Comparison of Outsourced Workers' Protection Under the Manpower Law and the Job Creation Law

Suyatno
syt250105@gmail.com

Universitas Bung Karno

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Abstract

Employment is regulated by Law Number 13 of 2003 concerning Manpower (Manpower Law). The relationship between workers and employers is formalized through agreements, which are then divided into fixed-term employment agreements (PKWT) and indefinite-term employment agreements (PKWTT). Additionally, there is outsourcing, which involves the recruitment of employees through manpower supply companies. The approach used in this research method is normative juridical research, where the analysis is based on an approach to legal regulations as the main elements of the study. The reduction of business risks often leads to the practice of outsourcing, which frequently involves the transfer of tasks to outsourcing companies. However, in reality, outsourcing workers often suffer more disadvantages compared to the benefits received by the companies. Hence, the Job Creation Law was enacted as a form of legal protection for the increasingly prevalent outsourcing workers. However, one of the policies in the Job Creation Law includes the removal of provisions from the Manpower Law that previously allowed outsourcing workers to become permanent employees or to establish more stable employment relationships with the employing companies.

I. Introduction

Work is one of the human efforts to maintain their lives, by working humans can make money to meet their needs. Therefore, the issue of work is an issue that never ends. Humans work to earn income which will then be used to survive. It cannot be denied that the state takes part in the availability of existing jobs, especially as it is part of the economy. State involvement in the economy is needed and active (Tchekoumi, 2015). If the country's economy is stable, the good impact will also be felt by the wider community, so that layoffs can be minimized. In addition, the government also carries out its duties as a coach, supervisor, and law enforcement officer, of course, must implement existing laws with full vigilance so that neither the workers nor the business actors feel disadvantaged (Soewono, 2007).

Manpower is regulated in Law Number 13 of 2003 on Manpower (Manpower Law), which consists of 193 Articles. The presence of the Manpower Law is a form of protection from the government for workers and business actors, and is also expected to create welfare for workers and business actors. In the Manpower Law, there are 2 (two) terms, namely labor and worker or laborer, whose definitions are explained in Article 1. The difference in understanding lies in the position of a worker, where the term labor is more broadly directed to the intended meaning of everyone who is able to do work. Meanwhile, workers or laborers are more directed towards people who have worked and received wages. Meanwhile, business actors or employers are also described as individuals or legal entities and others who employ labor and provide wages.

Business actors have a higher position than workers or laborers, workers or laborers are dominantly in a weak position and tend to have their rights protected. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) states that every citizen has the right to work and a livelihood that is worthy of humanity, and Article 28 D paragraph (2) states that every person has the right to work and to receive fair and appropriate compensation and treatment in labor relations (Soewono, 2007). Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations explains the definition of employment relationship in Article 1, which is defined as a relationship between employers and workers or laborers based on an agreement. The elements of the employment relationship are work, wages, and orders.

The relationship between workers and business actors is set out in the form of an agreement, which is then divided into a specific time work agreement (PKWT)

and an indefinite time work agreement (PKWTT). In addition, there is also outsourcing, which is the recruitment of employees through a labor service provider company. The Manpower Law defines outsourcing as an act of handing over some work tasks to another company. Outsourcing in the Manpower Law is divided into 2 (two) mechanisms, namely work contracting agreements and the provision of worker or labor services (Thea, 2021). In Article 64, the assignment of work to a labor service provider company is explained that it is carried out with a written agreement. Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment explains a work agreement as an agreement between workers or laborers and business actors, where the work agreement contains working conditions, rights, and obligations between workers and business actors.

The rise of the practice of outsourcing in Indonesia is certainly based on certain reasons, among them the reason for cheaper costs and minimal risk. Companies that recruit employees through outsourcing have calculated that the operational costs incurred will be lighter. This is because the company does not have to pay salaries as permanent employees, insurance, and others because the contract that is made with outsourced employees is done by the company contracts with outsourced employees are made by the outsourcing company. However, in its implementation, it turns out that the Manpower Law still cannot create justice between workers and business actors, especially outsourced workers. The problems of the outsourcing system also tend to be complicated because they concern the rights and obligations of outsourced workers, which tend to be unequal to the guarantees provided (Fitriyaningrum, 2019). The demand for justice for the rights of outsourced workers can be seen from the echoing of these demands during World Labor Day (Fitriyaningrum, 2019).

