Part II Study on Dispute Resolution Process in Specific Cases. Chapter IV Labor Dispute Resolution Process

Chapter IV
Labor Dispute Resolution Process

IV.1 Background

Under the Soeharto administration, the number of labor disputes is relatively low. This was not because relations among labors and employers are in harmony. The oppressive measures against labor movement by the government have been the reason for the low number of labor disputes. The government had used the military and police to keep labor from staging strike and protest against employer, even for the purpose of defending their normative rights.[183] Attracting foreign investors with cheap labor and lack of respect on human rights were the reasons behind such oppressive actions.

Currently, however, the situation has been in a sharp contrast. Labor and employer frequently involved in disputes. The government cannot freely intervene in the dispute as it used to be. Military actions have not been employed and police actions are limited amid more respect on human rights of the labor. As a result labor disputes have been on the rise.

The Labor in many occasions has demanded employers to pay them properly, saying that they are paid relatively low compared to company's profit, in addition to improved working conditions. The government has also been the target of labor protest as it has the responsibility of setting the minimum standard wage. The government has lately setting much higher minimum standard wage compared to before. Labor protested if the minimum standard wage is below the Consumer Price Index or did not take consideration of inflation.

On the other hand, employers claim that labor are demanding too much, and have failed to increase productivity. Furthermore, the reason for disagreeing for much higher minimum standard wage is because employers try to minimize their labor costs. They have criticized the government's move saying it will hurt the operation of the company.

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[183] A. Uwiyono said "(T)he employer will use every available means to overcome strike in the company. In Indonesia, the means amongst others are by requesting government to intervene, the military, the police, by reporting as a criminal case, lawsuit or by hiring other people who fight against labour." **See**: A. Uwiyono, Hak Mogok di Indonesia (The Right to Strike in Indonesia). (Jakarta: Universitas Indonesia Fakultas Hukum Program Pascasarjana, 2001), 160.

In recent years, labors taking on the street to stage protests, after negotiation failed with the employer, have become common and widespread.

IV.2 Laws Governing Labor Dispute

The current provisions on labor dispute are stipulated under the Labor Dispute Act of 1957,[184] and the Termination of Employment Act of 1964.[185] The 1964 Act has been further elaborated with implementing regulations. The last implementing regulations were issued in 2000, which created a lot of controversies.[186] The point of controversy was the employer has to pay severance money to labor, who resign on their will provided they have worked for at least three years. This of course is supported by the labor, but opposed by the employers.

Currently the government is discussing with the House of Representative a draft law on the settlement of industrial relations dispute referred to as *Rancangan Undang-undang tentang Penyelesaian Perselisihan Hubungan Industrial* (hereinafter referred to as "Industrial Dispute Settlement Bill"). The Bill has almost been agreed, but the labor unions and employer associations protested some provisions of the Bill resulted in the delay. The Bill is now under reconsideration, in particular on provisions that have been opposed by the labor unions and employer associations. Once promulgated, the Bill will replace the Labor Dispute Act of 1957 and Termination Act of 1964 altogether.

IV.3 Nature of Disputes

Under the Labor Dispute Act of 1957 and Termination Act of 1964 there are three categories of labor dispute. The first category of dispute is dispute concerning rights (*perselisihan hak*) under contract, regulations or laws (hereinafter referred to as "disputes concerning labor rights"). The dispute has been the result of differences of opinion between labor and employer or violations of rights and obligations

The second category is dispute that arises because of interests (*perselisihan kepentingan*), such as working conditions and demand for better salary (hereinafter

184 Act 22 Year 1957. State Gazette Number 42 Year 1957.
185 Act 12 Year 1964, State Gazette Number 93 Year 1964.
186 Minister of Labor Decree Number 150 Year 2000.

referred to as "disputes concerning labor interests"). This kind of dispute may stem from dissatisfaction of working conditions complaint by the labor union to the employer.

