

Legal Protection for Outsourced Workers Based on Law Number 13 of 2003 Concerning Manpower Post-Revision of Law Number 11 of 2020 Concerning Job Creation

Ilham Muhammad Mardiputra¹, Rineke Sara², Evita Isretno Israhadi³
ilhamufc@gmail.com¹, rineke_sara@borobudur.ac.id², evita_isretno@borobudur.ac.id³

Universitas Borobudur^{1, 2, 3}

Abstract. Arrangements regarding outsourcing are contained in Articles 65 and 66 of Law No. 13 of 2003 concerning Manpower. Outsourcing workers are usually provided by service provider companies, where service providers will carry out administrative and management processes based on agreed definitions and criteria. Outsourced workers themselves only carry out supporting work or activities that are not directly related to the production process. Many agencies prefer to use outsourced workers for supporting activities because outsourced workers themselves are considered cheaper than using contracted workers. The role of outsourced workers as executors of development must be supported by guarantees for the rights of every worker. Outsourced workers themselves cannot be separated from the risk of work accidents that occur in work relationships, and diseases caused by the work environment. To overcome this, it is necessary to have legal protection for outsourced workers. The health and safety of outsourced workers is the company's responsibility in providing outsourced workers. Therefore, laws and regulations regarding outsourcing need to receive better attention from the Indonesian government, so that social justice can be realized and realized in real terms in the lives of workers in Indonesia.

Keywords: Dynamics; Law enforcement; Criminal; restorative justice.

1. Introduction

The Republic of Indonesia is a holy state (rechtsstaat), specifically a state where all mindsets and lead, and exercises, whether committed by the subject matter experts or by its inhabitants, ought to be established on guideline.[1] The Indonesian legitimate state is a state considering Pancasila and the 1945 Constitution of the Republic of Indonesia, the consent to frame a state government, safeguard the whole country and its country, advance public government assistance and teach the country's all's life. Indonesia's law and order state is a cutting edge law and order state, regarding that, the fundamental errand of the public authority is the government assistance of its kin. To that end the advanced law and order is likewise called the government assistance state or "government assistance state".

Law and order points fundamentally to give legitimate insurance to individuals. As indicated by Philipus M Hadjon [2] that legitimate security for individuals against demonstrations of government depends on two standards, in particular the Standards of

Common liberties and the Standards of Law and order. Acknowledgment and security of basic liberties have an essential spot and can be supposed to be the objective of a law and order. As a result of a law and order state, state organizations should ensure that they are a device of state government to have the option to run the public authority and residents have the freedoms and commitments to get ensured legitimate insurance.

Thoughtfully, lawful assurance for individuals for government activities incorporates preventive legitimate security and severe legitimate insurance. In preventive legitimate security, individuals are permitted to submit protests (inspraak) or conclusions before an administration choice gets an authoritative structure.

Pancasila as the Indonesian nation's philosophy of life in the fifth precept states that, "Social Justice for All Indonesian People". This means that justice for the people is more important than justice for certain groups.[3] Equity should be maintained by maintaining the standards of equity for understanding a prosperous, just, prosperous, and impartial society both tangibly and profoundly.[4] This justice must be felt by all Indonesian people, including justice for workers or workers, both those who work in the country and abroad.

Work is every individual who could attempt to deliver labor and products and get a prize to address the issues of themselves or society. In the execution of public turn of events, the labor force plays a vital part as a specialist and objective of improvement. One of them is outsourced workers or what is commonly called casual daily workers included in the Precarious Work category.

Outsourced personnel are only temporary in nature, and cannot be extended. In the outsourcing system itself, when the contract period has expired, the worker must start from scratch or apply to another outsourcing service provider company. And management based on agreed definitions and criteria. Business is controlled in Regulation No. 13 of 2003 concerning Labor. The word outsourcing is not found in this law, but uses another term, namely a work charter agreement or worker or labor service provider in Article 64 which reads:

"Companies can hand over part of the execution of work to other companies through work contracting agreements or the provision of worker/labor services made in writing".