One case of outsourced workers occurred in 2021 in a state-owned company, where the outsourced workers demanded justice because they had been treated unfairly. The outsourced workers felt that the work they were given was very inappropriate, and that rights such as the holiday allowance (THR) were also not given in accordance with existing regulations. This caused a polemic that led to a strike, and several demands were also made, one of which was to restore the agreement between the Ministry of BMN regarding outsourced workers who were eligible to be appointed as permanent employees after working for more than five years, which has now been restored (Setyawan, 2021). Therefore, protection of outsourced workers in Indonesia is needed with the aim that outsourced workers do not feel unfairly treated by business actors.

2. Research Method

The legal research method is a procedure or steps used by researchers to investigate legal issues with the intention of identifying, evaluating, and understanding the relevant legal aspects. This procedure collects information from various legal sources such as documents, court decisions, and other sources. The legal research method consists of several phases, namely formulating research questions, determining data sources, collecting data, analyzing data, and concluding research results. In addition, there are two types of legal research methods, namely normative legal research and empirical legal research. The approach used in this research method is normative juridical research, where the analysis is based on an approach to legislation as the main element in the study. Primary legal sources are the focus, with secondary legal sources aiming to clarify the content of tertiary legal sources, which provide an explanation of the content contained in primary and secondary legal sources. In collecting data, researchers used the literature study method, where information was obtained through books, laws and regulations, articles, or journals. Data processing is qualitative, with the data and materials collected processed and analyzed to obtain conclusions relevant to the research objectives.

3. Results and Discussion

Protection of Workers or Laborers in Indonesia

Protection of the rights of workers or laborers must be given in order to provide comfort and welfare to workers. The Manpower Law contains a set of articles that regulate the legal relationship between workers or laborers and business actors, workers or laborers and labor unions, and labor unions and business actors. Manpower Law is private and public in nature where there are some things that do regulate individual interests and some that require the government to intervene. In KUHPer Article 1601 letter a, it is written that a labor agreement is an agreement where there are 2 (two) parties who bind themselves to each other for certain reasons, and then the worker or laborer will get a wage or salary. The 2 (two) parties referred to in Article 1601 letter a are workers or laborers and business actors, the relationship between workers or laborers and business actors is referred to as employment. Legal Protection for Workers Against the Type and Nature of Work in Realizing Justice (Sinaga, 2020).

The position of workers or laborers who tend to be lower than the position of business actors causes the need for more strict protection so that the rights of workers or laborers can be guaranteed. Legal protection of the rights of workers or laborers is also to avoid unwanted things, such as discrimination and unwanted treatment from business actors that have the potential to cause

workers or laborers not to prosper. Article 5 of the Manpower Law states that there is no discrimination against workers, which means that every worker can obtain the same rights in obtaining employment. Article 6 states that every worker or laborer has the same rights and treatment regardless of discrimination from business actors. The work relationship between workers or laborers and business actors is based on an agreement, so the relationship is only valid when the work agreement has been signed. The work agreement contains the rights and obligations of the parties. Comfort with the work environment affects satisfaction with work. Workers or laborers who have satisfaction with their jobs tend to come on time, and do their work as much as possible (Katebi et al., 2022).

In addition, there are elements in an agreement. These elements include that in an agreement or contract there must be parties in it at least 2 (two) or more parties, then there must be an agreement or agreement between the two parties so that there is no misunderstanding. Then there must be an object that is used as the object of the agreement, besides that, the agreement or contract must have a specific purpose for the object stated in the agreement or contract. The agreement or contract can be made in oral and written form. However, to strengthen the agreement or contract, it is better if the agreement or contract is written (Sinaga, 2020). The agreement or contract that has been made will bind the parties who make it according to Article 1313 of the Civil Code, and obliges both parties to do everything that has been agreed upon and outlined in the agreement. The agreement or contract will bind both parties who have jointly agreed to agree to the agreement or contract. If the terms of Article 1320 of the ICC the agreement or contract can be canceled or null and void (Sinaga, 2020).

The creation of a harmonious relationship between workers or laborers can increase the comfort of working so that the expected ideals are realized, namely the harmonious relationship between workers or laborers and business actors. Law No. 21/2000 on Trade Unions or Labor Unions is one manifestation of efforts to create the welfare of workers or laborers. Trade unions are organizations that serve as protectors for workers to defend or protect the rights and interests of workers or laborers as explained in Article 1 of the Trade Union Law. The birth of trade unions is a manifestation of the mandate of the 1945 Constitution of the Republic of Indonesia as a means of struggle for injustices that often arise in the relationship between workers or laborers and business actors. Trade unions must take sides with workers or laborers and defend the interests of workers or laborers and must be objective, open, and responsible in accordance with the provisions of the Trade Union Law (Soewono, 2019).

