PROBLEMATICS OF LEGAL REVIEW (PK) POST POST MK RULING NO 34/PUU-XVII/2019 IN RESOLUTION OF INDUSTRIAL RELATIONS DISPUTES

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Abstract: Legal action for judicial review (PK) after the Constitutional Court decision No. 34/PUU-XVII/2019 in resolving industrial relations disputes. The research method uses a normative legal research type, the research approach is a statutory approach, the nature of the research is descriptive, the data source is secondary data, the data collection tool is document study, qualitative data analysis. The elimination of judicial review as an extraordinary legal remedy in resolving industrial relations disputes has an impact on the sense of justice of the parties. It is proven that there is a test of legal norms in Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes which is considered as the basis for eliminating legal remedies for judicial review with the emergence of the Decision of the Constitutional Court of the Republic of Indonesia Number 34/PUU-XVII/2019. In the research, it was found that the elimination of judicial review in industrial relations dispute cases actually eliminates justice contained in the principles of simple, fast, fair and cheap, it is better that judicial reviews (PK) continue to be held in order to provide space for extraordinary legal remedies as regulated in the Civil Code. The legal remedy for judicial review as an extraordinary measure in industrial relations dispute cases is actually still provided as a manifestation of legal equality and justice. one example that has become permanent law and cannot submit a PK is decision number 779 K/Pdt.Sus-PHI/2022 in the case between PT Belawan Indah against Supatno, Hanafi, Abu Hasan, et al. According to Gustav Radbruch, there are three elements that must always be considered, namely legal certainty, expediency and justice.

Keywords: Legal Remedies, Judicial Review (PK), Industrial Relations Court.

Introduction

The current era is experiencing very rapid progress, not only in the world of industrial engineering and commerce but also in the development of law. Legal developments during this period are proven by the start of revising and updating several laws and regulations which are deemed no longer relevant to current developments and needs of society, for example, the Law on State Administrative Courts, the revised Law on Regional Autonomy. several times. Orderly society can be achieved if the law is dynamic and follows the development of society's needs. Legislative regulations which are legal products must be able to regulate things that are currently needed by society, because laws are formed to ensure the creation of order in society.

According to Mochtar Kusumaatmadja, the main and first goal of law is order. Therefore, legal products, namely laws and regulations that are no longer relevant, are immediately revised and updated so that they are in line with societal developments and meet current societal needs (Arpangi, 2019).

According to (Gustav Radbruch), the aim of law is to achieve justice, legal certainty and provide benefits to society, and for this reason the law must be dynamic and in accordance with developments at this time in order to achieve the intended goal of law, namely to be beneficial to society in order to achieve order in the world. order of social life. Mochtar Kusumaatmadja stated that law is not only the totality of the principles and rules that regulate human life in society, but also includes the institutions and processes that embody the application of these rules in reality. With the promulgation of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (hereinafter referred to as the PPHI Law), an Industrial Relations Court was established which specifically handles industrial relations disputes. So that industrial relations disputes can be resolved through judicial institutions (litigation) and non-judicial institutions (non-litigation), which consist of: Bipartite, Mediation, Conciliation and Arbitration. The next ordinary legal remedy is called an appeal to the High Court level, then a cassation to the Supreme Court level. In this process, the parties to the dispute are required to prove what they are proposing, because if it is not proven, then those in dispute cannot get what they think they deserve. If one of the parties is dissatisfied with the Supreme Court's cassation decision, extraordinary legal action can be taken, in the form of a Judicial Review (PK) (Fanani, Ahmad Zaenal, 2006).

