



## Employment Agreements as the Basis of Industrial Relations and the Independence of Ad Hoc Judges in Resolving Industrial Relations Disputes

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### Info Articles

#### Article History

Received: 2026-04-05

Revised: 2026-04-15

Published: 2026-05-14

#### Keywords:

*Agreements; industrial relationships; Disputes*

### Abstract

In the industrial relations system, the employment agreement serves as the main basis for establishing a legal relationship between the employer and the employee. In addition to defining the rights and responsibilities of the parties, an employment agreement is an important tool for resolving and resolving problems in the employment relationship. However, open bargaining positions between employers and employees often result in disputes that ultimately require legal action. An objective and independent industrial relations tribunal with ad hoc judges who are experts in the field of employment is needed to resolve these issues. In addition to examining the independence of ad hoc judges in the process of resolving industrial relations failures, this study seeks to investigate the position of employment agreements as the basis of industrial relations. Normative juridical research with regulatory and contextual approaches is the methodology used. The findings suggest that while the independence of ad hoc judges is critical to ensuring impartial and fair adjudications, clearly structured and fair employment agreements can reduce irregularities. Therefore, in order to provide legal certainty and justice in industrial relations, employment agreements must be strengthened and the independence of ad hoc courts must be upheld.

## I. INTRODUCTION

Basically, the right to work and decent livelihood is a constitutional right of every Indonesian citizen as well as a fundamental goal of the Unitary State of the Republic of Indonesia. The guarantee is expressly regulated in the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (2) of the 1945 Constitution affirms that "every citizen has the right to work and a decent livelihood for humanity," while Article 28D paragraph (2) of the 1945 Constitution states that "everyone has the right to work and to receive fair and decent remuneration and treatment in employment relations." This constitutional provision shows that the state is not only obliged to ensure the availability of jobs, but also to ensure the creation of fair, humane, and common welfare-oriented labor relations. Therefore, synergy and collaboration between the government and employers are needed in building a safe, fair, and

productive employment climate (Kusmayanti et al., 2020).

In practice, the relationship between workers and employers is born from a legal relationship that is contractual, which is outlined in the employment agreement. The agreement gives birth to an agreement that contains rights and obligations for each party. The employment relationship itself is a bond between the worker and the employer in which it regulates the mutual division of roles, rights, and obligations (Prawesti & Rizal, 2024). However, in the implementation of the employment agreement, it is not uncommon for a condition to occur where one of the parties does not fulfill the achievements as agreed, either due to differences in interpretation, changes in interests, or other factors. This situation has the potential to give rise to a conflict known as Industrial Relations Disputes.

Juridically, the definition of Industrial Relations Disputes is formulated in Article 1 number 1 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI Law), namely differences of opinion that result in conflicts between employers or associations of employers and workers/laborers or trade unions, which include disputes of rights, conflicts of interest, disputes of termination of employment, and disputes between trade unions/trade unions in one company. The existence of such disputes requires a fair, objective settlement mechanism and guarantees legal certainty for the parties (Sari, 2025).

Along with the development of the law in Indonesia, various special courts have been formed that handle certain cases, such as the Corruption Court, the Human Rights Court, the Fisheries Court, and the Industrial Relations Court. The Industrial Relations Court was established based on Law No. 2 of 2004 and is given the authority to examine, adjudicate, and decide all types of industrial relations disputes. The specificity of the character of employment cases opens up space for the presence of Ad-hoc Judges, who are expected to be able to provide practical and substantive perspectives in the judicial process (Nugrahela & Silviana, n.d.).

Although the PHI Ad-hoc Judges are proposed by union elements and employers, in carrying out their duties and authority they remain in the position of judges who are subject to the Code of Ethics and Judge Conduct Guidelines. The main principles that must be upheld are independence and impartiality. Independence means that judges are free from all forms of influence, pressure, or intervention from any party, while impartiality requires impartiality, neutrality, and freedom from bias and prejudice in examining, adjudicating, and deciding cases. These two principles are absolute prerequisites for ensuring justice, preventing conflicts of interest, and maintaining the honor and authority of the judiciary (Lita & Yurikosari, 2019).

