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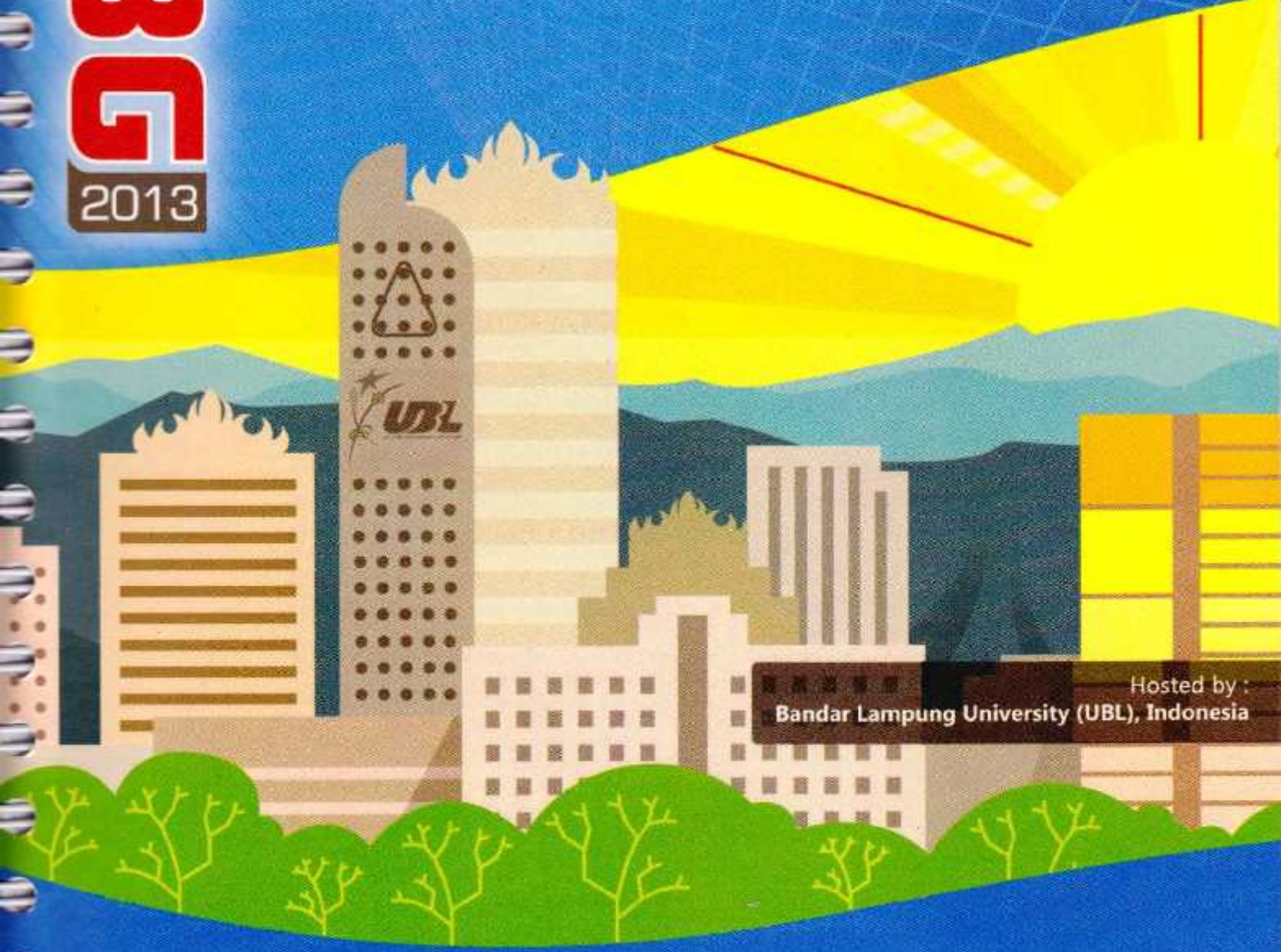
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THE FIRST  
INTERNATIONAL CONFERENCE ON  
**LAW, BUSINESS  
& GOVERNANCE**

**23-24**

OCTOBER 2013  
BANDAR LAMPUNG  
UNIVERSITY (UBL),  
INDONESIA

**ICON-LBG**  
2013



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**PROCEEDINGS**



# Icon-LBG 2013

THE FIRST INTERNATIONAL CONFERENCE  
ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013  
Bandar Lampung University (UBL)  
Lampung, Indonesia

## PROCEEDINGS

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## **PREFACE**

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 22 October 2013

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# **STRIKE AS THE LAST RESORT IN DISPUTE SETTLEMENT BETWEEN WORKERS AND EMPLOYERS**