The third category of dispute has to do with termination of employment (*perselisihan pemutusan hubungan kerja*). This dispute occurs if employer intends to terminate an individual or massive labor (hereinafter referred to as "dispute concerning termination of employment"). This kind of dispute involves matters, such as the conditions for terminating labor, calculation of severance pay, calculation of bonus and the like.

Currently, under the Industrial Dispute Settlement Bill a fourth category of dispute is introduced. The dispute is not between labor and employers, rather it arises from dispute between labor unions (hereinafter referred to as "dispute among labor unions"). This category of dispute had never occurred previously. This category of dispute is introduced because now in Indonesia labor is free to form their union even within a company. Hence, in one company, there can be several labor unions and it can be anticipated that a dispute arises among them.

IV.4 Provisions on Dispute Settlement

This sub-section will be divided into two parts. The first will deal with the prevailing laws. The other part will deal with the draft law, which will in the near future take effect.

IV.4.1 Under the Prevailing Laws

The Labor Dispute Act defines labor as a person working for employer who receives salary (*upah*),[187] whereas employer (*majikan*) is defined as a person or a legal entity that employs labor.[188] The Act also provides definition of labor dispute, which is dispute between employer or association of employer against labor union or a number of labor unions concerning disagreement on working relations, working and labor conditions.[189]

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187 Labour Dispute Act art. 46 (1).
188 *Id.* art. 1 (1) (a).
189 *Id.* art. 1 (1) (c).

For dispute concerning labor rights, two institutions can be requested to settle the dispute. First, the court, in this case the District Court can be requested to settle the dispute. Alternatively, it can be settled by Regional LDSC.

For dispute concerning labor interests, the Labor Dispute Settlement Committee is the only authority to settle such dispute. [190]

If labor dispute arises, according to Article 2 paragraph 1 of the Labor Dispute Act, the labor union and employer should first find amicable resolution through negotiation.[191] Any agreement concluded in the negotiation will become amendment to the labor agreement.[192]

If negotiation fails, and parties to a dispute do not opt for arbitration, then one of the parties may notify the public official within the Ministry in charge of labor to start mediation.[193] Such notification is considered as request for good offices from the official. The official will then act as mediator or conciliator.[194] The official will proceed with examination of the dispute and within 7 days since the notification will begin the mediation process. [195] If in the opinion of the official the mediation process is unsuccessful, then he will refer the case to the Regional LDSC by informing the parties in dispute.[196]

If the labor union or the employer is considering taking certain actions, such as the labor going strike or the employer pursuing lock out, that actions has to be informed to the head of regional LDSC and the contending party involved in the dispute.[197] The actions may take effect once such letter is received by the contending party.[198]

The LDSC when referred to a case shall first offer good offices to settle the dispute.[199] If, negotiation fails, the LDSC will examine and give decision. The decision can be in two forms. First is decision in the form of recommendations addressed to the

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190 Abdul Rachman Budiono, Hukum Perburuhan di Indonesia (The Labor Law in Indonesia), (Jakarta: Rajagrafindo Persada, 1995), 158.

191 Labour Dispute Act art. 46 (1).

192 *Id.* art. 2 (2).

193 *Id.* art. 3 (1).

194 *Id.* art. 3 (2).

195 *Id.* art. 4 (1).

196 *Id.* art. 4 (2).

197 *Id. a*rt. 6 (1).

198 *Id.* art. 6 (3).

199 *Id.* art. 7 (1).

parties in dispute.[200] The second is decision that has binding effect to the disputed parties.[201] Such binding decision is given if dispute is considered too difficult to be resolved with only recommendations.

