Outsourcing Labor Within the Legal Framework of Employment Relations

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Abstract
Positive impacts of national development progress include the growth and development of economic activity centers, resulting in the establishment of new industrial centers and providing employment opportunities for the community. The legal framework for employment relations between outsourced workers and parties in the labor sector is regulated by Pancasila Industrial Relations (hereinafter abbreviated as HIP). HIP is an industrial relationship based on the manifestation of all the principles of Pancasila and the 1945 Constitution (hereinafter abbreviated as UUD 1945), and develops in accordance with the character of the Indonesian nation. Meanwhile, industrial relations refers to all types of employment relationships between employers and employees, both at the regional and national company levels, relating to socio-economic matters such as wages, working hours, working conditions, employment relations, and so on. Employment relations serve as a basis for parties to protect their respective interests and avoid discriminatory practices and human rights violations during the organizational process to achieve company goals. Outsourced labor practices related to employment relations are frequently discussed and debated among various groups. This is directly related to companies' efforts to reduce costs related to human resource utilization and their responsibility to provide legal protection for workers in the employment relationship. The employment relationship between workers and companies in outsourcing practices must reflect legal protection for workers, as stated in the Preamble to the 1945 Constitution: to protect the entire Indonesian nation and its entire homeland and to advance general welfare based on Pancasila to achieve social justice for all Indonesians. Although outsourcing is limited to specific fields, it is widespread in companies' core businesses. Therefore, the government's role is crucial in ensuring that workers' rights within an employment relationship are fulfilled in accordance with applicable laws.

I. Introduction

The implementation of organizational processes fundamentally requires the involvement of various parties to achieve the organization's goals. Parties involved in an organizational process must cooperate in accordance with their respective primary duties and functions and authorities in carrying out their work, in accordance with the applicable regulations of the organization in question.

In Indonesia, the implementation of labor is regulated within a legal framework for employment relations, known as the Employment Relations Act (HIP). The employment relationship serves as a basis for protecting each party's interests within a company, preventing discriminatory practices and human rights violations during the organizational process to achieve company goals. The company is protected from employee activities or work methods that could harm the company in achieving pre-planned profits, and workers are also protected from arbitrary treatment by the company as the employer in obtaining their rights as employees.

The employment relationship, in principle, occurs between the employer and the employee. It contains several provisions regarding rights, obligations, and work requirements, thus clarifying what is acceptable and unacceptable for each party in carrying out their work. Upon the enactment of Law No. 6 of 2023 concerning Job Creation (hereinafter abbreviated as UUCK 2023), which was later revoked through Constitutional Court Decision No: 168/PUU-XXI/2023, dated October 31, 2024, has an impact on changes in the types of employment relationships, expansion of employment relationship models, and confirmation of the concept of agreements for the provision of worker services to outsourced workers.[1]

Imam Soepomo briefly stated that a work agreement is an agreement or agreement between two or more people who jointly bind themselves to an activity (work) with or without a time period where the person who is on the side doing something receives a form of compensation from the party who employs him.[2]

An employment agreement in an employment relationship is important because it serves as the basis for providing certainty about what the parties must do to achieve the company's goals. An employment agreement in an employment relationship is a conditio sine quanon, meaning that the employment relationship determines the position of each party, which will describe the rights and obligations of the employee to the company, as well as the rights and obligations of the employer to the employee, reciprocally.

Based on this, in an employment relationship there are the following things:[3]

a. The creation of an employment agreement, which serves as the basis for an employment relationship.

[1] Khairani, Trie Rahmi Gettari, Sri Arneti, *Perlindungan Pekerja Ditinjau dari Konsep Hubungan Kerja Pasca Berlakunya Undang-Undang Cipta Kerja*, Unes *Journal Of Swara Justisia*, (Universitas Eka Sakti Padang: Vol. 7, No. 2, Juli 2023), hlm. 1

[2] Imam Soepomo, *Hukum Perburuhan Bagian Pertama Hubungan Kerja*, (Jakarta: PPAKRI Bhayangkara, 1968), hlm. 9

[3] Saiful Anwar, *Sendi-Sendi Hubungan Pekerja dengan Pengusaha*, (Medan: Kelompok Studi Hukum dan Masyarakat, Fakuktas Hukum USU, 1994), hlm. 15

b. The employee's obligation to perform or not perform a job (activity) at a company or under someone's leadership, is the company's or employer's right over the employee.
c. The company's or employer's obligation to perform a performance-based payment of wages, which is the employee's right to receive wages for the work they provide.
d. The termination of an employment relationship, either due to the expiration of the term or the company's desire, or may also be due to the employee's own desire.
e. A dispute arises between the parties to the agreement and requires amicable resolution in accordance with applicable provisions.