Arrangements regarding outsourcing are also discussed in Articles 65 and 66 of Law No. 13 of 2003 concerning Manpower. Re-appropriating laborers are typically given by specialist co-op organizations, where specialist co-ops will do authoritative and the executives processes in view of concurred definitions and measures. Re-appropriated laborers themselves just complete supporting work or exercises that are not straightforwardly connected with the creation cycle. Many agencies prefer to use outsourced workers for supporting activities because outsourced workers themselves are considered cheaper than using contracted workers. The role of outsourced workers as executors of development must be supported by guarantees for the rights of every worker.

Outsourced workers themselves cannot be separated from the risk of work accidents that occur in work relationships, and diseases caused by the work environment. To overcome it, it is necessary to have legal protection for outsourced workers. The health and safety of outsourced workers is the responsibility of the company providing outsourced workers. Therefore, laws and regulations regarding outsourcing need to receive better attention from the Indonesian government, so that social justice can be realized and realized in a real way in the lives of workers in Indonesia.

2. Problem

The issue in this paper is; The way is the Legitimate Assurance of Rethinking Laborers In light of Regulation Number 13 of 2003 concerning Work?.

3. Method and Approach

3.1. Method

The system used recorded as a printed version this applied paper is the illuminating logical method, to be explicit by using data that clearly portrays the issues directly in the field, then the assessment is finished and a while later shut to handle an issue. Techniques for data combination through discernment and composing study to get decisive reasoning in the preparation of this paper. In accordance with the examination targets to be accomplished, the domain of this exploration is remembered for subjective examination, consequently a subjective methodology strategy will be utilized. As indicated by Petrus Soerjowinoto et al., the subjective strategy is a technique that underlines the most common way of understanding the specialist on the detailing of the issue to build a perplexing and comprehensive legitimate peculiarity.[5]

3.2. Approach

Regularizing juridical strategy, to be explicit the juridical philosophy method used to take a gander at issues from a legitimate and lawful perspective, using the goal approach, which dissects the issues to be inspected including genuine rules as discretionary data in fundamental, helper, and tertiary legal materials.[6]

Regularizing juridical methodology completed against explicit resolutions and guidelines or composed regulations, connecting with Legitimate Insurance of Reevaluated Laborers In view of Regulation Number 13 of 2003 concerning Labor.[7] The assessment depicts the state of the article under study, specifically zeroing in on legitimate assurance for rethought laborers in view of Regulation Number 13 of 2003 concerning Work practically speaking.

4. Discussion

4.1. Legal Protection for Outsourced Workers Based on Law Number 13 of 2003 concerning Manpower Post-Revision of Law Number 11 of 2020 concerning Job Creation.

Regulation 11 of 2021 concerning Corrections to Regulation 16 of 2004 concerning the Indonesian Head legal officer's Office changed upwards of 39 arrangements from the old Examiner's Regulation. For example, CHAPTER I General Provisions was abolished and only became Article 1. The Head legal officer's Office is an administration establishment whose capability is connected with legal power that activities state power in the field of indictment and different powers in view of the law.

The discussion regarding legal protection for outsourced workers requires clarity about what is meant by worker protection and outsourcing in Indonesia. Articles in the 1945 Constitution state that there is a guarantee of protection for workers/laborers, namely:

1) Article 28 D section (1) of the 1945 Constitution, in particular that everybody has the privilege to acknowledgment, ensures, assurance and fair legitimate sureness, and equivalent treatment under the watchful eye of the law.

2) Article 28 D paragraph (2) of the 1945 Constitution "Everyone has the right to work and receive fair and proper compensation and treatment in a working relationship."

Legal protection for workers is also stated in Article 4 letter c of the Manpower Act which states that "the aim of employment development is to protect workers in realizing prosperity". Furthermore, the articles in the Labor Law which regulate protection, wages, and welfare are contained in Chapter X in Articles 67-101.

This guarantee of protection has been further strengthened since the birth of the Constitutional Court Decision No.27/PUU-IX/2011, this choice referencing two models of re-appropriating. To start with, by expecting that the work understanding between the specialist and the organization doing the reevaluated work isn't in that frame of mind of a PKWT, yet as a PKWTT. Second, apply the rule of move of defensive measures for laborers who work for organizations that do rethought work. The guideline of moving security or Move of Undertaking Insurance of Business was beforehand a standard applied to an organization that was taken over by another organization so that specialists' freedoms were ensured.