The decision of LDSC will be enforceable if within 14 days after the decision is issued, there is no request for appeal.[202] If necessary, an enforceable decision against the employer can be imposed by requesting as such to the District Court.[203]

The decision of Regional LDSC can be challenged by one of the parties to the Central LDSC.[204] Other than that the Central LDSC, has the right to intervene and take up the case being examined by Regional LDSC if the matter being examined has bearing on the State's or public interest.[205]

The decision of Central LDSC will have enforceable effect within 14 days after the decision is issued, provided the Minister in charge of labor will not revoke or postpone the decision.[206] The Minister in charge of labor may revoke or postpone the decision of Central LDSC if in his/her opinion it is necessary to maintain public order and protect the interest of the State.[207]

The decision of the central LDSC, if necessary, can be imposed to the losing party by requesting the District Court to do so.[208]

With respect to labor dispute concerning termination of employment. In principle, the employer should make strenuous effort not to terminate employment with the labor.[209] Termination of employment is prohibited by the law if labor is in the middle of his/her sickness or fulfilling the duties required by the State.[210]

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200 *Id.* art. 8 (2).
201 *Id.* art. 8 (3).
202 *Id.* art. 10 (1).
203 *Id.* art. 10 (2).
204 *Id.* art. 11 (1).
205 *Id.* art. 11 (3).
206 *Id.* art. 13.
207 *Id.* art. 17 (1).
208 *Id.* art. 16 (1).
209 Termination Act art. 1 (1).
210 *Id. a*rt. 1 (2).

In the event the employer cannot avoid termination, then he/she has to negotiate of the intention to terminate with the labor union or with the individual labor, if such individual does not belong to any labor union.[211]

If agreement is unreachable, the employer may terminate the labor only after he/she obtains permission from the Regional LDSC provided it only involves individual labor. If it involves termination of massive scale of labors, the employer has to obtain permission from the central LDSC.[212]

The decision to allow termination can be appealed to higher authorities. In the case of the Regional LDSC, the appeal goes to the Central LDSC.[213] The decision of the Central LDSC can be challenged to the Administrative High Court within 90 days after decision is issued. The decision from the Administrative High Court can be appealed to the Supreme Court within 14 days after decision is issued.

Apart from settling dispute through the LDSC, the Act provides the possibility of settled dispute by arbitration. Under Article 19 paragraph 1 of the Act it is stated that, "(E)mployer and labor who are in dispute may on the basis of their will or proposed by the Regional LDSC to settle their dispute through arbitration."[214] If parties in dispute agree to settle their dispute through arbitration, such intention should be made in writing to the local LDSC.[215]

The Act further provides that parties have to agree on the appointment of arbitrator(s) and the rule of procedures governing the arbitration.[216] The official of Regional LDSC who acts as mediator can be nominated by parties to a dispute to be the arbitrator.[217]

The award issued by the arbitration has to be approved by Central LDSC and once approved has the same legal effect as award issued by the Central LDSC.[218] The award

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211 *Id.* art. 2.
212 *Id.* art. 3 (1).
213 *Id.* art. 8.
214 Labour Dispute Act art. 19 (1).
215 *Id.* art. 19 (2).
216 *Id.* art. 19 (3).
217 *Id.*
218 *Id.* art. 19 (4).

issued by arbitration may not be appealed.[219] The award, if necessary, can be imposed to third party upon request to the District Court.[220]

IV.4.2 Under the Industrial Dispute Settlement Bill

The Industrial Dispute Settlement Bill, once enacted, will abolish the existence of Regional and Central LDSC. As replacement, the Bill establishes the *Pengadilan Perselisihan Hubungan Industrial* or the Court in charge of Industrial Relations Dispute (hereinafter abbreviated as "PPHI"). PPHI will be a special chamber within certain District Court.[221] PPHI, once established, will consist of career judges and ad hoc judges representing employers and labor.

i) Negotiation

Article 3 of the Industrial Dispute Settlement Bill obligates parties in dispute to seek solution through bipartite negotiation.[222]

A bipartite negotiation to settle dispute will be based on *musyawarah mufakat*.[223] If resolution is achieved, the parties will have to draw an agreement.[224] Such agreement has to be registered at the PPHI of the District Court where parties draw the agreement. If for certain reason, one of the parties refuses to abide by the agreement, the other party has the right to request for enforcement of the agreement by PPHI.[225] This particular provision has made amicable settlement agreement concluded outside the court to have the same legal effect as amicable settlement agreement concluded within the court. This provision is an important step for recognition of amicable settlement agreement concluded outside the court.

