

## LEGAL PROTECTION OF OUTSOURCING LABOR COMPANIES IN MEDAN CITY

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**ABSTRACT** - The legalization of outsourcing raises the problem of sociological enactment which is based on the effectiveness of law, where the basis of law is based on acceptance or recognition by those to whom the law is aimed, considering that the legalization of outsourcing is rejected by the majority of the community, especially those who work in companies. The approach method used is Normative Legal Research (*normative juridical*) by using the statutory regulatory approach, and empirical research (field data). The data analysis was carried out qualitatively to look for dominant factors that have potential or trends in legal protection for labor workers, which have recently become guidance material based on Law No. 13 of 2003 concerning manpower. The results of the study can be argued that various legal protections for workers based on Law no. 13 of 2003, there are 3 (three) types of protection for workers / laborers, respectively: Economic protection, namely protection of workers in the form of sufficient income, including if the worker is unable to work against his will. Social protection, namely labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize. Technical protection, namely protection of workers in the form of work security and safety. The implementation of work protection and work conditions such as requirements for employment relationships, requirements for wages, requirements for work time breaks and wages for overtime work, requirements for social security, compensation for work accidents, and safety and health requirements for outsourced workers / laborers in Medan City are still not provided in accordance with the prevailing laws and regulations, so that workers feel disadvantaged economically and socially, feel that they are treated unfairly and inhumanely before, during and after they work.

Keywords : Outsourcing, Company, Legal Protection

### I. Introduction

The problem of *outsourcing* in Indonesia is getting worse as *outsourcing* practices are legalized by Law Number 13 of 2003 concerning Manpower which has generated a lot of controversy. In the midst of public concern about the rebirth of the dangers of capitalism, government is actually legalizing *outsourcing* practices which are economically and morally detrimental to workers / laborers. The controversy is based on the interests behind the concept of thinking of each subject.

Demands for the elimination of *outsourcing* system do not only come from workers / laborers, observers of labor issues like Prabowo Subianto once said that *outsourcing* system should be abolished, according to him "outsourcing system is less humane because it exploits workers". On another occasion, the Alliance of Labor Sues (ALS) and People's Struggle Front (PSF) at the commemoration of World

Labor Day (*May day*) 2008 at the Hotel Indonesia Roundabout, raised the issue of "Abolishing the Contract and *Outsourcing* System".

After the legalization of *outsourcing* system, which caused controversy, the government actually reduced its responsibility in providing legal protection for workers / laborers. Policies in the field of manpower (*employment policy*), both at the local and national levels, are felt to be less directed towards *social protection*. *Employment policy* actually aims at making workers / laborers part of the market mechanism and production components that have a selling value (related to low wages) for investors.

The pressure on high economic growth has made Indonesian government prioritize employers over workers. In Indonesia's capitalistic economic system, entrepreneurs are more positioned as a driver of economic growth, therefore the government facilitates more groups of entrepreneurs than workers groups. As a result, workers are paid very cheaply, even the cheapest among Asian countries.. " Indications of weak legal protection for workers / laborers, especially contract workers who work for *outsourcing* companies, can be seen from the number of irregularities and / or violations of work norms and occupational safety and health (K3) norms committed by employers in running *outsourcing* business. Based on the things stated above, the writer chose to discuss this outsourcing in depth.

## 2. Method

### a. Research Sites

The research was conducted at PBJ Jalan Sunggal No. 62 Medan City and some workplaces of *outsourcing* workers / laborers managed by PBJ in Medan Municipality.

### b. Population and Sample

#### 1) Population

In this study, a detailed look at the problem of legal protection and work relations that occur in *outsourcing practices between* the employing company (*Principal*) and the company (PBJ) that provides worker services.

#### 2) Sample

In accordance with the observation, the researcher took a sample of 5 (five) *Security Workers* as *respondents* according to the percentage of 329 workers who were managed by PBJ and employed in various companies in Medan City.

#### 3) Data collection techniques and data collection tools

##### a) Data collection techniques used are:

(1) *Field Research*, which is a data collection method based on field research that is closely related to the problems being studied, namely collecting data by conducting interviews with respondents.