The status of an employment agreement, as stated by David P. Twomey, is crucial and decisive in the production process of goods and services in a company. David stated that if a dispute arises between parties in an employment relationship, the previously agreed-upon agreement serves as evidence for obtaining rights (compensation) for the party who feels aggrieved.

The most important thing to note from the four characteristics of the work agreement mentioned above is that the agreement between the parties who entered into the agreement must be carried out freely according to their respective wishes. Mariam Darus Badrulzaman stated that the agreement of the parties who bind themselves in an agreement is an essential and determining principle to protect the interests of each party or also called the determining consensualism (raison dtre, het bastaanwaarde).[4] The employment agreement in Law No. 13 of 2003 concerning Manpower (hereinafter abbreviated as UUKK 2003), is contained in Chapter IX Article 1 number 14 which states that an employment agreement is an agreement between a worker/laborer and an employer or employer that contains the terms of employment, as well as the rights and obligations of the parties. Meanwhile, Article 1 number 15 states that an employment relationship is a relationship between an employer and a worker/laborer based on an employment agreement that has elements of workers, wages, and orders. Therefore, an employment agreement that causes an employment relationship has conditions in the form of work, wages (salary), and orders.

The command element in an employment agreement allows for a work relationship, where the relationship between employee and employer is not equal. The employer (who issues the order) holds a higher position than the employee, who carries out the work. This unequal position in organizational management is called subordination, and therefore, an employment agreement is required for its implementation.[5]

The work a worker must perform in an employment relationship can be interpreted as an achievement that is used as a basis for an employee's economic assessment by the company. This assessment relates to the employee's performance, whether it aligns with the previously agreed-upon work agreement and achieves the company's desired production targets. Therefore, in terms of performance, providing wages to workers is an obligation that employers must fulfill socially and economically.

[4] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis*, (Bandung: Alumni, 1994), hlm. 51
[5] F.X. Jumialdji, *Perjanjian Kerja*, (Jakarta: Sinar Grafika, 2006), hlm. 7

The wages that workers expect from the company as the economic value of the achievements they have carried out in an employment relationship are a right that must be fulfilled. In the 2003 UUKK Article 1 number 30 states that wages are the rights of workers/laborers received and expressed in the form of money as compensation from employers or employers to workers/laborers which are determined and paid according to an employment agreement, agreement, or statutory regulations, including allowances for workers/laborers and their families for a job and/or service that has been or will be performed. Therefore, it can be said that wages are compensation including allowances as a right that must be received.

2. Research Method

The type of research employed in this study is normative legal research. Normative legal research is an approach that conceptualizes law as a system of norms embodied in statutory regulations, legal principles, doctrines, and authoritative legal interpretations. In this perspective, law is understood as "law in the books," meaning that the analysis focuses on written legal rules and the normative framework governing a particular issue. This method examines how legal provisions regulate certain legal relationships and evaluates their coherence, consistency, and applicability in addressing legal problems. Furthermore, normative legal research views law as a set of standards and guidelines that function as benchmarks for determining appropriate and proper human conduct within society.

Normative legal research relies primarily on the study of legal materials rather than empirical field data. The research is based on primary legal materials, such as statutory regulations, official legal documents, and other binding legal instruments, as well as secondary legal materials, including legal literature, academic journals, expert opinions, commentaries, and scholarly analyses that provide interpretation and context to the applicable laws. Through the examination of these materials, the research seeks to identify relevant legal norms, interpret regulatory provisions, and analyze how these norms are applied in legal practice, particularly in relation to taxation aspects of consolidation and the use of book value.

In addition, this research adopts a statutory approach and a conceptual approach. The statutory approach involves reviewing relevant laws and regulations to understand the legal framework governing consolidation and tax treatment, while the conceptual approach focuses on analyzing legal doctrines, principles, and theories that underpin the regulation of business restructuring and tax compliance. By combining these approaches, the study aims to provide a comprehensive understanding of the legal issues and assess whether the existing regulatory framework provides sufficient legal certainty, fairness, and effectiveness.

The analysis conducted in this research is qualitative in nature, emphasizing logical reasoning and systematic interpretation of legal norms. Legal interpretation methods, including grammatical interpretation, systematic interpretation, and teleological interpretation, are used to understand the meaning and objectives of the relevant provisions. This allows the research to examine not only the literal wording of regulations but also their underlying purpose and policy considerations.