PK applications are submitted not only for dissatisfaction with the cassation decision, but also for court decisions that have obtained permanent legal force, meaning that district court decisions that are not appealed can be submitted for PK, and high court decisions that are not appealed for cassation can also be requested for PK. Legal action is an effort provided by law to all parties involved in a lawsuit in court to submit an opposition to the judge's decision. Giving every person who is in a lawsuit the right to file an opposition to a court decision provided by law is intended to prevent wrong judge decisions. This is because judges as humans are certainly not free from mistakes and/or mistakes. One of the PK cases that was rejected was the case filed by Marion Kova as a former employee of the Republic of Indonesia Public Printing Company (Perum Peruri) who had experienced layoffs at Perum Peruri. "Reject the Petitioner's petition in its entirety," said Chief Justice of the Constitutional Court Anwar Usman when reading out the Constitutional Court's decision no. 46/PUU-XVII/2019 in the Jakarta MK courtroom, Wednesday (24/10/2019). Decision No. 34/PUU-XVII/2019 automatically applies as consideration in this application. This is because the norms of Article 57 and Article 56 letter C of the PPHI Law have the same objective, namely that they can submit legal proceedings against decisions that have permanent legal force in Industrial Relations Dispute cases. The Constitutional Court (MK) rejected the judicial review of Article 57 of Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes (UU PPHI) and Article 28 paragraph (1) letter c of Law no. 3 of 2009 concerning the Supreme Court (UU MA) regarding requests for legal action for judicial review (PK) in industrial relations disputes (PHI) cases. Based on the background that has been described above, a complete legal study is absolutely necessary regarding the problems of judicial review (PK) after the Constitutional Court decision NO 34/PUU-XVII/2019 in resolving industrial relations disputes.

Literature Review

1. Industrial Relations Disputes

Disputes between employers and workers in industrial relations often occur, especially in matters of interest. On the one hand, entrepreneurs have the desire to get maximum profits, while on the other hand, workers have the desire to get the highest wages from their work in order to pay for their living needs properly. These differences in interests often cause problems and conflicts that are difficult to avoid, so that the consequences that arise include

demonstrations, work strikes and layoffs. The impact of this could disrupt the stability of the national economy.

In general, the resolution of disputes or disputes between workers and employers is based on the principle of deliberation to obtain agreement/consensus (vide Article 136 paragraph 1 of Law No. 13 of 2003 concerning Employment), which means that every dispute between workers and employers must be resolved through a peaceful mechanism based on the principle of balance. Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes, regulates that when an industrial problem occurs, it is prioritized to be resolved through negotiation to find a mutually beneficial/balanced agreement, without going to court. (vide Article 3 paragraph 1 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes). This will create a principle of balance in the position between workers and entrepreneurs. There are four forms of manifestation of the principle of balance that can be carried out as alternative solutions in an effort to resolve industrial relations disputes before taking the court route as ordered by Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes, namely by first resolving them by means of "bipartite, conciliation, arbitration." , and mediation".

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Legal Basis for Judicial Review

The legal remedy for judicial review certainly does not only apply to criminal cases, for other cases, both civil cases and state administrative cases, there is also a legal remedy for judicial review. This is regulated in Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court which regulates that "A request for judicial review can only be submitted 1 (one) time".

Legal measures for judicial review which already have special legal rules, namely the PPHI Law as lex specialis, have submitted their procedural law to general law, namely the Civil Procedure Law (HIR/RBg/RV) as lex generali in accordance with Article 57 of the PPHI Law. In Civil Procedure Law there are ordinary legal remedies and extraordinary legal remedies. These ordinary legal remedies include resistance (verzet), appeal and cassation, however, in industrial relations disputes there is no opportunity to submit an appeal to the High Court in accordance with the Elucidation to the PPHI Law. Meanwhile, extraordinary legal remedies consist of third party opposition and judicial review. Extraordinary legal measures, including judicial review, are only permitted in certain cases mentioned in the law where the decision has the force of law. In Article 28 (1) c of the 1985 Supreme Court Law, it is stated that the Supreme Court has the duty and authority to examine and decide on requests for review of court decisions that have obtained permanent legal force. Article 66 (1) states that a request for review can only be submitted once, and Article 66 (3) states that a request for review can be withdrawn as long as it has not been decided. Once revoked, a request for reconsideration cannot be filed once again. The provisions of Article 68 state that a third party, namely a person who was not originally a party to a civil case

whose decision has permanent legal force, cannot for any reason submit a request for a review of the decision. Furthermore, Article 67 of the 1985 Supreme Court Law states that a request for review of a civil case decision that has obtained permanent legal force can be submitted only based on the following reasons: (Harahap, 2005)

a. If the decision is based on a lie or deception by the opposing party which is discovered after the case has been decided or is based on evidence which the criminal judge later declares to be false
b. If after the case has been decided, documents of decisive evidence are found that could not be found at the time the case was examined
c. If something has been granted that was not demanded or more than what was demanded
d. If a part of the claim has not been decided without consideration of the reasons
e. If between the same parties regarding the same issue on the same basis by the same Court or at the same level, decisions are given that conflict with each other.
f. If in a decision there is a judge's error or a real mistake.