In the event dispute cannot be resolved amicably, the Bill provides different mechanisms for the four categories of dispute.

For dispute concerning labor rights, such dispute will be settled at PPHI and the decision issued will be final.[226]

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219 *Id.* art. 21.
220 *Id.* art. 22.
221 Industrial Dispute Settlement Bill art. 53 .
222 *Id.* art. 3.
223 *Id.* art. 6.
224 *Id.* art. 8 (1).
225 *Id.* art. 8 (5).
226 *Id.* art. 4.

For dispute concerning labor interests and dispute on termination of employment, such disputes will be settled by either mediation, conciliation, arbitration or PPHI.[227]

For dispute arising between trade unions, such dispute can be settled by arbitration based on a written agreement.[228] If parties in dispute cannot agree on the out of court settlement, the dispute will then be resolved at PPHI.[229]

ii) Mediation and Conciliation

The mediation and conciliation process under the Bill is similar. The only distinction between the two is in mediation the third party acting mediator has to be an official from the Ministry in charge of labor,[230] meanwhile in conciliation the third party is not have to be public official as long as such person is registered as conciliator at the Ministry in charge of labor.[231]

The mediation process begins when parties to a dispute request mediator to settle their dispute.[232] The mediator is selected from a list of mediator maintaned by the office of the Ministry in charge of labor.[233] The person acting as mediator has to be agreed by the parties to a dispute.[234]

Within 7 days from the date of request to mediate, the mediator has to start examining the dispute and immediately call for a meeting.[235] The mediator has to complete its task at the latest 40 working days since request for mediation is received.[236]

The mediator can call on witness or expert witness to be present at the mediation meeting.[237]

If an amicable settlement is reached, parties have to draw amicable agreement.[238] The agreement will be registered at the PPHI of the District Court where parties draw the agreement.[239] Once registered, the agreement will have an enforceable effect.[240]

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227 *Id.* art. 5 (1).
228 *Id.* art. 5 (2).
229 *Id.* art. 5 (3).
230 *Id.* art.1 (11) which provides, '…mediator is official at government agency in charge of manpower…"
231 *Id.* art. 25 (1) which provides, "Conciliator must be registered at government agency in charge of manpower…"
232 *Id.* art. 9 (2).
233 *Id.* art. 9 (3).
234 *Id.* art. 9 (2).
235 *Id.* art. 11.
236 *Id.* art. 16.
237 *Id.* art. 12 (1).

If the mediation failed, the mediator will issue recommendation in writing to the parties. [241] Parties have to respond whether they agree or disagree with the recommendation within 14 days after receiving such recommendation.[242] In the absence of respond from one of the parties within the required period will mean that such party refuses the recommendation.[243] If the disputed parties agree on the recommendations suggested by the mediator, the mediator will assist the disputed parties to draw the amicable agreement.[244]

If the disputed parties refuse mediator's recommendation, the dispute concerning labor interests and dispute concerning termination of employment will be settled at PPHI.[245]

iii) Arbitration

Under Article 29 of the Industrial Dispute Settlement Bill, the jurisdiction of arbitration is confined to examining dispute concerning labor interests, dispute concerning termination of employment and dispute between labor unions within a company.[246]

The arbitrator that can be selected by the parties to a dispute is also limited. The Act states that only arbitrator who is registered at the Ministry in charge of manpower can be selected as arbitrator.[247] This provision has made arbitration provided under the Act to be a specialized arbitration.