Overall, normative legal research is considered appropriate for this study

because it enables a thorough examination of the legal framework governing consolidation and the business purpose test, as well as the identification of potential gaps, ambiguities, or inconsistencies within existing regulations. By analyzing legal norms and doctrines, this research seeks to contribute to a deeper understanding of the legal issues and provide recommendations for improving regulatory clarity and implementation.

3. Results and Discussion

a. Legal Framework for Outsourced Worker Relations according to the 2003 UUKK

When formulating their desired terms in an employment contract, workers are often powerless to include the clauses they desire and tend to accept the clause format provided in the agreement.

Consequently, the fulfillment of their rights as workers by companies and/or labor service providers (hereinafter referred to as PJP) is very low, thus neglecting aspects of justice and human rights for workers. In such circumstances, government intervention, particularly from the labor office, is essential to ensure maximum oversight to ensure that workers' rights are fulfilled in an employment relationship in accordance with applicable laws.

The application of the principle of freedom of contract under law should be considered a primary principle. However, in reality, conflicting interests between the parties often lead to the principle of freedom of contract being implemented inconsistently with the provisions of the contract law.

The practice of outsourcing labor related to employment relationships is widely discussed in various circles, especially among economic and business actors. This is because it directly relates to companies' efforts to reduce costs related to the use of human resources and their responsibility to provide legal protection for workers in employment relationships.

Companies prefer to use outsourced labor not because they cannot afford to reduce costs, but rather because they want to avoid the legal risks of employment relationships that can arise during the HIP process. Legally, the employment relationship between the worker and the company through outsourcing is not mutually binding because the worker and the company are connected through an intermediary, the Contracting Agency (PJP), which manages, recruits, and distributes them. However, this does not mean that the worker is free to be treated arbitrarily, enslaved, or subjected to arbitrary treatment by the company that employs them. All forms of slavery, servitude and manipulation of the workforce, regardless of the form of work system, are not permitted because they are contrary to the 1945 Constitution, Pancasila and human rights.

In carrying out their work, workers are closely tied to their own resources, so they always rely on their resources wherever they are placed or employed by the company. However, it's not uncommon for companies to easily terminate their employment relationships when their resources are no longer needed, even without considering the social impact.

Employment practices should foster a balanced, reciprocal relationship between

protecting the interests of workers and the interests of employers/companies in achieving company goals. This aligns with the purpose of employment relations, which is to improve the quality of workers and their participation in development. Furthermore, it provides comprehensive protection for workers and their families, ensuring they enjoy basic worker/labor rights and are free from discriminatory treatment.[6]

The employment relationship between workers and companies in outsourcing practices must also reflect legal protection for workers as stated in the Indonesian state's goal in the opening of the 1945 Constitution, namely to protect all Indonesian people and all Indonesian territory and to advance general welfare based on Pancasila to realize social justice for all Indonesian people.[7]

The outsourcing workforce model is a simple and flexible work system that can be implemented to meet companies' needs for workforce resources. One of the advantages of outsourcing is the elimination of legal liability in the event of a conflict or dispute between the company and the employee. The company can easily terminate the employment relationship with the employee and return them to the Employment Contractor (PJP), who can then recruit and rehire new workers through the PJP's services.

Although outsourcing is limited to certain job fields (outside the core business), such as security, cleaning, drivers, and couriers, the use of outsourced workers remains widespread in daily life. Companies generally circumvent legal loopholes through PKWT (Fixed-Term Contracts). If the company no longer needs the employee, they can easily terminate the employment relationship and escape legal responsibility.

b. Legal Protection of Outsourced Workers in Employment Relations according to the 2003 UUKK

Government policy in creating regulations in the employment sector should be in accordance with the mandate of Article 27 paragraph (2) of the 1945 Constitution, as a form of government presence in providing protection for every worker in obtaining a decent life. Although the employment relationship is a private relationship between workers and employers, because it is related to fulfilling the rights of the community in realizing their welfare, the field of employment law also has a public law aspect.

The public law aspect in the employment sector makes the government obligated and responsible to participate in regulating the employment relationship between workers and employers, because the relationship that occurs is essentially a subordinate relationship (subordinate) so that the positions of the parties in the employment relationship are not balanced, especially from a socio-economic perspective.

The government has a strategic role in regulating and serving the interests of employers and workers to create a harmonious relationship between them. Upon the enactment of the 2023 Job Creation Law, workers were concerned, particularly regarding the certainty of their future, allowing them to continue working for a company without fear of termination. Several new concepts regarding employment relations in Chapter IV, Article 66 of the 2023 Job Creation Law are as follows:

1) The term of the employment agreement is set at five years and can be extended

[6] Hadi Setia Tunggal, *Himpunan Peraturan Ketengakerjaan*, (Jakarta: Harvarindo, 2009), hlm. iii
[7] I Nyoman Putu Budiartha, *Hukum Outsourcing, Konsep Alih Daya, Bentuk Perlindungan, dan Kepastian Hukum*, (Malang: Setara Press, 2016), hlm. 5

for two years. This lengthy term makes it difficult for workers to adapt to changes in life, such as changes in work conditions, wages, promotions, and so on.