Furthermore, Article 69 regulates the time limit for submitting a request for reconsideration. This article states that a request for review submitted based on the reasons as intended in Article 67 must be submitted within a grace period of 180 (one hundred and eighty) days to:

a. As mentioned in letter a, since the lie or deception is discovered or since the criminal judge's decision has permanent legal force, and has been notified to the parties involved in the case.
b. As mentioned in letter b, from the time the documents of evidence are found, the day and date of discovery must be stated under oath and ratified by an authorized official.
c. As mentioned in letters c, d and f, since the decision has permanent legal force and has been notified to the parties involved in the case.

Based on Article 40 (1) of the 1985 Supreme Court Law, it is emphasized that the examination of cases regarding requests for review is carried out by the Supreme Court of the Republic of Indonesia with at least three judges as panel judges. Regarding the decision of the Supreme Court of the Republic of Indonesia regarding cases of requests for judicial review, they can be classified into 3 forms, as follows: (Meutia, 2019)

a. Decision cannot be accepted. A decision cannot be accepted because it is late in submitting a request for review as stipulated in Article 69 of the 1985 Supreme Court Law. The decision for review is declared unacceptable by the Supreme Court because; 1) the application is submitted by a person who is not entitled, 2) the power of attorney is not included in the application for judicial review even though the application is authorized by another person. 3) the application for review is submitted a second time, 4) the application for review is filed against a religious court decision which does not yet have permanent legal force, 5) the application submitted does not meet the formal requirements determined by the applicable laws and regulations.
b. The decision is not granted or rejected. The application for reconsideration is rejected by the Supreme Court if the reasons are not supported by true facts which form the reason and form the basis of the application for review. Or also because the reasons for the review do not comply with the reasons specified in a limited manner in Article 67 letters a to f of the 1985 Supreme Court Law. If the Supreme Court rejects the request

for review, then the previous decision which has permanent legal force remains in effect.

c. The decision is granted. The request for review will be granted by the Supreme Court if the reasons for review submitted by the applicant are in accordance with the provisions of Article 67 of the 1985 Supreme Court Law. In the event that the Supreme Court grants the request for review, the Supreme Court will cancel the decision of the court for which the review is requested and then the Supreme Court will examine and decide the case itself. The Supreme Court's decision is a court decision at the first and final level of the Supreme Court's decision in terms of accepting or granting a request for review.

2. Process and Procedures for Judicial Review

Facts about Legal Remedies in Industrial Relations Disputes:

a. It does not regulate legal remedies for appeal. There are no legal remedies for appeals in Industrial Relations Disputes (PHI), so that matters involving Industrial Relations Court decisions are immediately requested for cassation to the Supreme Court within 14 days after the decision is read out in the trial or from the date of notification of the decision.
b. Does not regulate Judicial Review (PK), and Cassation as the Last Legal Recourse for Work Relations Disputes and Rights Disputes, the PPHI Law does not regulate dispute resolution through Judicial Review (PK), confirmed by Supreme Court Circular No. 03 of 2018 concerning the Implementation of the Results of the Plenary Formulation of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Court, which essentially states that in Industrial Relations Dispute Cases there is no legal remedy for Judicial Review, which in full reads: "Decisions of the Industrial Relations Court in cases of disputes of interest and inter-governmental disputes. union or Labor Union in one company, is a Final Decision and is permanent, while Decisions regarding Rights Disputes and Disputes on Termination of Employment can be submitted to Cassation as a last legal remedy, in accordance with Article 56, Article 57, Article 109, and Article 110, Law. Law Number 2 of 2004 concerning Industrial Relations disputes, so that in Industrial Relations Dispute cases there is no legal remedy for Judicial Review."
c. Decisions can be executed immediately, Article 108 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes: Article 108 The Chair of the Panel of Judges at the Industrial Relations Court can issue a decision that can be implemented first, even if the decision is challenged or appealed. This means that the decision can be implemented immediately even though it does not yet have permanent legal force or the term "uitvoerbaar bij voorraad". The fact that legal remedies for judicial review in industrial relations cases are eliminated can be seen in Decisions Number 34/PUU-XVII/2019, Number 46/PUU-XVII/2019 on September 3 2019 and Number 89/PUU-XVIII/2020.