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## **Abstract**

In order to maintain the continuity of the company's activities, harmonious relation between workers and employers is a necessity. Unfortunately, the relationship does not always run as expected. In an attempt to resolve the dispute some cases showed that workers choose to use the Strike. Strike includes a work stoppage, sit-ins, slow down, and a ban on overtime. Strike is one of workers' rights as regulated in Law Number 13 Year 2003. The problem that arises is the effects are complicated because it is associated with the rotation of the economy in which the effects may be felt in the area of municipal level, provincial and/or Nation wide. Based on that background, the author wants to discuss about the use of Strike in dispute settlement between workers and employer. The results of discussion shows that Strike is not the first choice of workers in resolving problems. Before conducting Strike the parties are required to negotiate to reach an agreement beforehand. If these efforts fail then Strike comes up as an option. Under these conditions, it can be said that the strike is the last resort in resolving disputes between workers and employers.

*Keywords:* Strike, Dispute Settlement, Workers and Employers

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## **1. INTRODUCTION**

In economic development there are three important parties which should always work together namely the Government, employers and workers. Government intervention in the matter of Labour is a very important factor in the modern Labour Law [1]. The Government has the function as a regulator to ensure the relationship between workers and employers is running well. Entrepreneurs have the capital that is used to run his business, while workers, by using their power, implement ideas from entrepreneurs. In order for the economy goes well then a harmonious cooperation between those three parties is an absolute requirement. Unfortunately, the relationship does not always run smoothly. An example is the dispute arising between workers and employers. According to article 1 number 1 Act Number 2 Year 2004, an Industrial Relations Dispute is "a difference of opinion resulting in a dispute between an association of employers or employers with workers/labourers or trade unions due to a disagreement on rights, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company".

In some cases the settlement of industrial disputes chosen by workers is Strike. According to article 1 number 23 Act Number 13 Year 2003 Concerning Manpower" Strike is a collective action of workers/labourers, which is planned and Carried out by a trade/labour union to stop or slower work". Strike action is able to affect the company's productivity and at least to force the employers give better consideration against a complaint or claim from workers. Moreover, the strike may also attract the attention of other parties, especially the government. This relates to the government's intervene as a third party to help resolve the industrial dispute [2].

The strike conducted by workers is desired to meet the demands of the labourer's right. This is a very effective effort because it creates huge impact. From the employers' side, work stoppage or slowdown will have an impact on the process of production of goods or services. Goods that should be produced and sold to increase company's income then of course, will be hampered. At the same time employers have to pay installments. This imbalance can result in the collapse of a company.

The second consequence is the economic chain on a scale of district, provincial or even national. If the company which has problem is a large-scale company and the types of goods produced related to the



public interest then the strike action will have an enormous effect. The examples are milk producers or manufacturers of Cooking Oil in which both types of goods are really needed by the community. Lack of goods in the market will lead to rise in prices, it is in line with the principles of Demand and supply. If the price increase due to the absence of such goods then it will likely lead to inflation at the national level.

The strike is one of the rights of workers. Right itself, according to Sudikno Mertokusumo, something which gives pleasure and freedom to individuals to exercise [3]. The strike which is one of the worker's rights, is based on the provisions of article 137 Act Number 13 Year 2003 which states Strike is a fundamental right of workers/labourers and trade/labour unions that shall be staged legally, orderly and peacefully as a result of failed negotiation. The issue is whether a strike is the only means to settle disputes between workers and employers and to find out the appropriate settings of legislation in force in Indonesia. Under these conditions, the authors are interested to discuss about strike

## 2. DISCUSSION

### **Strike is not the first Resort in the Industrial Relations Dispute Settlement**

Basically, every Indonesian citizen has the right of freedom of making association, assembly, uttering opinion and delivering expression. This is in accordance with Section 28E (3) of the Constitution of 1945. The implementation of these rights to workers are delivering their demands to the employer in case of working relationships with employers. In labour term there is a condition in which someone works on others and gets the wage [4]. In these conditions, the injustice situation often arise due to the difference level of status between employers and workers One effort that can be done by workers to ask their rights is by doing strike. The strike has been known since decades ago. Based on the data, the first strike occurred in 1806 which was conducted by the workers of Cordwainers in the United States [5]. The cause of the strike was the working hours that reached 19-20 hours per day. The main issue of the strike is the reduction of working hours.

Indonesia, as one of the countries which recognize the rights of workers, regulate the strike on two regulations namely Act No. 13 Year 2003 and the Decision of the Minister of Manpower and Transmigration Number 232/men/2003 Concerning The Legal Consequences of Illegal Strike. Article 137 Act Number 13 Year 2003 states that Strike is a fundamental right of workers/labourers and trade/labor unions that shall be staged legally, orderly and peacefully as a result of failed negotiation. When we look at this article then there are requirements that must be met when workers want to strike that is in terms of *failed negotiation*. This means the strike is not the first resort to do by the workers in order to ask for his/her rights. On the elucidation of this article, it explains that

“What is meant by failed negotiation under this Article is that no agreement to settle the industrial relations dispute is reached because the entrepreneur is not willing to negotiate or because the negotiation ends in deadlock. The term peacefully and orderly means that the strike must not disrupt security and public order and/or threaten the life safety and property of the enterprise, entrepreneur, other people or other members of the general public.”

