

Ideal Legal Protection of Workers 'Rights in Employment Relationships in Power Transfer Systems

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Abstract. Legal protection for workers in the labor outsourcing system in Indonesia as part of the industrial relations system is generally still a big problem, because outsourcing is still considered exploitation. The issue of work relations norms in the outsourcing system, namely the existence of gaps and differences in the sense of justice and discriminatory treatment in terms of rewards, salary and punishment in the same workplace. This research method is a normative juridical legal research where the source of legal materials is mainly secondary legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In addition, it is supported by primary legal materials in order to strengthen these secondary legal materials. Analysis of legal materials through qualitative juridical analysis methods. The results showed that the basic rights of workers with a certain time work agreement were lost after the enactment of the Omnibus Law on Cipta Kerja, the provisions of the Manpower Act were revised. However, the revision no longer confirms the existence of outsourcing systems, but instead regulates that the norms of work relations between outsourcing companies and their employees are agreed and written. In addition, there are additional conditions that further strengthen the argument for outsourcing work, which can be promised through a work agreement for a certain period of time. Outsourced workers make it impossible to form and become members of a trade union, and automatically other derivative rights cannot be realized, especially those that require a labor union. Likewise, rights related to working and rest periods, such as the right to annual leave and long rest. In addition, rights regarding wages, both during the employment relationship, and after the end of the employment relationship, cannot be obtained.

Keywords: Tenaga Kerja; Alih Daya; Perjanjian Kerja Waktu Tertentu

1 Introduction

Legal protection for workers in the labour outsourcing system in Indonesia as part of the industrial relations system is generally still a big problem, because outsourcing is still considered exploitation [1]. The issue of work relations norms in the outsourcing system, namely the existence of gaps and differences in the sense of justice and discriminatory treatment in terms of rewards, salary and punishment in the same workplace [2].

The outsourcing policy is contained in Law Number 13 of 2003, Article 64 to Article 66. Technically (operationally) it is further regulated in the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 19 of 2012 concerning Conditions for Submission of Part of the Implementation of Work to Other Companies as last amended by Regulation of the Minister of Manpower of the Republic of Indonesia Number 11 of 2019 concerning Amendments to the Second Amendment of the Minister of Manpower Regulation

Work and Transmigration of the Republic of Indonesia Number 19 of 2012 concerning Requirements for Submission of Part of the Implementation of Work to Other Companies (hereinafter referred to as "Permenakertrans.No.19/2012"). All the provisions governing outsourcing are what workers/laborers (especially unskilled labour) demand to be revoked or abolished because they are considered discriminatory and result in eliminating the basic rights of workers/laborers [3]. Demands for the elimination of outsourcing, apart from neglecting their rights, workers / laborers also experience uncertainty about their continuation of work (due to prolonged "contracts").

With the outsourcing and PKWT systems, workers/laborers experience work uncertainty and do not meet the requirements to obtain their rights during the working relationship, such as association rights and derivative rights associated with these rights of association, namely the right of representation in organizations and/or employment agencies. Likewise, the right to standard wages related to the length of service (according to the structure and scale of the wage), the right to allowances or non-wage income, the right to get the right to leave / rest. In addition, the uncertainty regarding the length of service that has been carried out (undertaken), in which the work period of an agency worker has never been calculated and rewarded. This has an impact on the loss of opportunities for outsourced workers / laborers to get a decent salary and allowances that are in accordance with their years of service and service.

Uncover the problems of work relations norms in the outsourcing system, namely the existence of gaps and differences in the sense of justice and discriminatory treatment in terms of rewards, salary and punishment in the same workplace. The next step, recommending reformulation of the norms of employment relations in outsourcing companies that can reduce the basic rights arising from the Manpower Law.

2 Research Methods

The normative juridical research method is based on rules and literature as well as a study of the Constitutional Court Decision in the 2020 Pilkada. Normative Juridical Research Method is a research method that is carried out based on the main law by examining theories, concepts, legal principles and regulations. laws relating to this research, so that the object of research used in this research is qualitative and uses the deductive thinking method (a way of thinking in drawing conclusions drawn from something that is general in nature which has been proven that it is correct and the conclusion is intended for something. which is special).

