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Research Article

The Factors Which Caused Outsourcing System Not According to the Content of the Work Agreement Regarding the Term of the Employment Contract

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Abstract: The purpose of this study is to understand the factors that cause outsourcing system not in accordance with the content of the work agreement regarding the term of the employment contract. Research with the title above is empirical juridical, meaning that research is based on research obtained from field studies and uses secondary data sourced from primary and secondary legal materials to analyze various regulations regarding the purpose of this research contained in Article 64 of the Law Number 13 of 2003 concerning Employment, can be referred to as the practice of outsourcing. The writer then analyzed the problematic which can be seen in several things, namely Employment Relations, Trade Unions. Employment Relations to the contract workers who work at outsourcing companies can be seen from the number of irregularities or violations of work norms carried out by employers in conducting outsourcing business. Trade Unions, where in practice are outsourcing workers, are unclear about the function and role of trade unions in the company.

Index Terms— Employment, Employee, Work Agreement, Outsourcing

1. Introduction

The development of the global economy and technological advances that are currently so fast brings the impact of the emergence of business competition that is so tight, therefore companies are more concerned with efficiency and effective business competition. Indeed, there are almost no companies that can maintain their competitiveness in the midst of this very rapid change in the flow of the global economy only by relying on their own resources.

Nowadays many companies use employee through companies that provide employee services, or better known as outsourcing, which is to buy up one part or several parts of the company's activities that were previously managed by themselves to another company which is then called a job recipient company (Sutedi, 2009: 219). In the business world, the use of outsourcing services is already familiar to reduce the range of obstacles, through outsourcing companies overcome the dilemma by focusing on their internal resources or activities that give it a unique competitive advantage (Tunggal, 2019:324-325).

Outsourcing is also often done deliberately to reduce the cost of workers / employees with the protection and conditions of work provided far below what should be given so that it is very detrimental to the employee. Such outsourcing can cause workers unrest and is often followed by strikes, so that the purpose of outsourcing as mentioned above is not achieved.

The law is one form of public policy. One form of public policy for employment is Law Number 13 of 2003. Employee means people who are able to produce goods, employee or services for personal or other needs. With this understanding, employee means not only covering employee or workers, but also employers. Law Number 13 of 2003 is a law that regulates all matters concerning labor and industrial relations. In accordance with the role and position of the employee, employment development is needed to improve the quality of employee and its participation in development and to improve the protection of workers and their families in accordance with human dignity.

The problem of outsourcing workers when it becomes one of the jobs in employee dynamics in Indonesia which actually in the Employment Act itself sets limits on the procurement of outsourcing workers into areas of activity that are not directly related to the production process, including: cleaning service business, and security service business.

The employment relationship that occurs in outsourcing is between the worker and job receiving company (Outsourcing Company) as outlined in a written work agreement. The work relations is basically an Indeterminate or Permanent Time Work Agreement (PKWTT), but can also be done with a Specific Time Work Agreement (PKWT) if it meets all the requirements both formal and material as stipulated in Article 59 of Law Number 13 Year 2003. With Thus the employment relationship on outsourcing is not always in the form of PKWT, and it is very wrong to assume that outsourcing is always and / or the same as PKWT.

According to Indonesian Labor Law expert, R. Iman Soepomo stated that Work Agreement is an agreement where the first party, employees, commit themselves to work by receiving wages to other parties, employers, who commit themselves to work on these workers by paying wages (Soepomo, 1968: 9).

Work agreements made by the parties that contradict the provisions referred to in Article 52 paragraph (1) of Law Number 13 Year 2003, namely:

Work agreements are made on the basis of:

a. Both side agreement;
b. The ability to carry out legal actions;
c. The agreed work; and
d. The work promised is not contrary to public order, decency, and applicable laws and regulations.

Article 52 paragraph (1) letters a and b have legal

consequences that can be canceled. Whereas an employment agreement that is contrary to the provisions referred to in Article 52 paragraph (1) letters c and d, the legal consequence is that the work agreement is null and void. The provisions of Article 52 paragraph (2) and paragraph (3) of Law Number 13 of 2003. The provisions of Article 52 of Law Number 13 of 2003 have adopted the provisions of Article 1320 of the Civil Code. Work agreement is one form of agreement, so it must meet the conditions of the legality of the agreement based on the provisions of Article 1320 of the Civil Code. Based on the provisions of Article 1320 of the Civil Code an agreement is said to be valid if it meets the elements of:

a. There is agreement;
b. Legal ability;
c. Certain thing;
d. *Causa* is justified.