Settlement of dispute through arbitration has to be on the basis of agreement between the parties to a dispute.[248] The parties in dispute have the option to establish a single or a panel of arbitrators.[249] Panel arbitrators may not exceed three persons.[250] The

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238 *Id.* art. 14 (1).
239 *Id.* art. 14 (1).
240 *Id.* art. 14 (3) (b).
241 *Id.* art. 14 (2) (a).
242 *Id.* art. 14 (2) (c).
243 *Id.* art. 14 (2) (d).
244 *Id.* art. 14 (2) (e).
245 *Id.* art. 15 (1).
246 *Id.* art. 29.
247 *Id.* art. 30.
248 *Id.* art. 32.
249 *Id.* art. 33 (2).
250 *Id.* art. 33 (2).

Act provides that if parties fail to appoint arbitrators, the dispute will then be submitted to PPHI.[251]

A dispute that is under examination or has been settled by arbitration is not allowed to be submitted to the PPHI.[252]

Arbitrator(s) has the obligation to settle dispute within 30 working days since the parties to a dispute signed the agreement to appoint arbitrator(s).[253] The time limit can be extended only once and limited to a maximum of 14 working days.[254] It is questionable whether such time limit will be sufficient if the dispute is complex. In addition, it is uncommon for a certain law to limit the time for arbitration process.

The Bill provides that the arbitrator(s) has the obligation to try to settle dispute amicably prior to any proceedings.[255] The Act further elaborates if parties can reach amicable settlement mediated by the arbitrator. These provisions are not common to any arbitration law. It is because those who have agreed to arbitrate had exhausted amicable settlement, but failed.

Arbitration decision will be binding and final on the parties to a dispute.[256] However, the decision may be requested for PK to the Supreme Court.[257] This provision may be interpreted as the possibility for an arbitration decision to be challenged. Actually, it is not. The Bill may mistakenly use the word 're-open' instead of 'annulment' since the grounds for re-opening a case under the Bill are similar to the grounds for annulment of arbitration decision under the Arbitration Act.

iv) Court

There are four types of dispute that can be settled through PPHI.[258] First, is the dispute concerning labor rights. In such dispute, PPHI will act as the court of first and final instance to examine and decide the case.[259] The second is dispute concerning labor

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251 *Id.* art. 33 (5).
252 *Id.* art. 51.
253 *Id.* art. 38 (1).
254 *Id.* art. 38 (3).
255 *Id.* art. 42 (1).
256 *Id.* art. 49 (1).
257 *Id.* art. 50 (1).
258 *Id.* art. 78.
259 *Id.* art. 78 (a).

interests. In such dispute, PPHI will act as the court of first instance to settle the dispute.[260] The third is dispute concerning termination of employment. In such dispute, PPHI will act as the court of first instance to settle the dispute.[261] The fourth dispute is dispute between labor unions. In this kind of dispute, PPHI will act as the court of first and final instance.[262]

The Bill obligates panel judges at PPHI to settle dispute within 50 working days counting from the first hearing.[263]

The dispute arises concerning labor interests and termination of employment can be challenged for cassation to the Supreme Court.[264] The Supreme Court when examining the case has to establish a panel that consists of one Supreme Court justice and two ad hoc Supreme Court justices.[265] The panel has 30 working days since application is made to issue decision.[266]

IV.5 Labor Dispute Resolution in Practice

IV.5.1 Formal Mechanism

Disputes concerning termination of employment have been the most frequent among other labor disputes. The dispute is usually brought to the Regional LDSC by either the labor or the employer.

In one case, an employer, PT. Nusantara Plywood, acted as plaintiff against Ch. Setiawan as defendant.[267] The plaintiff requested the Surabaya LDSC to grant permission to terminate the defendant. The ground for such request is the defendant had used the plaintiff's car for family purposes and the car was stolen when it is still under the defendant possession. The Surabaya LDSC in its decision of 1 May 2000 grant such

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260 *Id.* art. 78 (b).
261 *Id.* art. 78 (c).
262 *Id.* art. 78 (d).
263 *Id.* art. 90.
264 *Id.* art. 96.
265 *Id.* art. 99 Industrial Dispute Settlement Bill. The Bill introduced ad hoc judges at the Supreme Court as provided under Article 55 (2). These ad hoc judges are nominated by employer associations and labor union which then selected by the Supreme Court for appointment by the President.
266 *Id.* art. 101.
267 Decision of Surabaya LDSC Number 61/686-3/XIII/PHK/05-2000.

permission to the plaintiff and calculated a sum of money as severance money in the amount of IDR. 2.7 million (currently around USD 300).