3 Results and Discussion

In principle, legal protection arises from a legal provision and all legal regulations provided by the community [4], which are basically the agreement of the community to regulate the relationship of behaviour between community members and between individuals and the government who are considered to represent the interests of society (legal representative). Theoretically, the main function of law is to regulate the relationship between humans and between individuals and the state so that everything runs in an orderly manner so that peace due to the upholding of certainty (law) and justice in society which is the goal of law can be achieved [5].

However, if the work/activity is outsourced, the work relationship between workers/laborers is differentiated based on options, respectively: for the types of supporting activities, it can be agreed through PKWTT, or PKWT if it meets the requirements of Article 59 (Law No.13 / 2003). Whereas for the types of supporting service activities (non-core business), the working relationship of the worker/labourer can be agreed upon through PKWT if it meets the requirements of Article 59 (Law No.13 / 2003) and/or PKWTT which is made in writing. This means that outsourcing companies can choose a working relationship based on PKWTT, and/or PKWT if they meet the requirements of Article 59 (UU R.I. No.13 / 2003).

In this regard, if the said supporting activities or supporting service activities are to be handed over to another company (outsourcing company), ideally the treatment should be the same and equivalent to the cost which is relatively the same or equivalent as if it was done alone (in *cateris paribus* condition) In that sense, the cost is equivalent to the same. This means that the work in question must be considered a permanent job with an employment relationship through PKWTT and must pay the standard wage or minimum wage by applying the wage structure and wage scale (SUSU) according to the provisions. The provisions of Article 65 paragraph (7) and Article 66 paragraph (2) letter b of Law no. 13/2003 have become a decision in the Decision of the Constitutional Court of the Republic of Indonesia. Number 27 / PUU-IX / 2011, but still does not guarantee legal certainty.

According to the author, the Constitutional Court R.I. Number 27 / PUU-IX / 2011 does change and (even) add statement clauses in Article 65 paragraph (7) and Article 66 paragraph (2) letter b, but it does not affect the provisions of work relations norms and does not change the behaviour of the legal subject against the provisions referred to. Supposedly by issuing regulations, legal certainty for the community will be (increasingly) guaranteed, because of the more limited space for parties to act according to their wishes and insights. However, legal certainty will of course be violated if the regulations that are the basis of existing expectations (expectations) are changed. This means that his expectations regarding future events are shattered [6]

This view basically wants to state that all parties or people must be involved to contribute in a balanced way according to their respective fields so that a balance is achieved (proportionally). This connection is in line with the theory of Justice, put forward by John Rawls, namely the creation of a justice inequality (justice as fairness) [7]. It is time to make rules that are more just and provide legal protection to all workers in a balanced and proportionate manner, especially those with weak positions. Based on the practice of outsourcing in Indonesia, especially outsourcing at companies providing workers/labour services, it shows that workers are only considered as goods, not as a legal subject. This is even stated in Article 66 paragraph (2) of the Job Creation Law, that disputes that arise are the responsibility of the outsourcing company.

In essence, with the abolition of the "worker/labourer service provision agreement", part of the problem of outsourcing can be resolved, and part of the legal protection of labour gets attention, or most of the rights of workers/labour can be restored. Some of them reformulate the norms of work relations in the outsourcing system, it can be through synchronization of laws and regulations in the field of work contracting (according to the Civil Code) and the field of goods or services procurement, they can rewrite and reconstruct articles or clauses in Article 64, Article 65 and Article 66 of the Manpower Law and its implementing laws and regulations are coherent with all other laws and regulations related to manpower, so that workers/laborers' rights are protected, outsourcing activities can run smoothly and smoothly.

4 Conclusion

The basic rights of workers with a certain time work agreement are lost after the enactment of the Omnibus Law on Cipta Kerja, the provisions of the Manpower Act are revised. However, the revision no longer confirms the existence of outsourcing systems but instead regulates that the norms of work relations between outsourcing companies and their employees are agreed upon and written. The practice of working relations in outsourcing is always promised through PKWT with the consequence that it negates the basic rights of workers that arise from the law, or at least cannot be realized or do not meet the requirements to be taken.

The ideal legal protection for workers' rights in the norms of work relations in the outsourcing system, is the formation of laws and regulations (policies) that specifically regulate the norms of work relations which contain protection of all the rights of outsourced workers. Starting from the outsourcing model applied in Indonesia which is characterized by the values of Pancasila and the N.R.I. UUD. 1945, and the mechanism for the formation of trade unions, as well as derivative rights related to the said trade unions and rights of a personal nature as well as collective rights in industrial relations.

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