EMPLEYMENT LAW PERSPECTIVE AND MUTUAL RESPECT IN RESOLVING INDUSTRIAL ISSUE; THE CASE OF LABOR STRIKE IN DEMANDING WAGE INCREASE OF PT FREEPORT INDONESIA EMPLOYEES

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Abstract— Few factors has been identified as the cause of the interruption in Industrial relationship in PTFI which bring consequence in the suspend of negotiation thus followed by extended labor strike. The factors are the basic reference in increase wage demand, dead lock decision in -CLA negotiation as cause of labor strike, the Industrial relationship settlement approach after the -CLA negotiation stopped. The main cause of the problem is the discrepancy in understanding and communication as the consequence of each party keep hold tight on its principle and interest. Beside the material loss, the company also suffers physiological effect after the labor strike as the consequence of intimidation to non strike workers. To rebuild harmonious Industrial relationship in PTFI, the company and its employee needs to understand about industrial relationship principals with always consider the mutual interest, partnership, and interdependence, create calm and peacefully working atmosphere, increase productivity and increase mutual welfare. Start everything with good intention and industrial relationship approach together with mutual trust, if there is dispute in relationship. One of the Industrial relations- tool that needs to be develop in PTFI is communication in partnership relations- with equivalent position between company and labor union through -the bipartite corporation body ( LKS- Bipartit).

Key Words: Regulation No.13 Year 2003, Industrial Relationship, Mutual Agreement, Wages, Labor Strike, Industrial relationship dispute, Mutual respect / trust.

I. INTRODUCTION

PT Freeport Indonesia (PTFI) is one of the largest and the first foreign capital investment (PMA) in the field of general mining operations in Indonesia, particularly in the Mimika, Papua. PTFI shares is owned by Indonesia Government and PT Freeport Indonesia Incorporated (PTFII) affiliated with Freeport McMoRan Copper & Gold which its headquarters based in New Orleans, United States. PTFI vision and mission is to become world-class copper producer company, the largest with lowest cost in the world. Therefore it is important for PTFI has to be supported by employees with high motivational to achieve the best result for company.

The PTFI employee consists of foreign worker and local workers (staff employee. Non-staff employee, and Graduate Development Program (GDP)). However PTFI has committed to increase the nationalization of workforce thus increased the number of local Papua workers every year in order to fill position in PTFI organizational structure.

To retain those high qualified employee and also to maintenance their productivity and performance, PTFI provide competitive compensation and benefit program, as follow:

1. Total Cash
   Company provide cash compensation package which consist of monthly compensation as follow; wage / basic salary, allowance, shift and work place incentives, and monthly performance bonus. For yearly as follow: yearly performance bonus, cost of living allowance, allowances on personal leave, and national day allowance.

2. Total Benefit
   Company also provide some benefit package to support employee as follow: health allowance, personal leave and ticket plane /
travel allowance, children education allowance, insurance, home loan, and some house facility and recreation in working place.

3. Retirement Benefit

Company provide retirement program to help employee on its retirement period in the future.

As addition, employee also given opportunity to prepare his/her retirement period through saving plan where company and employee give their own contribution.

PTFI through Human resource and Industrial relations- Department has obligation to ensure that all the program works as it should be. Those programs and term and obligation are written in -CLA. The agreement is used to build Industrial relationship. PTFI also build affilience with Labor Union in order to create harmonic, dynamic and fair Industrial relationship between company and the employee.

The -CLA is negotiated between company and Labor Union in every two years. Untill 2011, PTFI has had sixteen mutual agreements. The 16th mutual agreement period 2009-2011 ended on September 30th, 2011 thus based on -.Labor Law, Company and the Labor Union had to start –negotiation to create the new one before its end period.