Workers or laborers are also entitled to wages that are balanced with the workload they have done. Wage eligibility is one of the issues that often triggers disharmonious relations between workers or laborers and business actors. Wage

eligibility remains a never-ending issue even though this matter has been regulated in the Manpower Law. Article 88 paragraph (1) of the Manpower Law states that workers or laborers are entitled to an income that meets a decent livelihood for humanity. The word decent here means that the income given to workers or laborers as a result of their hard work must be adjusted to the work they have done and must also be adjusted to the cost of living in the city where the worker or laborer works. Article 88 paragraph (3) states that what is meant as a wage for a decent livelihood includes minimum wages, overtime wages, wages for absence from work due to obstacles, wages for absence from work due to other activities outside of work, wages for exercising the right to rest time, the form and method of payment of wages, fines and deductions from wages, things that can be calculated with wages, proportional wage structures and scales, wages for severance payments, and wages for income tax calculations.

In addition, workers or laborers must also be protected from unilateral termination of employment (PHK). The settlement of disputes between workers or laborers and business actors or what is commonly called industrial relations disputes must essentially be resolved amicably through bipartite negotiations. Bipartite negotiations are the first step in resolving industrial relations disputes between workers or laborers and business actors. This bipartite negotiation is a form of settlement of worker or laborer relations disputes through consensus deliberation in accordance with Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution Articles 6 and 7 (Suwadji, 2019). Industrial relations disputes must be settled out of court first, which is basically divided into 2 (two) types, namely settlement by the parties involved themselves (business actors and workers or laborers) and settlement involving the assistance of third parties as mediators or arbiters. The settlement must also be completed within 30 (thirty) working days of the negotiation. If the parties have mutually agreed, the agreement will be set out in a collective agreement and registered at the registrar of the industrial relations court.

Protection of Outsourced Workers Based on the Employment Law and the Job Creation Law

The enactment of Law No. 3 of 2013 on Manpower is a form of protection for workers and businesses in Indonesia, so that with the existence of the Manpower Law it is hoped that social justice in the field of employment can be realized and the rights of businesses and workers can be protected. But in reality, workers or laborers always occupy a position that is more vulnerable to the arbitrariness of business actors. Article 27(2) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) states that every Indonesian citizen has the right to a job and a life worthy of humanity, which means that the state is responsible for providing protection for the rights of workers, including outsourced workers.

Furthermore, Article 28D paragraphs (1) and (2) also state that every citizen who works must receive compensation in the form of a salary or wage and that workers must be treated fairly in the working relationship between workers or laborers and business actors.

The transfer of some or all work to a worker or laborer from another company is called outsourcing. The position and working relationship between workers or laborers who are delegated from an outsourcing company and workers or laborers and their employers who do not come from an outsourcing company have an unequal position. This is because of differences in the contracts of workers or laborers who come from outsourcing companies, where the contracts of outsourced workers are made directly with outsourcing companies and are placed in companies that have agreed to delegate some work to outsourcing companies. These differences have an impact on the position of outsourced workers or laborers, social security, health insurance, and severance pay in the event of termination of employment. There are also differences in benefits between outsourced workers or laborers and workers or laborers who are not outsourced (Heru Suyanto et al., 2018).

When workers or laborers are unhappy with their work, the resulting work performance is also worse than workers or laborers who carry out their work happily. Therefore, business actors are also responsible for making workers or laborers who work feel comfortable in doing their work (Katebi et al., 2022). This is also the case with labor workers who are recruited through outsourcing. Outsourcing is the transfer of part of the work to another company that offers work services that are not directly related to the company's main focus, where the task is delegated to another entity or company (Setiawati, 2021). The Manpower Law regulates outsourcing in Article 64, Article 65, and Article 66. Where it is written that the company can assign part of the existing work to another company and the assignment of the work is based on an agreement and the agreement in question must be made in writing. The requirements for an agreement to be valid are listed in Article 1320 of the KUHPer, where there are 4 (four) conditions for a valid agreement, namely:

a) There is an agreement
b) Legal capacity
c) Regarding certain matters
d) Halal clause

