

Legal Security and Legal Protection of Outsourcing Employees Based on Indonesian Labor Law

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Abstract

Outsourcing practices are a serious concern in discussions of employment in Indonesia because almost all companies rely on outsourced labor to maintain their competitiveness in a rapidly changing global economy. This research method uses normative legal research using a literature study approach to analyze the data used in this article. The aim of the research in this article is to examine the regulation and implementation of outsourcing from a labor law perspective, as well as to examine legal certainty and protection for the implementation of labor using an outsourcing system in companies. The results and discussion in this article are that in the field of employment law, outsourcing can be implicitly found in the provisions of Law Number. 13 of 2003 concerning Employment. One form of legal protection and certainty, especially for workers, is through the implementation of work agreements. An employment agreement is an agreement made between the employer and recipient of employment and is the starting point for an employment relationship, which contains employment conditions that refer to Law Number 13 of 2003 on Employment.

I. Introduction

In daily activities, especially in the field of trade and services, both in buying and selling activities, many companies use labor services in the clothing counter section or other sections determined by company management. The position of the workforce is very important in the development of industry, services and trade, as well as the economy in general, which is why the government has issued Law No. 13 of 2003 concerning Employment. An important aspect in employment regulation is the relationship between workers/laborers and employers in the employment relationship (Asyhadie, 2008).

In the midst of current globalization, every effort is being made by business people to create a work system that can provide changes in increasing productivity that has competitiveness. This system is called contracting out or better known as outsourcing. In a climate of increasingly tight business competition, companies are trying to make production cost efficient (cost of production). With this system, companies can save expenses in financing human resources (HR) (Sunnyoto, 2013).

According to Tibor Kremic, et al, the meaning of outsourcing is stated as follows: "outsourcing is a common practice among both private and public organizations and is a major element in business strategy". Outsourcing is the delegation of daily operations and management of a business process to an outside party (outsourcing service provider company). Through this delegation, management is no longer carried out by the company but is delegated to outsourcing service companies (Damanik, 2006).

The term outsourcing in Indonesia comes from Article 64 of Law Number 13 of 2003 concerning Manpower, which states that companies can hand over part of the work to other companies through contracts for contracting work or providing worker/labor services made in writing. According to this law, there are two forms of outsourcing, namely job outsourcing and worker outsourcing. Literally, the term outsourcing is defined as outsourcing or delegating a business process to a third party. However, there are also people who argue that the term outsourcing refers to work that is hired out, while contract workers are workers who are hired out (Nurachmad, 2009).

Increasingly tight competition between companies currently requires companies to be more flexible in responding to market demands. For some entrepreneurs, outsourcing strategy is a form of flexibility that needs to be considered. The various benefits of this strategy make the development of outsourcing increasingly widespread, not only in the number of transactions that occur, but also the activities carried out. Contract labor is traditionally associated with

support activity units such as cleaning services, catering, security and the like, which do not require special competencies from suppliers. Next, it develops towards strategic activities when the "outsourcer" hands over some of its main activities to the vendor.

In the trade and service business activities of many companies that use labor, dissatisfaction often arises from workers/laborers who are outsourced, among others, because they feel they are treated unfairly, especially regarding their rights when compared with the rights of permanent workers in the company. Likewise, the amount of compensation they receive is still very low, and does not correspond to the achievements/results of the work they have done, below the wages received by permanent workers with the same length of work and skills.

Workers in trade and service companies, especially contract workers and casual daily workers, can easily have their contracts terminated by companies using outsourced workers. This condition has caused dissatisfaction among workers, even giving rise to large-scale demonstrations from workers who want improvements in their fate, as well as assurance that they will obtain proper rights as workers. Therefore, in order to anticipate different interests that could lead to conflict, the government needs to be firm as a stabilizer to resolve the problem of discrimination within the company.

Based on the background of the research problems described above, there is no certainty and clear legal protection for workers using the outsourcing system in implementation in Indonesia. Therefore, the research written in this article has a specific aim to examine the regulation and implementation of outsourcing from a labor law perspective, as well as examining legal certainty and protection for the implementation of labor using an outsourcing system in companies.

2. Research Method

This research is normative legal research. Legal research is a process of finding legal rules and legal principles to answer the legal issues faced. The approach used in this research is a statutory approach, theoretical approach. The legal materials used in this research are: a. Primary legal materials, namely binding legal materials, in writing this law include: Law Number 13 of 2003 concerning Employment. b. Secondary legal materials. Secondary legal materials in this research as support for the research are textbooks written by legal experts, articles and other sources that are related to supporting this research. In this research, the type of writing research is normative juridical. Legal material collection techniques the data collection procedure used in this research is literature study, namely collecting data by reading statutory regulations, as well as literature that is closely related to the problems discussed.