Of the four conditions are cumulative, meanings that all must be fulfilled before it can be said that the agreement is valid. The conditions of ability and free will of both parties in making agreements in civil law are called subjective conditions because it involves the person making the agreement, while the conditions for the promised work and it must be halal are called objective conditions because it involves the object of the agreement. If the objective conditions are not met with subjective conditions, then the result of the agreement itself can be canceled, the parties who do not give their consent freely. Thus the agreement has a legal provision that has not been canceled by the Judge (Husni, 2013: 43).

Indications of weak legal protection for workers / employees, especially contract workers who work at outsourcing companies can be seen from the number of irregularities and / or violations of work norms committed by employers in conducting outsourcing business. Deviations and / or violations can be categorized as follows:

1) The company does not classify the main work (core business) and the company supporting work (non-core business) which is the basis of outsourcing, so in practice the outsourced is the nature and type of the main work of the company. The lack of classification of the nature and type of work that is outsourced results in workers / employees being employed for the types of main work or jobs directly related to the production process, not supporting activities as required by law;
2) Companies that submit work (principal) submit a portion of the implementation of their work to other companies / companies that accept jobs (vendors) that are not incorporated;
3) Work protection and conditions of employment for outsourced workers are very minimal when compared to other workers / employees who work directly at the Principal company and / or are not in accordance with applicable laws and regulations.

2. Research Methodology

The research method used is a juridical empirical research method, namely research conducted by empirical / sociological juridical methods. Sociological law research is called the study of law in action. So called, because research involves the mutual relationship between law and other social institutions, so it is a non-doctrinal social study, which is empirical meaning based on data that occurs in the field (Supranto, 2003: 3). This study uses a descriptive analytical type, which seeks to provide a comprehensive, systematic and in-depth picture of the situation or phenomenon under study (Soekanto, 1984: 10).

The type of data and data collection methods needed in this study are primary data and secondary data. Primary data is data obtained directly from the object (Supranto dalam Wijayanti. 1982: 1), which in this case is the entrepreneur, workers / employees, as well as parties related to this research. Secondary data is data obtained from library materials.

Method of Data Analysis is done by means of qualitative empirical data analysis methods, where the authors analyze secondary data and primary data collected from the results of field research. The empirical qualitative analysis method is based on the depth of data collected as a whole, systematic, critical and constructive in the labor law system. Through this method the author tries to find answers to existing problems, which then emerge several new concepts about how outsourcing practices should be carried out, which has caused a lot of controversy to be carried out so as not to harm the workers / laborers.

3. Research Results and Discussion

a. Overview of Workers / Employees

The use of the word labor, workers, and employees must be distinguished because the meaning of labor is wider in scope than workers / employees, including formal workers, informal workers, and those who are not yet working or unemployed. Article 1 number 2 of Law Number 13 Year 2003 concerning Employment, employee contains a general meaning, that is, anyone who is able to do work can produce goods / services both to meet their own needs and for the community. The term worker in practice is often also used to achieve an employment relationship status such as contract workers or permanent workers.

Workers / employees can be defined in the provisions of Article 1 number 3 of Law Number 13 Year 2003 concerning Employement which states that workers / employees are all people who work so that they receive wages or rewards in other forms. Therefore workers / employees are every worker or every employee who is bound in a work relationship with another person or his superior.

Work relationship can be interpreted as a legal relationship carried out by 2 (two) legal subjects regarding a job. The legal subjects conducting employment are employers / employers with workers / employees (Wijayanti, 2009: 36). According to the provisions of Article 1 number 14 of Law Number 13 of 2003, employment relations are relations between employers and workers / employees based on work agreements and have elements of work, wages, and orders.

b. General Review Regarding the Work Agreement

Regarding the understanding of the agreement, Article 1313 of the Civil Code (Civil Code), an agreement is an act by which one or more people commit themselves to one or more other people. According to Abdul Kadir Muhammad related in Article 1313 of the Civil Code states (Muhammad, 1982: 78).

An agreement will be broader and more firm, if the understanding of an agreement can be interpreted as an agreement by which two or more people commit themselves to carry out a matter in the field of assets.

According to R. Iman Soepomo stated that, an employment agreement is an agreement in which the first party, the worker, commits himself to work by receiving wages / salaries to the other party, the employer, who commits himself to do the labor by paying wages (Djumialdji, 1995). Work agreements are regulated in Chapter IX of Law No. 13 of 2003, Article 1 number 14 of the 2003 Employment Act states that an work agreement is an agreement between the worker / laborer and

the company or employer which contains terms of work, rights and the obligations of the parties.