However, the plaintiff was not satisfied with the decision, in particular the severance money that it has to pay. The plaintiff then challenged the decision to the Central LDSC in Jakarta. In 9 January 2001, the Central LDSC upheld the decision of the Surabaya LDSC.

The above case is an example of a case handled by the LDSC. The LDSC is requested to grant permission to terminate employment. If granted, the LDSC has to calculate the severance pay for the labor. A simple case handled by regional LDSC will take about 6 to 8 months. At the central LDSC, the time requires is almost the same. Time wise, the decision issued by LDSC is time consuming.

Another problem is with respect to appeal at Central LDSC since it only sits in Jakarta. Appeal will require money, which may be larger than what is being claimed by the labor. The drafter of the Industrial Dispute Bill may have realized this problem and may have provided remedy to which under the Bill, PPHI established at every District Court in Indonesia.

Another interesting labor dispute case is the Shangri-La Hotel case. The case has attracted local and international public.

The Shangri-La Hotel case started in September 2000 arising from dispute between PT. Swadharma Kerry Satya, the company which has the right to operate hotel under Shangri-La chain in Jakarta, and approximately 600 of its employees. The point of dispute is the company and labor union when negotiating the terms of new collective labor agreement cannot reach an agreement.[268] The negotiations entered into a deadlock and strike was staged by Shangri-La employees.

The case was taken up by Shangri-La to the Central LDSC to have permission to terminate some of its employees based on their illegal strike and causing Shangri-La to close down. In defence, the employees argued that they had no intention to cause the closure of Shangri-La.

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268 Under Indonesian labor law, an employer who employs certain number of employees must conclude an agreement referred to as collective labor agreement. The employees or labours is usually represented by a labor union.

The Central LDSC in its decision of 1 May 2001 granted Shangri-La permission to terminate its 414 employees. [269] It held that the employees' spontaneous strike was illegal because it was carried out without permission from the Regional LDSC. The Central LDSC also decides that Shangri-La has to pay severance money to some of its employees.[270] All but 79 of the employees accepted this ruling and settled with Shangri-La.

The 79 who refused to settle immediately appealed the decision of the Central LDSC to the Administrative High Court in Jakarta.

At the time the when Central LDSC issued its ruling, Shangri-La lodged a lawsuit at the South Jakarta District Court against employees who have caused loss to Shangri-La. Although the case brought to the South Jakarta District Court was not labor dispute, however it had close connections with the labor dispute. This is where court mechanism can be used for 'labor related civil dispute'. Shangri-La was seeking damages of approximately IDR 8 billion from its former employees suspecting of causing damage and loss to Shangri-La.

On 1 November 2001, the judge at the South Jakarta District Court ruled that seven union officials has to pay IDR 20.7 billion for damage to reputation, damage to hotel facilities and losses suffered due to the closure of Shangri-La. Throughout the judgment the court made reference to the illegal strike. The company later offered to withdraw the order for damages if the employees would withdraw their appeal on the Central LDSC ruling and not make any counterclaims.

The employees, however, declared that they would continue with their appeal. They have submitted the appeal to the High Court.

On 26 March 2002, on the issue of termination of employment, the Administrative High Court found in favour of the employees. The court annulled the rulings of the Central LDSC.[271] The court in its decision has ordered Shangri-La to reinstate its former employees.

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269 Decision of the P4P Number 602/358/63-5/IX/PHK/5-2001 of 1 May 2001.

270 Ibid.

271 Decision of the Administrative High Court Number 227/G/2001/PT.TUN.Jkt of 26 March 2002.

Based on the ruling of the Administrative High Court, the Central LDSC and Shangri-La appealed to the Supreme Court.