Work agreements or contracts are made in written form. Work agreements are divided into 2 (two), namely a specific time work agreement (PKWT) and an indefinite time work agreement (PKWTT). However, usually the work agreement has been drafted by the business actor, and the worker or laborer only needs to sign the work agreement or contract. However, because the agreement or

contract has been made unilaterally and workers or laborers tend not to read the agreement or contract, there is a possibility that the agreement or contract will be one-sided in the sense that it only benefits the business actor. This can be seen from the position of power of business actors who are economically higher, compared to the position of workers or laborers who need work so they are vulnerable to succumbing if they are disadvantaged (Febriana, 2021). Therefore, it is necessary to educate and raise awareness on the part of workers or laborers regarding what rights and obligations they have obtained so that there are no deviations from justice that lead to discomfort while working. Especially for outsourced workers.

Companies in carrying out their business activities will of course take into account many things, including how employee recruitment is carried out. One of the options chosen is outsourcing. One of the reasons is cost efficiency. However, every company must of course consider many things before deciding anything. Especially when it comes to the welfare of many parties, including their workers. So, an analysis is needed regarding what work can be done through outsourcing so as not to harm workers or laborers and business actors. The rights of outsourced workers or laborers are also the same as the rights of contract workers or laborers, where outsourced workers or laborers have a contractual agreement with the company providing outsourcing services. Outsourced workers or laborers have fundamental rights that must be guaranteed. Outsourced workers or laborers have the right to work as a human right in accordance with Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, and they also have the right to receive a wage or salary in accordance with the work they have done.

Workers or laborers who work through the outsourcing system have the same right to organize and assemble as other workers or laborers. This right is a basic right that aims to fight for their rights and interests. They also have the right to protection of security, safety, and health in the workplace as part of their basic right to a life free from risks that can occur in the work environment. In addition, outsourced workers or laborers have the right to fair legal treatment in accordance with procedures when facing legal cases, as well as the right to prove their guilt. They also have the right to receive equal treatment without discrimination. Workers or laborers also have the right to confidentiality of their personal data, especially because business actors usually keep the personal data of workers or laborers during the recruitment process. This personal data must be kept confidential and must not be accessed by unauthorized parties. Finally, outsourced workers or laborers have the right to act in accordance with their freedom of conscience and should not be forced to take actions that are contrary to their beliefs (Sinaga, 2020).

The practice of outsourcing often involves the transfer of work to outsourcing companies with the aim of reducing the risk burden for business actors. However, in reality, outsourced workers or laborers are often in a position that is disadvantageous for them and advantageous for the company. According to the Manpower Law, if an outsourcing company does not continue the contract on the grounds that it wants to transfer the work to another outsourcing company, it needs to pay attention to making a new employment agreement. It is important to ensure that the new agreement does not reduce the terms agreed upon in the previous agreement (Hafizh et al., 2022). However, the practice of outsourcing as stipulated in Manpower Law Article59, Article 64, Article 65, and Article 66 has already been challenged in the Constitutional Court (MK) because it is considered contrary to the 1945 Constitution Article 27 paragraph (2), Article 28D paragraph (2), and Article 33 paragraph (1). This view considers that there is a tendency that only leads to excessive efficiency. Excessive outsourcing practices can produce workers or laborers with lifetime contract agreements. For that reason, 2 (two) models have emerged to guarantee the rights of outsourced workers. One is not to use the form of a Fixed-Term Employment Agreement (PKWT) or a permanent work contract, but to use a temporary work contract with a very short period of time. Another model is to apply the principle of security transfer to outsourced workers or laborers who work for the company where they are placed.

The President has issued Law Number 11 of 2020 on Job Creation to better strengthen the protection of workers' rights. However, in the revised Job Creation Law, provisions related to outsourcing in Indonesia that were previously stipulated in Articles 64 and 65 of the Manpower Law have been removed. In addition, Article 66 of the Manpower Law has also been amended. The revised rules related to outsourcing and non-permanent contracts in the Job Creation Law are considered to have the potential to improve business conditions. However, this needs to come with some caveats, especially in terms of monitoring. Previously, in the Manpower Law, there were restrictions on the types of activities that could be carried out by outsourced workers. For example, they were not allowed to perform principal activities or those directly related to the production process; outsourced workers could only carry out supporting activities or those not directly related to the production process. However, in the Job Creation Law, these restrictions are abolished. According to Manpower Law No. 13/2003 Article 59, fixed-term contracts may only be used for certain jobs that are naturally completed within a short period of time. Fixed-term employment contracts for a certain period of time are also limited to a maximum of 2 years and can only be extended once, with a maximum additional time limit of 1 year (Hafizh et al., 2022).