In the process of -negotiation, the Labor Union demand to raise its hourly wages become 35 USD for non staff grade F 1 -and 200 USD for staff level 3 – -. Labor Union wants wages and benefit worker for level 1-3 staff is also being – negotiated on the - CLA negotiation. This events never –been done before as usually the wages and benefits for staffs was –determine though company -policy. The reason of demand itself are as follow:

- PTFI average contribution to FCX is higher than –other company in FCX group
- The PTFI company benefit and ability (PTFI income is higher than –other company in FCX group)
- Very high commodity prices at that time (since 2010 for gold, copper and silver and other commodities)
- Working ability of PTFI employee in general is equal with other FCX employee (Competency System, Tools, ATA, National Competent dan Internasional, Nosa, ISO-14001, etc)
- Working climate and working risk is very extreme (at Grasberg, Underground, Mile 74, Erstberg, DOM, Big-Gossan, etc)
- Remote nature condition, extreme weather and field (higher than 4.200 M -above sea level, foggy, rainy, and extremely cold)
- Wages increase in -previous CLA only 3% per year for two years -
- PTFI is the world’s biggest mining company with the lowest cost

The negotiation was held in Rimba Papua Hotel, Timika for 30 days and can be extend for 7 days until August 26th, 2011. The negotiation has come to deadline date with no agreement between them, because company’s offer cannot meet Labor Union’s demand. Therefore the union worker has 3 option response to company offer, which are:

A. Accept company’s offer without any conditions term
B. Disputing using appropriate law
C. Make Labor Strike with all risk

From the vote that Labor Union held, 96% of total Labor Union member or 7.612 workers choose to reject company’s offer and choose to do Labor Strike and they ready to face all the risk that might occur. The company wanted to continue the negotiation so the agreement can be achieved but unfortunately the Labor Union on one side stated dead lock and thus urge all employee to stop working for one month, start from September 15th and then extend to December 25th, 2011.

Therefore in this writing, the writter aim to find - the solution of the problem and limited its detailed explanation in:

1. High demand of wages increases of PTFI employee through -CLA negotiation as background of Labor Strike.
2. Labor Strike in employee law perspective and its risk impact
3. The solution through Industrial Relations-approach and mutual respect.

II. BUSINESS ISSUE EXPLORATION

A. Conceptual Framework

The main concept used in this study to resolve the negotitiation is Industrial relations-, which is relationship system that formed between the parties in goods and/or service production process , which consists of entrepreneur,
worker/employee and government based on legislation.

Industrial relations- system is a formulation and strategy to synergize the power of the parties in order to optimize the goods and/or service production process and also to avoid the conflict of interest between them.

One of the significant Industrial relations- theory by John Dunlop (1950) stated that Industrial relations- is consists of 3 parties, which are:

a) Organization Management
b) The workers and their regulation (formal and informal)
c) Government installation

Dunlop model identifies three key factor that has to be consider in order to analyze working relationship management, which are follow:

1. External environment or law and social economic power, technology, politic that impacted to working relationship.
2. Characteristic and interaction between key parties in working relationship, labor, management and government.
3. Regulation from this interaction that control working relationship.

Dunlop emphasize this core idea from the system that each party is affecting each other intimacy thus became a team to handle certain issues and responsible collectively for certain results.

The result of Industrial relationship is system that creates regulation in working place. Those regulation are the products of interaction between three main parties, which are worker / Labor Union, entrepreneur and involved organization, and Government.

This Dunlop model gives huge meaning to external power or environment. In other word, employment management and Government has mutual ideology to define their role in relationship and stabilize the system.

The Industrial Relations- role in build and maintenance the harmonic relationship, company and employee as partner need to understand the industrial relationship principal by consider:

a. Mutual Interest
b. Partnership and interdependence
c. Functional relations and the sharing of tasks
d. Create a peacefully working atmosphere
e. Increase the productivity

B. Analysis of Business Situation

The main issue in the employee demand id about compensation and benefits. One of them is about wages, as employee’s right that accepted in form of money as payment from entrepreneur or employer for worker/labor that determined and paid based on working agreement, deal, or legislation regulation, include allowance for worker and his/her family for certain task and/or service.