On 23 October 2002, the Supreme Court issued its decision with respect to termination of employment. The Supreme Court overruled in part the decision of the Administrative High Court.[272] The Supreme Court upheld the decision of the central LDSC of granting Shangri-La the right to terminate its employees. However, the Supreme Court disagrees with the compensation granted by the Central LDSC to former Shangri-La's employees. The Supreme Court gave more compensation to the employees.

Nevertheless, the 79 employees and their attorney are not satisfied with the Supreme Court ruling.[273] They found that the ruling was unfair. To this end the employees have submitted for the decision to be re-opened by the Supreme Court.

All in all the case has taken almost 2 years, but it has not come to an end. Time wise, the process starting from the permission lodged to the Central LDSC to the Supreme Court has been relatively fast compared to other labor dispute that has to go to court. One reason for the speedy process is the case has attracted public and international attention.

As to the appeal of the South Jakarta District Court ruling, the High Court has issued its verdict on 27 August 2002. The verdict stated that the appeal will not be entertained and declared null due to procedural matters. The employees, according to the High Court, failed to submit their appeal within 14 days as provided under the law of procedures. This means the decision of South Jakarta District Court will have enforceable effect.

The lesson that can be learned from the Shangri-La case is labor dispute can be pursued by various mechanism. The important thing is to find the legal basis so that the court or LDSC will entertain the case. This is despite the labor law has made distinction of which categories of dispute can go to which dispute resolution. In addition, if necessary, the various mechanism can be pursued simultaneously.

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[272] Decision of the Supreme Court Number 250K/TUN/2002 and 251K/TUN/2002 of 23 October 2002.

[273] Tempo Interaktif, "MA Dinilai Merekonstruksi Fakta Baru dalam Kasus Hotel Shangri-La (The Supreme Court has been Considered of Recontructing New Facts in the Shangri-La Hotel Case)" **See**: http://www.tempo.co.id/news/2002/12/23/1,1,22,id.html access on 31 January 2003; Press release by Serikat Pekerja Mandiri Shangri-La Hotel can be found in http://www.asianfoodworker.net/shangrila-lbh.htm access on 31 January 2003.

Labor dispute brought to court usually concerns with contractual obligations or tort. A labor will suit his/her employer on the ground that certain action's of the employer has caused injury to the labor. The labor initiating this kind of process usually comes from the middle-upper class labor. The intention is to obtain much higher compensation, higher than what the LDSC would grant for severance pay.

Labor dispute settlement through court system, however, is a very long process. In average initiating labor settlement through court will take about 5 years before enforceable verdict is obtained.[274] Hence, labors who have insufficient fund will avoid settling dispute through court since they do not want to lose out from their employer.

IV.5.2 ADR Mechanism

Although unrecorded, there have been settlements of dispute between labor and employer based on mutual goodwill through bipartite negotiations. There have also been successful settlements assisted by third party acting as mediation or conciliator.

In mediation or conciliation process apart from official at the Ministry of Labor, there have been occasions in which other institutions are asked to assist. The National Commission of Human Rights, for example, has played a role as mediator for some of labor disputes. The Commission successfully mediated *PT Duta Busana Danastri* labor and the management.[275] The Commission assistance came after the Department of Labor has failed to resolve the dispute. The Commission went so far as to draw up the settlement agreement, which the two parties eventually concluded.[276]

In labor dispute, arbitration is rarely used. One reason is arbitration has not been popular among labors or, even, employers. The parties in dispute are not familiar to such mechanism.

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[274] Uwiyono stated that it takes 5 years and 1 month from the decision of District Court to the decision of Supreme Court. **See:** A. Uwiyono, Hak Mogok di Indonesia (The Right to Strike in Indonesia), 205.

[275] 1994 National Human Rights Commission Report. **See**: http://www.komnas.go.id/english/report/1994/ar_txtc10b.html access on 31 January 2003.

[276] Ibid.