The Job Creation Law has abolished the provisions on work contracting agreements and worker service providers in the Manpower Law, so the laws and

regulations that still contain these provisions should no longer apply. The Job Creation Law also removes provisions in the Manpower Law that allow outsourced workers to become permanent workers or have a more stable working relationship with the employer company (such as PKWTT) if the conditions of outsourcing are not met. Excessive outsourcing practices can result in workers or laborers with lifetime contract agreements.

4. Conclusion

Business actors have a higher position than workers or laborers, and workers or laborers are predominantly in a weak position and tend to have their rights protected. The rise of the practice of outsourcing in Indonesia is certainly based on certain reasons, including the reason for cheaper costs and minimal risk. Companies that recruit employees through outsourcing have calculated that the operational costs incurred will be lighter. The creation of a harmonious relationship between workers or laborers can increase the comfort of working so that the expected goal of harmonious relations between workers or laborers and business actors is realized. Workers or laborers are also entitled to a wage that is balanced with the workload they have done.

In addition, workers or laborers must also be protected from unilateral termination of employment (PHK). With the enactment of the Job Creation Law, workers' rights have received stronger protection, but there are changes in the provisions of outsourcing and non-permanent contracts that are considered to improve business performance. However, strict supervision is needed to prevent abuse. One of the main changes is the removal of restrictions on the types of activities that can be performed by outsourced workers. In addition, the rules related to non-permanent contracts have also changed, including in terms of contract time limits and extensions. The Job Creation Law removes provisions from the Manpower Law that previously allowed outsourced workers to become permanent workers or have a more stable working relationship.

References

Febriana, A. P. (2021). Analisis Perlindungan Hukum Perjanjian Kerja Leemanagement Terhadap Pekerja/Buruh Wanita. Law, Development and Justice Review, 4(2), 158–170.

Fitriyaningrum, J. (2019). Implementasi Sistem Alih Daya atau Outsourcing Dalam Mencapai Kesejahteraan Pekerja Indonesia Ditinjau Dari Undang-Undang Nomor 13 Tahun 2003. Indonesian State Law Review, 2(1), 88–102.

Hafizh, D. F., Maghribi, G., Mulyani, R., Afradyta, S. R., & Fernanda, S. (2022). Analisis Praktik Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja. Jurnal Lemhannas RI, 10(3), 212–223.

Katebi, A., HajiZadeh, M. H., Bordbar, A., & Salehi, A. M. (2022). The relationship between "job satisfaction" and "job performance": A meta-analysis. Global Journal of Flexible Systems Management, 23(1), 21–42.

Setiawati, N. E. (2021). Analysis of outsourcing system and work motivation on employee performance. Journal of Business and Behavioural Entrepreneurship, 5(2), 108–117.

Setyawan, F. A. (2021). Buruh Bongkar Perilaku PLN kepada Pegawai Outsourcing. CNN Indonesia. https://www.cnnindonesia.com/ekonomi/20210610153033-85-652737/buruh-bongkar-perilaku-pln-kepada-pegawai-outsourcing

Sinaga, N. A. (2020). Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian. Jurnal Ilmiah Hukum Dirgantara, 10(1).

Soewono, D. H. (2007). Analisis Hukum Ketenagakerjaan di Indonesia. Jurnal Inspirasi, 1(2), 1–13.

Soewono, D. H. (2019). Peran Serikat Pekerja Dalam Menciptakan Hubungan Industrial Di Perusahaan. Jurnal Hukum Unik Kediri, 2, 1–13.

Suwadji, Y. T. (2019). Penyelesaian Pemutusan Hubungan Kerja (PHK) melalui Perundingan Bipartit. Jurnal Ketenagakerjaan, 14(2), 559943.

Tchekoumi, L. B. (2015). Redistribution of income: an approach. African Journal of Economic and Sustainable Development, 4(2), 174–187.

Thea, A. (2021). Ini Bedanya Outsourcing di UU Ketenagakerjaan dan UU Cipta Kerja. Hukum Online. https://www.hukumonline.com/berita/a/ini-bedanya-outsourcing-di-uu-ketenagakerjaan-dan-uu-cipta-kerja-lt60657d8d20b58