However, in social reality, the public's understanding of the position of judges, especially the Ad-hoc Judges of PHI, as well as the principles of independence and impartiality, is still relatively

limited. On the other hand, the mechanism for proposing Ad-hoc Judges from workers and employers often raises the perception of the potential for partiality in the judicial process. This condition is problematic because it can erode public trust in the Industrial Relations Court's decision. Therefore, the issue of the implementation of the principles of independence and impartiality of the Ad-hoc Judges of PHI is important to be critically examined, in order to assess the extent to which these principles are actually implemented in practice and their implications for the enforcement of justice in the settlement of industrial relations disputes.

## **II. RESEARCH METHODS**

This research is a normative legal research that is prescriptive, which aims to provide legal arguments and recommendations on the issues studied (Rizkia & Fardiansyah, 2023). The approaches used include a legislative approach, a conceptual approach, and a case approach to understand legal norms, theoretical concepts, and their application in practice. The source of legal materials consists of primary legal materials and secondary legal materials obtained through literature studies. The analysis of legal materials is carried out qualitatively using deductive reasoning patterns and syllogistic methods to draw logical and systematic legal conclusions.

## **III. RESULTS AND DISCUSSION**

### **A. Problems of Legal Protection of Workers and the Position of Collective Labor Agreements (PKB) in Industrial Relations**

One of the fundamental problems in industrial relations in Indonesia is the weak legal protection for workers, especially in the context of the implementation of the Collective Labor Agreement (PKB). Normatively, PKB is intended as a collective legal instrument that guarantees the protection of workers' normative rights and is a means to create fair and harmonious industrial relations. However, in practice, not a few PKBs actually reflect the interests of employers more than the interests of workers. This condition cannot be separated from the reality of the inequality of bargaining positions between

workers and employers, where workers are in a weaker position structurally, economically, and socially (Karsona, 2020).

Juridically, PKB is part of the industrial relations system and functions as a reference for labor relations governance norms in companies. PKB should be the main source of law that regulates the rights and obligations of the parties collectively, as well as the basis for the birth of individual employment agreements, both PKWT and PKWTT. However, the regulation of PKB in Law Number 13 of 2003 concerning Manpower is still limited to the procedural and technical aspects of its formation, without being accompanied by a firm regulation regarding the legal force and normative position of PKB in the hierarchy of labor relations regulations (Davin, 2024).

The absence of explicit regulations regarding the legal force of the PKB opens up space for different interpretations by the parties, especially entrepreneurs. As a result, PKB is often positioned as a mere administrative document or formality, rather than as a strongly binding legal norm. This has implications for the weakening of the function of PKB as a tool of legal protection for workers and has the potential to cause legal uncertainty in industrial relations (Nugrahela & Silviana, n.d.).

Furthermore, in Law No. 13 of 2003, there is also a dichotomy between PKB and Company Regulations. Both are treated as if they are two legal products that stand alone and have no normative relationship, even though in the practice of industrial relations, Company Regulations are actually technical instruments for the implementation of the PKB. PKB can be understood as a basic norm (*grundnorm*) within the scope of a company that requires implementing rules to operationalize its basic clauses. The inaccommodating legal relationship between PKB and Company Regulations in the law reflects the existence of a legal vacuum (*recht vacuum*) that has the potential to harm workers (Lestari & Novita, 2022).

## **B. Principles of Employment Agreements, Their Evidence, and Implications in Industrial Relations Disputes**

In treaty law, including employment agreements and PKB, there are fundamental principles that must be considered so that the agreement reflects justice and balance for the parties. These principles include the principle of consensualism, the principle of binding force (*pacta sunt servanda*), the principle of freedom of contract, and the principle of balance. These four principles normatively guarantee that the agreement is born from the free agreement of the parties, is legally binding, does not contradict the laws and regulations, and places the parties in a legally equal position (Jackie, 2009).

However, the reality of industrial relations shows that the application of these principles is often not ideal. One of the crucial problems is that there are still work agreements that are made orally without being stated in written form (Zulkarnaen, 2023). Legally, an oral agreement remains valid as long as it meets the conditions for the validity of the agreement. However, in the context of proving industrial relations disputes, oral agreements pose a great legal risk to workers. This is reflected in the Supreme Court Decision Number 1219 K/Pdt.Sus-PHI/2020, where workers have difficulty proving the existence of an employment relationship due to the absence of a written agreement.