By looking at the Elucidation above we can draw the conclusion that in the event of a dispute between workers and employers both parties must conduct Bipartite Negotiation. Bipartite Negotiation according to Article 1 number 11 Act Number 2 Year 2004 is negotiation between the workers/labourers or trade/labour unions with employers to resolve industrial disputes. Obligation to perform bipartite negotiations are also described in Article 3 paragraph 1 of Act Number 2 Year 2004, they are: "Industrial relations disputes shall be sought prior settlement amicably through bipartite negotiations to reach a conclusion". The length of time given for completion is 30 days. If the discussion reaches an agreement, the agreement shall be made and signed by the parties and a responsible official from the government agency responsible for manpower affairs shall serve as witness.

Moreover, on the article 3 The Decision of the Minister of Manpower and Transmigration Number 232/men/2003 Concerning The Legal Consequences of Illegal Strike, it is said that:

Strike becomes illegal if it is carried out:

- a. Not as a result of failed negotiations; and/or
- b. Without any notification given to the entrepreneur and the government agency responsible for manpower affairs; and/or
- c. With a notification but the notification is given less than 7 (seven) days prior to the strike; and/or
- d. With a notification but the contents of the notification do not accord with point a, point b, point c, and point d of subsection (2) of Article 140 of Act Number 13 Year 2003 concerning Manpower.

Under these conditions, a strike undertaken by workers without prior efforts to negotiate to resolve settlement of the dispute is illegal. Unauthorized strike that led to the workers involved in these activities are categorized as defaulters. In the case of workers are defaulters then the employer will call for a return to work. The call by employers are conducted 2 consecutive times within a period of 7 (seven) days. If the worker is not considered to meet the call then he shall be considered resigned. There is a special attention on the companies that serve the public interest and/or companies which type of activities endanger the safety of human life. Article 5 The Decision of the Minister of Manpower and Transmigration Number 232/men/2003 Concerning The Legal Consequences of Illegal Strike states that strike performed by the worker/laborer who is on duty is categorized as illegal strike. Sanction for this action is the workers will be considered defaulter and if the strike is to cause loss of life associated with the work it would classified as major offenses

### **Strike Which is Based on Indonesia's Regulation**

Strike, as already mentioned above, is a fundamental right of workers. This fundamental right can be used by workers in order to ask for the fulfillment of their rights. It is very important for the workers to know the terms and what should be prepared at the time of going on strike in order to comply with Regulation in Indonesia. Subordination to the applicable rules will prevent workers from getting the status of defaulters when they conduct a strike.

In order to realize an order, peaceful and legitimate strike according to regulations, there are obligations that must be done before the strike as described in Regulation as follows:

#### **a. Act Number 13 Year 2003 Concerning Manpower**

##### (1) Article 139

It is stated that "The implementation of the strike staged by the workers / labourers of enterprises that serve the public interest and/or enterprises whose types of activities, will lead to the endangerment of human lives , shall be arranged in such a way so as not to Disrupt public interests and/or endanger the safety of other people ". Explanation of the above article is Enterprises that serve the public interest and / or enterprises whose types of activities, when interrupted by a strike, will lead to the endangerment of human lives are those running hospitals, fire department, those providing railway service, those in charge of sluices, those in charge of regulating air traffic, and those in charge of sea traffic. That the strike shall be arranged in such a way so as not to disrupt public interests and/or endanger the safety of other people means that the strike shall be carried out by workers/labourers who are not on duty. Workers in companies that serve the public interest of particular concern because it is associated with the lives of many people so that business continuity must be maintained even if workers are trying to assert their rights. Workers who are permitted to strike are those who are not on duty, while those who are on duty serve and still strike will get the status of defaulters

##### (2) Article 140

Within a period of no less than 7 (seven) days prior to the actual realization of a strike, workers/labourers and trade/labor unions intending to stage a strike are under an obligation to give a written notification of the intention to the entrepreneur and the local government agency responsible for manpower affairs .The notification as mentioned under subsection ( 1 ) Article 140 shall at least contain a :

1. The time (day, date and the hour ) they will start and end the strike ;
2. The venue of the strike ;
3. Their reasons for the strike; and
4. The signatures of the chairperson and secretary of the striking union and /or the signature of each of the chairpersons and secretaries of the unions participating in the strike, who shall be held responsible for the strike.