3. Results and Discussion

Outsourcing Regulations According to Labor Law in Indonesia

In Law Number 13 of 2003 concerning Employment, the word outsourcing is not mentioned directly, but is stated as "handing over part of the work to another company." Outsourcing itself is a term commonly used in the industrial world with a meaning that is more or less the same as the meaning outlined in labor law. The regulations regarding outsourcing in Law 13 of 2003 concerning Employment have developed from the regulations contained in the Civil Code, which began with the rental of servants and workers which was included in book III of the Civil Code where the services of servants or workers were equated with property. With regulations in law, the aim of regulation is more towards the human aspect or protection of workers (Jualianti, 2015).

Constitutional Court Decision Number 27/PUU-IX/2011 and regulations which are a follow-up to Constitutional Court Decision Number 27/PUU-IX/2011. The ruling of the Constitutional Court Number 27/PUU-IX/2011 states that, "the phrase specific time work agreement in Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of the Manpower Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as the work agreement does not require the transfer of protection of rights for workers/laborers whose work object remains, even if there is a change in the company carrying out part of the contract work from another company or company providing worker/labor services" (Nevani, 2019).

Constitutional Court Decision No. 27/PUU-IX/2011 states that Articles 64, 65 and 66 of Law Number 13 of 2003 concerning Manpower remain valid as the legal basis for companies to carry out outsourcing, except for Article 65 paragraph (7) and Article 66 paragraph (2) letter (b). Employers can implement an outsourcing system with PKWT status as long as the PKWT contains a clause that guarantees the protection of workers/laborers' rights that the employment relationship of the worker/laborer concerned will be continued at the next company, in the event that the object of employment remains. If the object of work remains and the conditions for the transfer of rights protection are not regulated in the PKWT, then the worker/labor employment relationship is in the form of a PKWTT. Technically, the terms of the PKWT can be regulated at the conclusion of the agreement, so that the form of the employment relationship, PKWT or PKWTT, can be known (Santosa, 2016).

Normatively, before it was regulated in Labor Law No. 13 of 2003 and Law No. 11 of 2020 concerning Job Creation, the terminology of outsourcing was contained in article 1601 b of the Civil Code which regulates job contracting. Apart from that, there is Regulation of the Minister of Manpower and Transmigration Number 19 of 2012, a derivative of Law Number 13 of 2003

concerning Manpower concerning the regulation of handing over part of the work of workers to companies providing worker/labor services, or often called outsourcing, there are only five types of work, namely cleaning service businesses, providing food for workers, security personnel, supporting services in mining and oil and providing transportation for workers/laborers (Syahputra, Romainur, & Arrisman, 2022).

Kunarti in the journal Nafila et al stated that in Law Number 13 of 2003 there is no term outsourcing that is explicitly stated. Article 64 of Law Number 13 of 2003 refers to outsourcing as contracting out work or transferring the services of workers or laborers. Based on Article 64 of Law Number 13 of 2003, it is regulated that, "a company can hand over part of the work implementation to another company through a work contracting agreement or provision of worker/labor services made in writing." Agreements similar to outsourcing in BW can be found in Article 1601, although the term outsourcing does not appear explicitly. Article 1601 BW explains that an outsourcing agreement is "an agreement in which the contractor binds himself to carry out work for another party, namely the party who contracts out the work for a certain fee" (Nafila, Kristine, & Wijaya 2017).

In the field of employment law, outsourcing can be found implicitly in the provisions of Law no. 13 of 2003 concerning Employment. As for the articles that regulate outsourcing, they can be found in the formulation of Article 64, Article 65 and Article 66. Where in Article 64, it states that; A company can hand over part of the work to another company through a work contracting agreement or provision of workers or labor services which is made in writing. Then it is further clarified in the provisions of Articles 65 and 66 which regulate the agreement, namely that it can be in the form of (an agreement for contracting work and providing worker or labor services) which is based on PKWT and PKWTT contracts and the parties involved in it are related business actors, namely; (outsourced workers or workers, companies receiving work providers or outsourcing companies or users) (Prabhaputra, Budiarta, & Seputra, 2019).