The problem of proof is very central in resolving industrial relations disputes through the Industrial Relations Court. The judge in deciding the case is bound by the principle of *audi et alteram partem*, which is the obligation to hear both parties in a balanced manner. In this context, evidence plays an important role as a basis for judges to find formal truth. When the worker does not have strong written evidence, the legal position of the worker becomes even weaker, even though the employment relationship is factually (Lestari & Novita, 2022).

In addition, the characteristics of industrial relations dispute resolution that do not recognize appeal legal remedies further emphasize the importance of the quality of evidence at the first level. The decision of the Industrial Relations Tribunal is final for certain types of disputes, and is only open to cassation or review within a limited scope. Therefore, weak evidence from the

beginning has the potential to permanently eliminate access to justice for workers (Zairudin, 2022).

### **C. The Role of the Industrial Relations Court, Ad Hoc Judges, and the Principle of Justice in Pancasila Industrial Relations**

The Industrial Relations Court (PHI) is a manifestation of the state's presence in ensuring fair, balanced, and law-based settlement of industrial relations disputes. As a special court in a general judicial environment, PHI has absolute competence to examine and decide various types of industrial relations disputes. The specificity of employment cases is the background for the presence of Ad Hoc Judges, who are expected to bring practical perspectives and expertise in the field of industrial relations (Prawesti & Rizal, 2024).

Although Ad Hoc Judges are proposed by elements of trade unions and employers, in carrying out their duties they remain bound by the principles of independence and impartiality as part of an independent judicial power. The independence and independence of judges are the main requirements for the upholding of justice, as affirmed in Article 24 paragraph (1) of the 1945 Constitution. Judges should not be influenced by the interests of the group or the background of their proposals, but should be solely guided by the law and a sense of justice (Hernawan, 2011).

In the context of Pancasila industrial relations, the settlement of labor disputes does not solely rely on the logic of power or bargaining positions, but on the principles of balance, justice, and propriety. Pancasila's industrial relations place workers and entrepreneurs as strategic partners in the production process, so that the conflicts that arise must be resolved dialogically, humanely, and oriented towards the common good. Industrial relations disputes that are not handled fairly have the potential to cause wide social and economic impacts, such as strikes, demonstrations, mass layoffs, and disruption of national economic stability (Dyan Arni Firmanti, 2023).

Thus, the role of PHI judges, both career judges and ad hoc judges, is not only as a positive law enforcer, but also as a bridge between written law

and living law (Sherly et al., 2021). The judge's decision is required not only to provide legal certainty, but also to reflect a sense of substantive justice. In this context, strengthening the position of the PKB, affirming the principle of fair proof, and strengthening the independence of judges is an important agenda in the reform of industrial relations law in Indonesia.

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

Legal protection of workers in industrial relations in Indonesia still faces various normative and implementing problems. One of the fundamental problems lies in the position of the Collective Labor Agreement (PKB) which juridically does not have a firm regulation regarding the legal force and its position in the hierarchy of labor relations norms. The absence of such an arrangement creates a difference in interpretation between workers and employers, which in practice tends to disadvantage workers due to weak bargaining positions. In addition, the dichotomy between PKB and Company Regulation in Law No. 13 of 2003 shows a legal vacuum related to the normative relationship between the two, even though functionally the Company Regulation is a technical instrument for the implementation of PKB.

In the context of resolving industrial relations disputes, the issue of proof, especially due to employment agreements that are not stated in writing, is a crucial factor that affects access to justice for workers. The role of the Industrial Relations Court and judges, including ad hoc judges, has become very strategic in ensuring balance and substantive justice. Therefore, the application of the principles of independence, impartiality, and the principle of *audi et alteram partem* must be the main foundation in every decision, in line with the values of Pancasila Industrial Relations which emphasize justice, propriety, and balance of interests.

### **B. Suggestion**

Legal reconstruction of the PKB regulation in labor laws and regulations is needed, especially by affirming the legal force of PKB and its normative

relationship with Company Regulations. The government needs to strengthen supervision of the substance of PKB in order to truly guarantee the normative rights of workers. In addition, the strengthening of the culture of written employment agreements must continue to be encouraged to minimize evidentiary issues in industrial relations disputes. For judicial officials, increasing the capacity and integrity of PHI judges, especially ad hoc judges, needs to be carried out on an ongoing basis so that the resulting verdicts not only provide legal certainty, but also reflect substantive justice in accordance with the principles of Pancasila Industrial Relations.

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