(2) *Library Research*, which is collecting data by conducting a review of library materials or data which include primary legal materials, secondary legal materials, and tertiary legal materials that have something to do with the problem under study in the form of legislation, including Law of the Republic of Indonesia No.13 2003 concerning Manpower.

##### b) Data collection tools

To obtain secondary data, both primary, secondary and tertiary legal data, a library research and document study were conducted. Meanwhile, to obtain primary data in the form of raw data, both opinions and responses (*qualitative*), structured interviews were conducted with *respondents* and *informants* directly. The research plan is to carry out data analysis to look for dominant factors that have potential or trends in legal protection of labor workers who have recently become guidance material based

on Law No. 13 of 2003 concerning employment. Data analysis was carried out through a qualitative approach in accordance with the research objectives

### III. Result and Discussion

#### 1. Implementation of legal protection for workers and conditions of employment for *outsourced* workers in companies

In the era of globalization and the demands of intense business competition today, companies are required to strive to improve their business performance through effective and efficient organizational management. One of the efforts made is to employ a minimum number of workers to be able to provide maximum contribution according to the company's goals. For this reason, the company seeks to *focus* on handling work that is *core business*, while supporting work is left to other parties. This process of activity is known as "*outsourcing*." Studying the existing *Outsourcing* system PT. Putra Buana Jaya in managing the workforce to fulfill the company's responsibilities as a provider of *security* workforce and office employees distribute and are responsible for operations according to the applicable procedures as set out in the discussion below.

The limited number of labor inspectors becomes a separate obstacle for the routine and effectiveness of the apparatus' performance in providing legal protection for workers / laborers and for enforcing labor laws. Based on Law Number 21 of 2003 concerning Ratification of ILO Convention No. 81, "The number and specialization of Labor Inspectors must be sufficient to ensure the effective implementation of supervisory duties" This means that for the effective function and role of labor inspection, Ketapang Regency Government has at least 5 (five) to 10 (ten) functional personnel of Labor Inspection Employees. Logically, 1 (one) Employee of Labor Inspection is only able to carry out effective supervision on an average of 20 to 30 companies in one year.

Furthermore, in the Elucidation of Law it has been stated that the authorized official has obligation to determine the necessary arrangements so that the Labor Inspector can be provided with a local office, equipment and adequate transportation facilities in accordance with the requirements of job duties and to make necessary arrangements to replace labor inspectors travel expenses in the performance of their duties.

Various legal protections for workers based on Law no. 13 of 2003 concerning Manpower. According to Abdul Khakim, Soepomo's opinion divided into 3 (three) types of protection for workers / laborers, respectively:

1. Economic protection, namely protection of workers in the form of sufficient income, including if the worker is unable to work against his will.
2. Social protection, namely labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize.
3. Technical protection, namely labor protection in the form of safety and security

Furthermore, according to Imam Soepomo as followed by Asri Wijayanti, providing worker protection covers five areas of labor law, namely:

1. The field of recruitment / placement of workers.
2. Field of work relations.
3. Occupational health.
4. Job security.

## 5. Worker's social security sector.

The Steps to Implementing *Outsourcing* System, the provisions of Article 64 to Article 66 of the Manpower Law and Constitutional Court decision in 2004, have become a separate legitimation for the existence of *outsourcing* in Indonesia. This means that legally formal, the *outsourcing* work system has a strong legal basis to apply. This situation makes entrepreneurs apply this system. The use of *outsourcing* is often used as a company's competitive strategy to focus on its *core business*. However, in practice *outsourcing* is driven by the desire of companies to reduce costs to the lowest possible level and get multiple profits even though it often violates business ethics<sup>1</sup>. *Outsourcing*, cannot be separated from the *outsourced* service provider company. The company must choose a provider in accordance what is needed where the *outsourcing* company must be tested for quality promised.