Worker Service Providers as referred to in article 64 of Law Number 13 of 2003 concerning Employment are defined as companies handing over the implementation of work to "other parties" along with their equipment and work equipment. In other words, the "other company" only provides labor services. Furthermore, regarding article 66 paragraph (1), the Explanation of the Law provides further information as follows: "In work related to main business activities or activities that are directly related to the production process, entrepreneurs are only permitted to employ workers/laborers with a work agreement for a certain period of time and /or work agreement for an indefinite period of time." What is meant by supporting service activities with the production process are activities related outside the main business of a company." (Koto, & Hanifah, 2023).

Legal Certainty of Outsourced Labor in Employment Law

Legal certainty in employment, especially legal relations between parties in an employment relationship, will not only provide legal protection for workers or those who are bad regarding terms of employment, working conditions as well as social security and other work protections, but will also influence the development of progress in the business world, the climate investment, and development in general (Fauzi, 2006).

One form of legal protection and certainty, especially for workers, is through the implementation of work agreements. An employment agreement is an agreement made between the employer and recipient of employment and is the starting point for an employment relationship, which contains employment conditions that refer to Law Number 13 of 2003 on Employment. Therefore, all forms of agreements must basically provide protection for the parties who make or implement the agreement, so that later they can provide legal certainty, especially for workers whose rights are often violated by employers and for the validity of an agreement it is necessary to fulfill the requirements according to the law (Faturrachman, 2024).

The legal protection of outsourcing workers in terms of the principle of legal certainty in Law Number 13 of 2003 concerning Employment can be seen in two forms, namely legal certainty in preventive protection and legal certainty in repressive protection. Legal certainty in preventive protection includes certainty of employment relations, namely regarding the status of the employment relationship between outsourcing workers and the outsourcing company and the request of the employer. Then there is certainty about the type of work of outsourcing workers, and certainty about the legal entity form of the outsourcing company. Law Number 11 of 2020 concerning Job Creation changes the term outsourcing from handing over part of the work implementation to another company to outsourcing (Kurniasari, 2022).

In the context of legal certainty, the existence of protection for workers, including but not limited to general protection, wage systems, worker welfare, conditions for carrying out work, as well as resolution of disputes that will arise will at least be carried out in accordance with the provisions of laws and regulations and be the outsourcing company's responsibilities, then the outsourcing company's workers have been assured of these matters, as mandated by law (Septiana, & Sitabuana, 2023).

Several protections for legal certainty regarding the rights of workers/laborers as regulated in the Employment Law and its amendments to the Job Creation Law, include the right not to be discriminated against, the right to receive equal treatment and rights in the workplace, the right to receive advancement and development, recognition of competence and competency qualification certification, the right to strike according to procedures, the right to perform religious duties (including

worship for a long period of time) with the right to full wages, and the right to take maternity and maternity leave (including abortion) with the right to wages (Morris, & Rasji, 2023).

Legal Protection of Outsourced Workers in Employment Law

Protection comes from the word *lindung* which means to take shelter, or hide. Legal protection for workers is basically provided to protect workers' rights. The sociological position of workers/laborers is not free. Therefore, as people who have no means of living other than that, workers/laborers are inevitably forced to work for other people. Considering the lower position of workers/laborers compared to employers, there is a need for government intervention to provide legal protection for them (Indrawati, 2019).

Legal protection for workers is the goal of employment development in an effort to provide protection to workers so they can achieve prosperity. Labor is the backbone of the company because labor has a very important role in the production process, without labor the company will not be able to take part in the national development process. Realizing how valuable the position of workers is for companies, government and society, it is necessary to implement comprehensive policies to protect the safety and security of workers in carrying out their work (Dalimunthe, & Nurhaliza, 2023).

According to Adrian Sutedi, there are only two ways to protect workers/laborers: First, through labor law, because law means there is a guarantee from the State to provide decent work, protect them in the workplace (health, work safety and decent wages) up to the provision of social security after retirement. Second, through workers/labor unions (SP/SB). Because through SP/SB workers/laborers can convey their aspirations, negotiate and demand the rights they should receive. SP/SB can also represent workers/laborers in making a Collective Labor Agreement (PKB) which regulates the rights and obligations of workers/laborers with employers through a general agreement which serves as a guideline in industrial relations (Sutedi, 2009).

Legal protection has the meaning of protection using legal means or protection provided by law, aimed at protecting certain interests, namely by turning the interests that need to be protected into a legal right. In legal science "Rights" are also called subjective law, subjective law is an active aspect of the legal relationship provided by objective law (norms, rules, *recht*) (Sudarto, 2019).

