

ABSTRAK

Perselisihan hubungan industrial, termasuk PHK diselesaikan melalui mekanisme dalam Undang-Undang Nomor 2 tahun 2004 tentang penyelesaian Perselisihan Hubungan Industrial, yang mewajibkan mediator menerbitkan anjuran tertulis apabila mediasi tidak mencapai kesepakatan. Namun, dalam praktik pada Putusan Nomor 38/Pdt.Sus-PHI/2024/PN Smg, mediator tidak menerbitkan anjuran tertulis serta beberapa pihak tidak memenuhi kewajiban mediasi sehingga gugatan dinyatakan tidak dapat diterima, meskipun PMK Nomor 68/PUU-XII/2015 menegaskan bahwa anjuran tertulis merupakan bagian dari risalah penyelesaian mediasi dan bukan syarat formil tersendiri. Penelitian ini bertujuan untuk mengkaji pengaturan kewajiban mediator dalam menerbitkan anjuran tertulis, kedudukan risalah mediasi sebagai syarat formil pengajuan gugatan, serta akibat hukum mediator tidak menerbitkan anjuran tertulis dan tidak dipenuhinya kewajiban mediasi oleh para pihak terhadap penerimaan gugatan PHK di Pengadilan Hubungan Industrial.

Metode penelitian yang digunakan adalah hukum *yuridis normatif* dengan spesifikasi penelitian yang bersifat deskriptif analitis. Data penelitian terdiri data sekunder yang diperoleh dari bahan hukum primer berupa Undang-Undang, PMK No 68/PUU-XIII/2015, dan Putusan Nomor 38/Pdt.Sus-PHI/2024/PN Smg, bahan hukum sekunder berupa literatur, dan bahan hukum tersier. Analisis dilakukan secara kualitatif dengan metode deskriptif-analitis untuk memperoleh argumentasi hukum yang sistematis dan komprehensif.

Hasil penelitian menunjukkan kewajiban mediator untuk menerbitkan anjuran tertulis telah diatur secara tegas dan bersifat imperatif dalam Undang-Undang Nomor 2 Tahun 2004 dan Permenakertrans Nomor 17 Tahun 2014, yang mewajibkan penerbitan anjuran tertulis paling lama 10 hari kerja sejak sidang mediasi pertama apabila tidak mencapai kesepakatan. Selanjutnya, PMK Nomor 68/PUU-XIII/2015 menegaskan bahwa anjuran tertulis bukan syarat formil yang berdiri sendiri, melainkan bagian yang integral dari risalah penyelesaian mediasi sebagai syarat pengajuan gugatan ke Pengadilan Hubungan Industrial. Berdasarkan analisis Putusan Nomor 38/Pdt.Sus-PHI/2024/PN Smg, tidak diterbitkannya anjuran tertulis oleh mediator merupakan pelanggaran kewajiban normatif dan asas kepastian hukum yang berimplikasi terhadap mekanisme administratif dan prosedural, serta akibat tidak dipenuhinya kewajiban mediasi oleh seluruh pihak menyebabkan gugatan tidak dapat diterima karena tidak memenuhi syarat formil, sehingga dapat menghambat akses pekerja terhadap keadilan.

Kata Kunci: Mediator, Anjuran tertulis, Risalah Mediasi, Pemutusan Hubungan Kerja, Pengadilan Hubungan Industrial.

ABSTRACT

Industrial relations disputes, including layoffs, are resolved through the mechanism in Law Number 2 of 2044 concerning the settlement of Industrial Relations Disputes, which requires the mediator to issue a written recommendation if mediation does not reach an agreement. However, in practice in Decision Number 38/Pdt.Sus-PHI/2024/PN Smg, the mediator did not issue a written recommendation and several parties did not fulfil the mediation obligations so that lawsuit was declared inadmissible, even though PMK Number 68/PUU-XIII/2015 emphasizes that a written recommendation is part of the mediation settlement minutes and not a separate format requirement. This study aims to examine the regulation of the mediator's obligation to issue a written recommendation, the position of the mediation minutes as a formal requirement for filing a lawsuit, and the legal consequences of the mediator not issuing a written recommendation and the failure of the parties to fulfil the mediation obligations on the acceptance of the layoff lawsuit in the industrial relations court.

The research method used in normative juridical law with descriptive analytical research specifications. The research data consist of secondary data obtained from primary legal materials in the form of Laws, PMK No. 68/PUU-XIII/2015, and decision No.38/Pdt.Sus-PHI/2024/PN Smg, secondary legal materials in the form of literature, and tertiary legal materials. The analysis was conducted qualitatively with descriptive-analytical methods to obtain systematic and comprehensive legal arguments.

The results of the study indicate that the mediator's recommendation has been strictly regulated and is imperative in Law Number 2 of 2004 and Ministerial Regulation Number 17 of 2014, which requires the issuance of a written recommendation no later than 10 working days from the first mediation session if no agreement is reached. Furthermore, PMK No. 68/PUU-XIII/2015 emphasizes that a written recommendation is not a stand-alone formal requirement, but rather an integral part of the mediation settlement minutes as a requirement for filing a lawsuit with the Industrial Relations Courts. Based in the analysis of decision No. 38/Pdt.Sus-PHI/2024/PN Smg, the failure to issue a written recommendation by the mediator constitutes a violation or normative obligations and the principle of legal certainty which has implications for administrative and procedural mechanisms, and the result of the failure to fulfil mediation obligations by all parties causes the lawsuit to be inadmissible because it does not meet formal requirements, thus hindering worker's access to justice.

Keywords: Mediator, Written recommendation, Mediation minutes, Termination of employment, Industrial Relations Court.