-097086-8.94001-7>
- Mason, D. (2015). Alternative dispute resolution trial. *Veterinary Record*. <https://doi.org/10.1136/vr.h2560>
- Mills, A. (2015). The law applicable to cross-border defamation on social media: Whose law governs free speech in 'facebookistan'? *Journal of Media Law*. <https://doi.org/10.1080/17577632.2015.1055942>
- Roblek, V., Meško, M., & Krapež, A. (2016). A Complex View of Industry 4.0. *SAGE Open*. <https://doi.org/10.1177/2158244016653987>
- Saiya, N. (2017). Blasphemy and terrorism in the Muslim world. *Terrorism and Political Violence*. <https://doi.org/10.1080/09546553.2015.1115759>
- Scriven, G. (2017). Restorative justice. In *Understanding Inclusion: Core Concepts, Policy and Practice*. <https://doi.org/10.4324/9781315279893>
- Wijayanti, A., Hidayat, N. A., Hariri, A., Sudarto, & Sholahuddin, U. (2017). Framework of child laborers legal protection in marginal communities. *Man in India*.
- Woodson, T. (2018). Weapons of math destruction. *Journal of Responsible Innovation*. <https://doi.org/10.1080/23299460.2018.1495027>