As there is discrepancy between employee demand and company offer about compensation and benefit thus create dispute in Industrial Relations-. The dispute create conflict between entrepreneur and Labor Union because disagreement about right, interest, and working relationship.

The disagreement in Industrial Relations- should be seek the solution through bipartite negotiations in discussion at most for 30 days (working day). If in that time period one party refuses to negotiate or have conducted negotiations but did not reach an agreement, then the negotiations was considered unsuccessful.

In the unsuccessful discussion, then both party or one of them record the disagreement to authorized institution which responsible to local employment by attaching evidence that negotiation bipartite has been done before. In the settlement through conciliation or to mediation failed, then one of the parties can filed a lawsuit to the Court Relations.

Unfortunately, the worker did not follow the legal procedure and choose to stop working by doing Labor Strike. Even though the Labor Strike is regulated in -Labor Law No.13 article 137 to 145 year 2003. Labor Strike is action planned and carried out the workers together and/or by the unions to stop or slow the job. However, Labor Strike as basic right of worker/labor and Labor union should be done by:

- Legally, orderly and peaceful as the result of –dead lock negotiations
- If other workers/laborers invited to the strike, the progress must be done by not breaking the law
- It should be done by no harm public interest and/or put other’s life in danger.
- At least in 7 (seven) working day before the labor strike, they must inform formally to the company and local authorized institution.

III. BUSINESS SOLUTION

There are three option solution can be taken due to disagreement between the company and the Labor Union, which are: mediation, Industrial Court - (Pengadilan Hubungan Industrial), and through third party.

A. Alternative Business Solution
- Mediation
  The mediation has to be held for three times due to Labor Union request to delay the first and the second mediation. In the last offer in this mediation, PTFI offers increase in financial packages including revising the distribution of basic wage increases in two years to 15% in the first year and 7% in the second year as well as other benefit package. This offer is already increase than the previous offers. However the Labor Union seemed still to be unsatisfied. Therefore the mediation recommend PTFI to raise wages of workers non staff to 25 % increase distribution 15 % in the first year and 10 % increase in second year and other benefits. PTFI accept the mediation recommendation. However Labor Union reject the results and keep continue the Labor Strike.
- Court Relationship (Pengadilan Hubungan Industrial)
  Due to unsettele the agreement between PTFI and the Labor Union, PTFI decided to file the lawsuit through Industrial Court in Jakarta. The court was scheduled for three times due to the absence of one of the both party. However in the end, the court was -finalized -as per request from PTFI -after the mutual agreement signed.
- Third Party Involvement
  Papua Local council called the both parties to meet in Jayapura to settle this disagreement. Through the meeting, the local council issued the letter that they wanted the settlement can be solved internally in Papua area, and PTFI could stop intimidate the workers and yet paid their wages.
  Commission IX National Council with the team from Labor Ministry joined the next meeting. In the end, through many third parties involvement, Union asked for basic wage per hour of USD 7.5 for the lowest level (F1) or equal to Rp 11.677.500 (increase of 252%) and Rp 33.475.500 or increase by 500% for the highest level (A5), compared the results with agreement 2009-2011 or increase of about 400%.