Basically, labor protection has received a lot of attention from the government which has been outlined in the Labor Law. This is because labor is the backbone of national development. The Law on Employment, namely Law no. 13 of 2003 mandates that one of the goals of employment development is to provide protection to workers in realizing prosperity. Every worker has the same opportunity to choose, get or

change jobs and earn a decent income at home or abroad Bagiaastuti, 2017).

Law Number 13 of 2003 concerning Employment Article 86 paragraph (1) states that every worker/laborer has the right to obtain protection for work safety and health, morals and decency, and treatment that is in accordance with human dignity and religious values. (Nursalim, & Suryono, 2020). Law Number 13 of 2003 concerning Employment does not regulate in detail the protection of the rights of employed workers. Protection of workers is regulated in Article 65 paragraph (4) regarding job protection and work conditions at the employer company (Pratiwi, & Andani, 2022).

Article 86 of Law No. 13 of 2003 states that every worker has the right to obtain protection for; occupational health and safety, morals and decency, as well as treatment in accordance with human dignity and religious values. To implement the above, occupational safety and health efforts are carried out which are intended to provide safety guarantees and improve the health status of workers by preventing accidents and work-related diseases, controlling workplace hazards, health promotion and rehabilitation (Kanahebi, 2016).

One of the objectives of employment development is to provide protection to workers/laborers in realizing welfare, namely as regulated in Article 4 letter c of the Employment Law. The scope of protection for workers/laborers provided and regulated in the Employment Law is protection of workers' basic rights, protection of occupational safety and health, protection of workers' social security, and protection of wages (Suyanto, & Nugroho, 2017).

The scope of legal protection for workers or laborers provided and regulated in Law No. 13/2003 is the protection of the rights of workers or laborers. The objects of this protection consist of: a) Protection for female workers/laborers relating to working time limits for workers under 18 (eighteen) years of age, namely as regulated in Article 76 paragraph (1), the prohibition on working for pregnant women for certain hours, namely as regulated in Article 76 paragraph (2), terms and conditions that must be fulfilled by companies if they employ women between 23.00 to 07.00, namely as regulated in Article 76 paragraph (3), Obligation for Companies to provide transportation pick-up and drop-off for those who work between 23.00 and 07.00, namely as regulated in Article 76 paragraph (4); b) Protection of child workers/laborers. Included in child workers/laborers are those or any person working under the age of 18 (eighteen) years, as regulated in Article 1 point 26. Protection of child workers/laborers includes matters or provisions regarding procedures for employing children, as regulated in Articles 68, 69 paragraph (1) and paragraph (2), Article 72, Article 73 and Article 74 paragraph (1); c) Protection for people with disabilities. Employers who employ workers with disabilities are obliged to provide protection according to the type and degree of disability, as regulated in Article 76 paragraph (1). These forms of protection include providing accessibility, providing work equipment and personal protection (Haurissa, Salmon,

& Pattipawae, 2024).

4. Conclusion

The conclusions of this study are as follows:

- a. In the field of employment law, outsourcing can be found implicitly in the provisions of Law no. 13 of 2003 concerning Employment. As for the articles that regulate outsourcing, they can be found in the formulation of Article 64, Article 65 and Article 66. In Law Number 13 of 2003 concerning Employment, the word outsourcing is not mentioned directly, but is stated as "hand over some of the work to other companies." Normatively, before it was regulated in Labor Law No. 13 of 2003 and Law No. 11 of 2020 concerning Job Creation, the terminology of outsourcing was contained in article 1601 b of the Civil Code which regulates job contracting.
- b. The legal protection of outsourcing workers in terms of the principle of legal certainty in Law Number 13 of 2003 concerning Employment can be seen in two forms, namely legal certainty in preventive protection and legal certainty in repressive protection. Legal certainty in preventive protection includes certainty of employment relations, namely regarding the status of the employment relationship between outsourcing workers and the outsourcing company and the request of the employer. Then there is certainty about the type of work of outsourcing workers, and certainty about the legal entity form of the outsourcing company. Law Number 11 of 2020 concerning Job Creation changes the term outsourcing from handing over part of the work implementation to another company to outsourcing.
- c. The scope of legal protection for workers or laborers provided and regulated in Law No. 13/2003 is the protection of the rights of workers or laborers. Law Number 13 of 2003 concerning Employment does not regulate in detail the protection of the rights of employed workers. But there are two ways to protect workers/laborers: First, through labor law. Second, through workers/labor unions (SP/SB). Because through SP/SB workers/laborers can express their aspirations, negotiate and demand the rights they should receive.

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