Outsourcing is "The transfer of part or all of the work and/or authority to another party to support the outsourcing user's strategy, whether personal, company, division or a unit within the company." [8] Arrangements in regards to re-appropriating are controlled in Article 64 of the Labor supply Act, to be specific, an organization can surrender part of the execution of work to different organizations through a work contract understanding or specialist/work specialist organization made recorded as a hard copy, and afterward the principles are managed in Pemenakertrans No. 19 of 2012 concerning Necessities Terms of Accommodation of Part of Work Execution to Different Organizations.

Aristotle said that humans are "zoon political" [9] social creatures or social creatures on the grounds that every citizen has a relationship with each other. As friendly creatures, intentionally or unknowingly, people generally complete legitimate activities (*rechtshandeling*) and lawful relations (*rechtsbetrekkingen*).

Legitimate activity (*rechtshandeling*) is characterized as any human activity that is done deliberately/at his will to lead to freedoms and commitments whose outcomes are directed by regulation. Legitimate activities comprise of one-sided lawful activities like making a will or award, and two-party legitimate activities like trading, work arrangements, and others. A legitimate relationship (*rechtsbetrekkingen*) is characterized as a connection between at least two lawful subjects, which relationship comprises of connections among people and people, among people and society, or between one local area and another. In this lawful relationship, the freedoms and commitments of one party manage the privileges and commitments of the other party.

The functioning relationship has the significance of a connection between a specialist/worker and a business in light of the components of orders, wages, and work. This illustrates the issuance of labor rights and obligations to employers and vice versa. In outsourcing, workers only have a working relationship with the company that receives the job charter (outsourcing company) not with the employer company (user company). The provisions in Article 65 paragraph (2) letter b which stipulates that work that can be handed over to other companies can be carried out by direct or indirect orders from the employer can lead to criticism, namely how is it possible for a company that has handed over the execution of work to another person still has the authority to give orders either directly or indirectly to work that has been contracted out to other companies. [10]

The arrangements of Article 65 passage (6) of Regulation Number 13 of 2003 concerning Labor express that the business relationship through a work sanctioning understanding is directed in a composed understanding between the organization getting the work contract (reevaluating organization) and the specialists utilized. This article shows that the employment relationship does not occur between the worker and the company giving the job, but with the company that receives the job charter. The employment relationship can be transferred to the company giving the job if there is a violation as stated in Article 65 paragraph (8) of Law Number 13 of 2003 concerning Manpower. On the off chance that the arrangements alluded to in Article 65 passage (2) and section (3) are not satisfied, then, at that point, by regulation the situation with the work relationship, the worker with the company that receives the job charter (outsourcing company) switches to an employment relationship with the company giving the job. This means that 1) if the work performed is not supported work or work that may be done outsourcing and 2) if the work contracting company is not a legal entity, then the employment relationship between the worker and the work contracting company will automatically change to PKWTT workers in the giving company work. The employer's company is obliged to recruit him as a permanent employee. This provision is considered burdensome by the employer.[11]

The functioning connection between the laborer and the organization that gets the work contract can be founded on PKWT assuming it satisfies the necessities specified in Article 59 of Regulation Number 13 of 2003 concerning Labor supply. These arrangements demonstrate that the kind of work in the organization getting the work contract managed in the PKWT should be brief. Regulation Number 13 of 2003 concerning Labor doesn't direct exhaustively the security of the freedoms of utilized specialists. The security of laborers is managed in Article 65 passage (4) that the work security and working states of reevaluated laborers should be equivalent to the gig assurance and working states of the business or by the material regulations and guidelines. Kepmenakertrans No. 220 of 2004 directs the security of the privileges of rethought laborers relying on the prerequisite that the work settled upon in the work arrangement can't be lower than the arrangements in the material regulations and guidelines. Article 5 of the Priest of Labor supply and Immigration Announcement No. 220 of 2004 specifies that each work contract arrangement is obliged to ensure the satisfaction of laborers'/workers' freedoms in the business relationship as specified parents in law and guidelines.[12]

Over time, it was felt that outsourcing practices were not by applicable laws and regulations, especially in the wages and discriminatory treatment of stable workers and outsourced workers to the Constitutional Court (MK) on Articles 59, 64, 65, and 66. On January 5, 2012, the Constitutional Court decided to issue decision No. 27/PUU-IX/2011 and read out at the plenary session of the Constitutional Court open to the public on January 17, 2012.