B. Analysis of Business Solution
- Union request for financial package after mediation in three alternative solution, as follow:
  Alternative 1:
  - Basic wages of F1 become US $7.5 per hour or Rp 11.677.500 per month
  - Wages of A5 become US $18 per hour or Rp. 28.026.000 per month.
  - Staff-employee is accommodated in -l –CLA and his wages is negotiating together between the Labor Union and Management.
  - Other benefits still refer to the current benefits.
  Alternative 2:
  F1 s/d C4 = 35%, B1 s/d B5 = 50%, A1 s/d A5 = 100%,
  from basic wages and added with these fixed allowance as follow:
  - Location allowance Rp. 2 .000.000 per month
  - Shift allowance Rp. 2 .000.000 per month
  - Housing allowance Rp. 2 .000.000 per month.
  - Risk allowance Rp. 2 .000.000 per month
  - Saving Plan allowance Rp. 1.000.000 for house contribution
  Staff employee is accommodated in the CLA - and his wages is negotiating together between the Labor Union and Management
  Alternative 3:
  F1 s/d C4 = 35%, B1 s/d B5 = 50%, A1 s/d A5 = 100%,
  from basic wages and added with these fixed allowance as follow:
  - Saving Plan allowance Rp. 1.000.000 for house contribution
  - etirement calculation = 2,5 x length of working x basic wages.
  - Personal leave will be send to original place (where parents/family lives) three times in a year with travel system allowance for worker allocation and his/her family. The personal leave regulation is only for 7 Papua tribes.
  - Location allowance Rp. 100.000 per day
  - Shift allowance Rp. 100.000 per day (Non shift will be adjusted)
  - Housing allowance Rp. 2.000.000 per month.
  - Saving Plan allowance Rp. 1.000.000 for house contribution
Staff -employee is accommodated in -CLA and his wages is negotiating together between the Labor Union and Management

All alternatives come with one package with term and requirement as follow:

- All -termination and deciplinary action process in any form is cancelled and condition (position) is being returned to its original condition, both for PTFI and also its privatization and contractor employee.
- All workers rights that been pending due to Labor Strike will be -returned (ticket right, personal leave right, contract extend, retirement, accommodation and camp)
- Service year award
- Annual Bonuses

After this agreement about the basic wages then the negotiation will further discuss about other financial material and Non Financial and also the regulation of next negotiations.

III. IMPLEMENTATION PLAN

The demand for wages increase of PTFI employee through -CLA negotiation in 2011 that was followed with Labor Strike for three months and ended through third party involvement is the first time event in the last sixteen time -CLA negotiations.

The main focus of solution from this concept is role factor from involve party in order to build better industrial relations- in PTFI. The main problem and its alternative solution to solve the problem are:

1. Welfare improvement demand from PTFI worker as the background of Labor strike has major impact for employee, Papua community, Government (both national and local)
2. Government through employment installation should play active role in developing the labor union in Papua and to socialize employment regulation in order to avoid misinterpretation if Industrial relations dispute occur.
3. The bipartite communication needs to manage as an industrial relations- tools to communicate things that related to company and worker interest in order to minimize the industrial relations- risks before its grows become major issue.
4. Company and the labor union need to do comparative study to see best practice in building industrial relations- in another company in order to find solution in control and manage risks.
5. Start everything with good intention and industrial relationship approach together with mutual trust , if there is dispute in relationship.
6. In industrial relations-, worker and labor union has function to do the job according to its obligation, keep harmony as behalf of continuity of production, democratize aspiration, develop skill and together help the company grows while welfare its member and his/her family.

The main cause of problem is the communication that does not going well because each party keep defending its principle and interest in company policy and employment regulation.

As the result of extended Labor strike and the agreement between the company and Labor union is there is a separation between two group of worker, which are those who join the labor strike and those who did not join. This separation might generate frictions of interest, and even intimidation that resulting dispute in Industrial relations-.

This issue need special treatment in order to return the harmonic working relationship in PTFI so the company can keep moving forward for all party’s interest. It need strong collaboration between the company and the labor union to fulfill the agreement in mutual agreement so the law and the regulation can be enforced in order to normalize the working atmosphere.

Since the -CLA has been signed and the labor strike ended. The most important thing has to be done is how to build each other trust and make them united between the worker who join the labor strike and those who didn’t striker and non striker) so the condition will be normal as usual.

It needs supportive working environment and the change in point of view to share the same vision for the continuity of company operation and increase productivity and welfare. All party should learn from the Labor strike event in order to improve the industrial relationship so in the future the problems can be solved using mutual trust approach.
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