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes does not explicitly regulate that legal remedies in resolving industrial relations disputes are only regulated up to the cassation level. Even though the PPHI Law has handed over the procedural legal process to generally applicable civil procedural law. This gives rise to an interpretation that legal action for judicial review can be submitted for industrial relations dispute cases. However, when submitting a legal action for judicial review to the Supreme Court, a judge's decision was issued which contained the sentence "does not specifically regulate the legal action for judicial review, and also takes into account the results of the most recent Civil Chamber Plenary Session as contained in the Supreme Court Circular Letter (SEMA) Number 3 of 2018 (Kusumaatmadja, 2002). "The Panel is of the opinion that the Petitioner's request for Judicial Review (PK) is deemed

to have no legal basis, so it must be declared unacceptable (niet ontvantkelijk verklaard)," this sentence was felt to have oddities where it was clear that the judge ignored Article 57 of the PPHI Law which states that the procedural law that applies to the Industrial Relations Court is the Civil Procedure Law that applies to courts within the General Courts, except as specifically regulated therein. The judge should find the law (judge made law) based on the Civil Procedure Law (HIR) in accordance with the provisions of Article 57 of the PPHI Law which submits the procedural law that applies to the Industrial Relations Court to the Civil Procedure Law that applies to the Court within the General Court environment, except for those specifically regulated in the PPHI Law in this case regarding Judicial Review. There is no reason for the PPHI Law, which does not specifically regulate judicial review efforts, to be taken into consideration by judges in deciding on judicial review cases regarding PPHI cases for all PPHI cases that have been submitted to the Supreme Court. In addition, the inclusion of SEMA Number 3 of 2018 is used as the basis for judges' considerations in deciding cases even though SEMA itself is not a law.

In the Constitutional Court Decision Number 34/PUU-XVII/2019, a review of Article 56 of Law no. 2 of 2004 and was declared unacceptable by the Constitutional Court based on the legal consideration that the general provisions (lex generalis) which must be interpreted as meaning that judicial review can only be carried out on decisions that have permanent legal force as long as these general provisions are not excluded by statutory provisions. of a special nature (lex specialis), both because of the nature of the case and because of the conditions determined for a Judicial Review to be submitted. In this context, Article 56 of the PPHI Law is a form of specialist legal norm from Article 34 of the Supreme Court Law. Such specificity is given with the consideration that the resolution of industrial relations cases is aimed at ensuring the implementation of the principles of speed, accuracy, fairness and cheapness. So by eliminating the Review stage, it is hoped that the production process will not be disrupted in a company that employs employees. Thus, the PPHI Law also does not provide regulations or prohibitions regarding the right to file a judicial review. The restrictions that are expressly provided for by the PPHI Law are limited to not being able to submit appeals against all PHI cases, as well as closing cassation efforts for cases of interest disputes and disputes between workers/labor unions. Judicial review as an extraordinary measure in industrial relations dispute cases is actually still provided as a manifestation of legal equality and justice. (Gustav Radbruch), there are three elements that must always be considered, namely legal certainty, expediency and justice. Legal certainty is closely related to the guarantee of protection for the community against arbitrary actions aimed at public order, while expediency is to create the maximum benefit or happiness for the community, while justice is truth, impartiality, can be accounted for and treats everyone. humans are in the same position before the law (equality before the law).

Conclusion

It is recommended that a Judicial Review (PK) continue to be held in order to provide space for extraordinary legal action as regulated in the Civil Code. PK is a way to correct the judge's negligence which is detrimental to the condemned person. Judges are ordinary, weak human beings who cannot avoid mistakes or errors. Judicial review as an extraordinary measure in industrial relations dispute cases is actually still provided as a manifestation of legal equality and justice. According to (Gustav Radbruch), there are three elements that must always be considered, namely legal certainty, expediency and justice.

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