Legitimate security for rethought laborers After the issuance of the Established Court Choice No. 27/PUU-IX/2011, the government provided a few guidelines among others are:[12]

- Round Letter (SE) Number B.31/PHIJSK/I/2012 concerning Execution of the Protected Court Choice No. 27/PUU-IX/201;
- Permenakertrans Number 19 of 2012 concerning Conditions for Giving Over Piece of the Work Execution to Different Organizations;
- Round No. SE 04/MEN/VII/2013 concerning Rules for Executing the Guideline of the Priest of Labor and Immigration of the Republic of Indonesia Number 19 of 2012 concerning Conditions for Giving Over Piece of the Work Execution to Different Organizations;
- Permenakertrans Number 27 of 2014 concerning Revisions to the Guideline of the Pastor of Labor supply and Immigration Number 19 of 2012 concerning

Conditions for Giving Over Piece of the Work Execution to Different Organizations

- Permenakertrans Number 11 of 2019 concerning the Second Alteration to the Guideline of the Clergyman of Labor supply and Immigration Number 19 of 201 concerning Conditions for Giving Over Piece of the Work Execution to Different Organizations.

In Law Number 11 of 2020 concerning Job Creation several provisions regarding outsourcing have been deleted, among them are Articles 64 and Article 65 of Law Number 13 of 2003 concerning Manpower. Article 66 of Law Number 11 of 2020 contains:

- The working connection between the re-appropriated organization and the specialists/workers it utilizes depends on a fixed-time work understanding (PKWT) or a vague time work understanding (PKWTT).
- Protection of laborers/workers, wages and government assistance, working circumstances, and questions that emerge are the obligation of the re-appropriated organization.
- The re-appropriated organization as alluded to in passage (2) is as a lawful substance and is expected to satisfy a Business Permitting.
- Further arrangements in regards to the security of laborers/workers as alluded to in passage (2) and Business Permitting as alluded to in section (3) will be controlled in an Administration Guideline.

The arrangements in Article 66 of Regulation Number 11 of 2020 concerning Position Creation are not generally included in regards to the impediments of works that are denied from being completed by laborers with a reevaluating framework. This amendment in regards to the guideline of the re-appropriating framework opens up the opportunities for Work Specialist organization organizations to utilize laborers for different assignments that are not controlled in Regulation Number 11 of 2020 concerning Position Creation. Despite the fact that Article 65 section (2) of Regulation Number 13 of 2003 concerning Labor recently controlled work that could be given over to different organizations that needed to satisfy the circumstances, in particular that it was done independently from the primary action; did by immediate or circuitous orders from the business; is a supporting action of the organization all in all; and doesn't impede the creation cycle straightforwardly. This provision also allows for no time limit for outsourced workers and can even be for life. This provision of course can make companies able to employ workers with an outsourced system in all lines of work. This will have an impact on the free use of outsourced workers if there are no rules or regulations derived from Law Number 11 of 2020 concerning Job Creation.

The arrangements of Regulation Number 11 of 2020 concerning Position Creation which erases Articles 64 and 65 of Regulation Number 13 of 2003 concerning Labor supply and holds Article 66 demonstrate that reevaluating arrangements are as yet allowed by regulation. The provisions have resulted in opening up opportunities for the proliferation of outsourcing work relationships, even though it has been proven that triangular forms of relationships such as outsourcing are very unfavorable for workers.