If the strike is staged by workers/labourers who are not members of any trade/labor union, the notification as mentioned under subsection ( 2 ) Article 140 shall be signed by workers/labourers' representatives who have been appointed to coordinate and / or responsible for the strike.

When a strike is not roomates is performed pursuant to the requirements as mentioned under subsection (1) Article 140, then in order to save production equipment and enterprise assets , the entrepreneur may take temporary action by :

1. Prohibiting striking workers/labourers from being present at locations where production processes normally take place; or
2. Prohibiting striking workers/labourers from being present at the enterprise 's premise if necessary.

Sanctions for workers / laborers are on strike are not legally regulated in Article 186 Act Number 13 Year 2003 Concerning Manpower is the shortest one month imprisonment and a maximum of four years. In addition there is also a fine of 10,000,000,- (Ten Million Rupiahs ) and maximum Rp. 400.000.000, - (Four Hundred Million Rupiahs). Obstructing workers / laborers or trade / labor union strike lawful (Article 143 Subsection (1) Act No. 13 Year 2003) or catch / keep workers/laborers and trade unions/labor unions to strike legally ( Section 143 Subsection (2) Act No. 13 Year 2003). Sanctions for violations of the Article is imprisonment for one year and a maximum of four years and / or a fine of Rp 100.000.000, - (one hundred million rupiah ) and maximum Rp 400.000.000,- (four hundred million rupiah).

**b. The Decision of the Minister of Manpower and Transmigration No. 232/men/2003 Concerning The Legal Consequences of Illegal Strike**

Under this rule, we can find the legal consequences of illegal strike as stated in Article 140 and Article 142 in conjunction with Article 139 Act Number 13 Year 2003 Concerning Manpower.

1. Article 6

1. A strike that is performed illegally as Referred to under Article 3 shall be classified under the 'defaulter' category .
2. Within a period of 7 ( seven ) days the entrepreneur shall make a proper and written call twice successively to workers / laborers participating in the illegal strike as Referred to under subsection (1) to come back to work .
3. Workers / laborers who do not respond as Referred to under subsection ( 2 ) shall be Considered to have resigned .

This article entitles the employer to take action because the workers had violated company regulations or collective labor agreement. The existence of this article is evidence that, in addition to regulate the rights of workers, the government also requires workers to perform its obligations and any violation will get penalized.

2. Article 7

- (1) A strike that is performed illegally as Referred to under Article 5 shall be classified under the defaulter' category.
- (2) If the strike that is performed illegally as Referred to under subsection (1) causes the loss of human life as a result of the discontinuation of jobs that should have been performed uninterruptedly, the illegal strike shall be classified as a serious or major offense .

Furthermore it should also be informed here regarding approval of the Police when the workers want to conduct a strike, as discussed above, before the strike, then the parties shall be notified in written form. Parties here are only employers and agencies responsible for manpower affairs. As there is no sttement that there must be permission from the police. This means that if the strike is just a slowdown or stopage, then it does not need to ask permission from the police. Licensing procedures would be different if a strike is performed with a demonstration or perform convoy. This is because the action is categorized as activity expression in public area. Under Article 5 jo. Article 6 of Regulation of Indonesian Chief of Police Number 9 Year 2008 on Procedures for Implementation Services, Security and Delivery of Case Management in Public Opinion, organizing activities in the delivery of public opinion, shall submit written notification to local police officials, before the activities performed.

According to Article 15, delivery of the notice made to the police officer as low as the low-level Police Sector in which the activities will be carried out and such notice must be received no later than 3 x Police 24 hours before the activity is done. If a notice is given in accordance with , and based on Article 16 paragraph (1) letter b of Regulation of Indonesian Chief Police Number 9 Year 2008 , the police is obliged to immediately issue a Receipt Notice ( STTP ) with a copy to the relevant police force, relevant agencies, owner/location where the object/target delivery in public opinion.

### 3. CONCLUSION

Based on the discussion about a strike, it can be concluded that a strike is a fundamental right of every worker and is protected by Act Number 13 Year 2003 Concerning Manpower. However, the strike is not the only resort and the first thing that can be conducted by workers in order to ask the fulfillment of the rights to the employer. A strike can be done if the negotiations between employers and workers failed to reach an agreement. So it can be said that a strike is the last resort in resolving disputes between workers and employers.

In doing a strike, workers must know the procedures and requirements. For example, they have to give a written notification of the intention to the employer and the local government agency responsible for manpower affairs within a period of no less than 7 ( seven ) days prior to the actual realization of a strike. Besides, special for those working in the company that serves the public interest, for example those who are running hospitals, fire department, those providing railway service, those in charge of sluices, those in charge of regulating air traffic, and those in charge of sea traffic, the implementation of the current strike is not actively working, because if he conducts a strike while on duty then he will be considered defaulters in which it will result a sanction from the company.

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