2. The employment relationship is flexible, allowing workers to choose to work part-time and, during the remaining time, to work at another location or company. This relates to the employee's responsibility regarding the employer's obligation to register them for social security programs.

3. The implementation of a probationary period (training) for fixed-term contracts (PKWT) is prohibited, as this could result in legal revocation, and the employee's length of service is still counted.

4. There are provisions regarding compensation to recognize workers whose length of service is not extended.

5. The continued emphasis on the concept of outsourced labor means that modern slavery persists, and there are no clear restrictions on the types of work that can be outsourced. This raises concerns that all areas of work within the employment relationship could be outsourced, detrimental to workers' futures.

The provisions regarding outsourcing labor practices contained in the 2023 Job Creation Law (UUKJ) regarding employment relations do not provide positive protection for workers, as the new provisions are essentially the same as those contained in the 2003 UUKK. In fact, the creation of new legal provisions should be truly functional and provide benefits to the parties regulated therein.

Everyone, including workers in an employment relationship with a PJP (Worker Contracting Agency) and their respective employers, is responsible for the work performed in accordance with the mutually agreed upon agreement. However, in practice, the burden of responsibility often falls more heavily on the workers than on the PJP and/or the employing company (employer).

Workers, in their employment relationships with companies, often carry out work responsibilities that sometimes do not align with what was originally agreed upon with the PJP. For example, working hours exceeding the working hours (overtime) are not counted as excess workload. Performing other work that is not in line with the previously agreed upon scope of duties. Social security benefits for workers, as part of their normative rights, are not provided. And if the workers question this situation either to the PJP or the company (employer), then the PJP and the employer will shift responsibility to each other.

The issue of shifting responsibility between the contracting agency (PJP) and the employer regarding several issues, as mentioned above, should be resolved through a humane approach that considers the interests of all parties involved in the employment relationship.

The contracting agency (PJP) and the employer using outsourced labor are the parties that derive greater economic benefits from the contributions made by the workers to achieving company goals. Therefore, it is appropriate for the PJP and the employer to jointly bear the burden of responsibility for any losses suffered by the outsourced workers in the employment relationship.

Common losses experienced by outsourced workers in employment relationships include arbitrary treatment by the company, such as failure to pay overtime, exclusion from social security benefits, and the lack of certainty regarding the number of times the worker's employment contract can be extended, resulting in a loss of tenure with the

company.

Legal certainty is paramount for protecting the rights of every citizen in their relationships with others. In Indonesia, the principle of legal certainty is a fundamental principle of national law. This is because legal principles are universally applicable and in accordance with the embodiment of the Pancasila principles, particularly the implementation of just and civilized humanity and social justice for all Indonesian people.

Article 6 paragraph (1) letter i of Law No. 12 of 2011 concerning the Formation of Legislation states that all legislation must reflect the principles of order and legal certainty. In relation to labor regulations, particularly those related to the regulation of outsourced labor, they should refer to the principles of legal certainty, including: certainty in the formation of regulations that do not harm the interests of workers and only provide benefits to the PJP and employers, certainty in protecting the interests of subjects and objects of labor law administratively, and certainty in preventing arbitrariness (eigenrechting) from the tripartite elements in realizing a harmonious and sustainable HIP.[8]

[8] Bachsan Mustafa, *Sistem Hukum Administrasi Negara Indonesia*, (Bandung: Citra Aditya Bhakti, 2001), hlm. 53.

4. Conclusion

Government policy in making regulations in the field of employment should be in accordance with what is mandated by Article 27 paragraph (2) of the 1945 Constitution, as a form of government presence in providing protection for every worker in obtaining a decent life. Although the employment relationship is a relationship between workers and employers which is private in nature, because it is related to fulfilling the rights of the community in realizing their welfare, the field of employment law also has a public law aspect.

Every worker, including skilled power workers who have a working relationship with the PJP and the employer, each has responsibility for the work carried out in accordance with the mutually agreed agreement. However, in practice, the burden of responsibility is greater on outsourced workers than on the PJP and/or employing employers.

Legal certainty is the most important value for protecting the rights of skilled power workers to create a balanced and harmonious working relationship within the HIP framework in Indonesia.

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