In Regulation Number 11 of 2020 concerning Position Creation, the relationship that exists between reevaluating organizations and laborers/workers depends on a Particular Time Work Understanding (PKWT) or an Endless Time Work Understanding (PKWTT). Meanwhile, if you look at the provisions regarding PKWT in Law Number 11 of 2020 concerning Job Creation, it is regulated in Article 56 which states:

- Work arrangements are made for a predefined time frame or for a vague time frame;
- Certain Time Work Arrangements depend on a period or the fruition of a specific work;

- The period or fruition of specific work as alluded to in passage (2) is resolved in view of the understanding of the gatherings.
- Further arrangements with respect to work arrangements for a specific time frame in view of the period or the fulfillment of a task are managed by the Public authority.

In light of the arrangements in Article 56 of Regulation Number 11 of 2020 concerning Position Creation, rethinking in its execution depends on a specific period or the finishing of specific concurred positions.

5. Conclusion

In Indonesia, the practice of resolving criminal cases using restorative justice has been carried out, especially for the settlement of criminal cases that fall under minor crimes. In its turn of events, helpful equity has started to get a lawful umbrella through the Police Boss Guideline Number 6 of 2019 concerning Examinations of Criminal Demonstrations and the Republic of Indonesia Examiner's Office Guideline Number 15 of 2020 concerning End of Arraignment In light of Supportive Equity. Handling cases based on restorative justice can make punishment a last resort so that it can hinder the accumulation of cases in court and reduce overcapacity in Correctional Institutions.

Authentic affirmation for re-appropriated workers in Indonesia is controlled in Guideline Number 11 of 2020 concerning Position Creation. Guideline Number 11 of 2020 concerning Position Creation deletes the game plans in Article 64 and Article 65 of Guideline Number 13 of 2003 concerning Work supply. Assurance of laborers/workers, wages and government assistance, working circumstances, and questions that emerge are the obligation of the reevaluating organization. The arrangements in Article 66 of Regulation Number 11 of 2020 concerning Position Creation are not generally included in regards to the impediments of work that are denied from being completed by laborers with a reevaluating framework. The arrangements in Regulation Number 11 of 2020 concerning Position Creation consider no time limit for rethought laborers, so laborers can be reevaluated endlessly, in any event, forever.

Over time, it is felt that outsourcing practices are not by applicable laws and regulations, especially in the field of wages and discriminatory treatment of permanent workers and outsourced workers, therefore, Law Number 11 of 2020 concerning Job Creation exists to provide legal certainty better for outsourced workers, even though they are still not perfect because there are still many aspects that are felt to have not provided full justice for outsourced workers in earning a living for their families.

References

- [1] Kranenburg dan Sabroedin B, *Ilmu Negara Umum*. 2017.
- [2] P. M. Hadjon., *Perlindungan Hukum Bagi Rakyat di Indonesia*. Surabaya: PT. Ilmu, 2005.
- [3] A. Sutedi, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2009.
- [4] Ahmad Fadlil Sumadi, "Mahkamah Konstitusi dan Kontrak Outsourcing," *Kontitusi*, vol. IX, no. 1, 2012.
- [5] D. Petrus Soerjowinoto, *Buku Panduan Metode Penulisan Karya Hukum (MPKH) dan Skripsi*. Semarang: Fakultas Hukum, UNIKA Soegijapranata, 2006.
- [6] G. Suteki., & Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktek)*. Depok: RajaGrafindo Persada, 2018.

- [7] R. H. Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta : Ghalia Indonesia, 1988.
- [8] K. P. dan A. E. Maharata., *Outsourcing Versus Serikat Pekerja (An Introduction to Outsourcing)*. Jakarta: Alihdaya Publishing, 2008.
- [9] R. Soeroso, *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 2018.
- [10] Andasari Yukosari, “Departemen Tenaga Kerja dan Transmigrasi, Bogor, 27 November 2010.,” 2010.
- [11] I. Farida., *Hukum Kerja Outsourcing di Indonesia*. Jakarta: Universitas Indonesia, 2017.
- [12] W. B. Pratiwi and D. Andani, “Perlindungan Hukum Tenaga Kerja Dengan Sistem Outsourcing Di Indonesia 1,” *J. Huk. IUS QUIA IUSTUM*, vol. 29, no. 3, pp. 652–673, 2022, doi: 10.20885/iustum.vol29.iss3.art.