Outsourcing if interpreted simply means the transfer of part of the job implementation from the company that give the jobs to another company as a recipient of work through a written agreement on chartering or providing workers / employees' services. This understanding in the context of understanding outsourcing (Law) in Law Number 13 Year 2003, the relation in outsourcing there are 2 (two) types of agreements that must be made in writing, namely:

1) Job contracting agreement

The contract of employment referred to in Article 65 paragraph 1 of Law Number 13 of 2003 is slightly different from the contract of employment that has been regulated in Article 1601b of the Civil Code, namely an agreement with one party (the contractor) is bound to carry out a work for another party (Djumialdi, 1995: 3). The difference with the employment contract agreement in Article 64 and Article 65 paragraph 1 of Law Number 13 Year 2003 with Article 1601b of the Civil Code can be understood that what is regulated in the Civil Code is generally applicable, meaning that it can be done between an individual or an individual with that company, and besides, the form is not required. written. Whereas Law No. 13/2003 applies specifically to job contracting companies as a form of outsourcing agreement, so that it also applies between the employer and the recipient company in the form of the agreement must be in writing.

An employment agreement requirement basically can be divided into 2 (two), namely material requirements and formal requirements. Material requirements are regulated in Article 52 of Law Number 13 of 2003 while formal requirements are regulated in Article 54 of Law Number 13 of 2003.

2) Worker / Employee Service Provider Agreement

On outsourcing, there is a prohibition based on the provisions of Article 66 of Law Number 13 Year 2003, namely workers / laborers from companies providing workers / laborers services may not be used by the employer to perform main activities or activities directly related to an activity production, are excluded for supporting service activities or activities that are not directly related to the production process.

In accordance with the employment contracting agreement, it can be interpreted that the agreement for workers / employee service providers is also not found in Law Number 13 of 2003 and Kepmenakertrans No. Kep. 101/MEN/VI/2004, but can be found from the provisions of Article 66 paragraph (2) d of Law Number 13 Year 2003 which states that: Agreement between the company using the services of workers / employees and other companies acting as companies providing services for workers / employees made in writing and obliged to contain articles as referred to in this law.

From the provisions of Article 66 paragraph (2) d of Law Number 13 Year 2003, it can be understood that the agreement on the provision of worker / employee services is one of the outsourcing agreements which constitutes an agreement for the delivery of work from a company providing work to a company providing workers services / employee made in writing.

If the conditions in the labor service provision agreement are in accordance with Article 66 of Law Number 13 Year 2003 concerning part of the work that can be submitted to the company providing the worker / labor service does not meet the requirements, then by law the status of the relationship switches between the worker / employee and the company the worker / employee provider becomes the worker / employee and the employer. Whereas the issue of protection of wages, welfare, terms of employment and disputes that arise will be the responsibility of the company internal provider of worker / employee services regulated in Article 66 paragraph (2) c.

c. The Factors that cause outsourcing system is not in accordance with the contents of the work agreement regarding the term of the work contract

1) Strategic Factors

(a) Work done by more professionals, with outsourcing, companies can easily choose vendors or workers in accordance with company requirements without having to be burdened with costs or more efficient time.

(b) The company wants to focus on the core of the company's business, with outsourcing the company does not have to go directly to take care of the supporting parts or divisions of the company but is given or hired to the company providing worker services.

(c) The quality of the workers' human resources is also maintained, with outsourcing if the worker is not suitable or if there is a decrease in the performance of the worker, the company can easily replace or choose a vendor that is in accordance with the provisions of the employer's company.

(d) Running a business without obstacles, with outsourcing, companies can focus more on the company's core business without having to go directly to business support.

2) Long-Term Factors

(a) Reducing the risk burden, if a loss occurs, the company does not need to pay additional costs / severance to outsourced workers.

(b) Efficient production costs, companies can easily stop or reduce outsourcing workers in accordance with the wishes of the company.

(c) Professionalism is also maintained, by outsourcing the company's performance power can be maintained because the company is free to choose workers to be able to support the company in full without disrupting the company's core business.

4. Conclusion and Suggestion

a. Conclusion

Companies that outsource labor services are legally protected by laws within the auspices of PT, therefore any form of dissatisfaction or disputes between outsourcing workers and the giver / recipient of labor can be resolved either legally or current regulation. The conflicts that occur in the field of practice, due to ignorance of a clear source of law in terms of work agreements between the giver / recipient of work with outsourcing workers.

b. Suggestion

It is best if outsourcing workers before accepting or signing a work agreement must understand the contents of the work agreement, including rights and obligations as well as risks arising from the ongoing work agreement. Likewise, the recipient / employer company before giving or making an agreement between the two, must educate outsourced workers (outsourcing) in terms of the Employment Act along with the

risks that will arise. After the signing of the work agreement so that there are no demands in the future in terms of facilities and or policies implemented in each company.

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