## 2. The role of Medan City Government in providing legal protection for *outsourcing* workers

The role of Medan city government in responding to most disapproval of this outsourcing is to try to provide legal protection and provide the rights of workers in the company, including:

### A. Protection of the Basic Rights of *Outsourcing* Workers.

The operationalization of manpower development objectives are:

1. Protecting the rights of citizens to obtain work, protecting workers from work risks in doing work such as work accidents, occupational diseases, death, loss / loss of income, protecting workers from forms of bad, improper and inhuman treatment, discrimination as well as exploitation both physically, mentally, morally and socially, as well as protecting all labor rights arising from an engagement or from legislation.
2. Educate and improve the skills and skills of the workforce in order to meet the demands of labor market, increase *bargaining position*, and increase income.
3. Welfare and guarantees the fulfillment of workers' needs for a decent life, including: income / wage levels, welfare and social security for themselves and their families. Legal protection for workers is protection provided by law to workers / laborers for the actions of employers before work (*pre-employment*), during work (*during employment*) and *during post employment*. Protection of workers' rights is carried out by providing (legal) remedies to those whose rights have been violated so that they can be restored and / or fulfilled. Harjono stated that "the law distinguishes between legal measures to protect a person's rights in several kinds; Civil legal remedies, criminal lawsuits, administrative legal remedies, and constitutional legal remedies, even legal remedies that are provided across countries "so there are legal remedies that are private and there are also public legal remedies. Protection of interests by giving rights will be stronger if the subject to whom the right is granted is also equipped with legal remedies to defend their rights ". This means that the law gives legal entities the right to control the implementation of obligations by other parties to fulfill their rights.

In the effort to protect this law, "Government intervention is realized through labor policies and laws that are contained in various laws and regulations". Then through this law, a series of rights, obligations and responsibilities are placed on each party, even including criminal sanctions and fines. Legal protection for workers / labor is carried out so that the rights of workers / laborers are not violated by the entrepreneur, considering that in a work relationship the position of parties is not equal, where the worker

/ laborer is in a weak position, both from an economic and social perspective, so that with his position the weak often experience violations of their rights.

Providing legal protection for workers is the mandate and purpose of labor law, as stated by Senjun H. Manulang, that the purpose of labor law is to achieve or implement social justice in the field of employment and protect workers against the unlimited power of employers. Zainal Asikin, as followed by Asri Wijayanti, also said that "legal protection from the power of employer is carried out if the laws and regulations in the labor sector that require or force employer to act as in these laws are actually implemented by all parties because the validity of law cannot be measured *juridically*, but measured socially and philosophically". Legal protection efforts for outsourced workers / laborers must be implemented maximally and more specifically, considering that in the practice of *outsourcing*, there is a triangular work relationship involving the company that provides the job (*principal*), the company receiving the job (*vendor*) and the worker / laborer. In this condition, *outsourcing* workers / laborers are very vulnerable to exploitation and inhumane actions, both because of their status as temporary workers / laborers (contract) or because of the treatment of employers who tend to behave like capitalists who seek profit from their labor. The *vendor* business is to employ workers / laborers for the interests of *principal*, while the vendor himself benefits from difference between wages / services provided by principal to the vendor and wages paid by the vendor to the worker / laborer. This practice has been analyzed by Marx, who said that workers are alienated (exiled) from work, because once the worker / laborer is in an outsourced atmosphere, he will work based on the goals of vendor who pays and pays wages, and they (workers) will exploited for the benefit of vendor and principal. Quoting what Chainur Arrasjid once said, that law is the will and creation of humans in the form of norms containing behavioral guidelines, about what can be done and about what should not be done. Therefore, law must have sanctions and contain values of justice, usefulness, and value of certainty in the society where the law was created, in order to realize the values of justice, utility, and certainty, there needs to be *legal remedies* to maintain it .

#### **IV. Conclusion**

Various legal protections for workers based on Law no. 13 of 2003, there are 3 (three) types of protection for workers / laborers, respectively:

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The implementation of work protection and work conditions such as requirements for employment relationships, requirements for wages, requirements for work time breaks and wages for overtime work, requirements for social security, compensation for work accidents, and safety and health requirements for *outsourced* workers / laborers in Medan City in accordance with the prevailing laws and regulations, so that workers feel disadvantaged economically and socially, feel that they are treated unfairly and inhumanely before, during and after they work.

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