

The Phenomenon of Work Contract and Outsourcing Viewed by Sociological and Law, Indonesia

Ibnu Affan

Law Faculty, Islamic University of North Sumatra (UISU), Medan, Indonesia

Abstract: Regarding certain contract labor or work contract (PKWT) and our sourcing (submission of some work to other companies) explicitly has been regulated in Law no. 13 of 2003 on Manpower. However, in practice there is always a deviation in which there are often found jobs that are prohibited to be employed by contract or outsourcing system but the fact is made in the form of contract or outsourcing. Today almost all types of work are made in the form of contracts or outsourcing. This fact is often the cause of problems and often get resistance from the workers / laborers. The issues raised in this study are: 1) How are the arrangements regarding contract labor and outsourcing in Indonesia today ?; 2) How is its implementation in terms of sociological and juridical ?; 3) What is the supervision of the manpower agencies in the current era of regional autonomy? Although the Manpower Act has provided employers with the opportunity to hire workers on a contract or outsourcing system, not all types of work can be made in the form of contracts or outsourcing. Only for certain types of work can be created in the form of contractual or outsourced contracts. Therefore, to prevent the occurrence of irregularities in the implementation of contract and outsourcing work system is required an effective, efficient and sustainable monitoring system of the Department of Manpower. To optimize this oversight system, if necessary, be made in tripartite form by involving trade unions and employers' organizations within the oversight structure.

Keywords: contract labor; outsourcing; sociological; law

Date of Submission: 16-04-2018

Date of acceptance: 02-05-2018

I. INTRODUCTION

The practice of contract labor and outsourcing is a global phenomenon that can be viewed as an icon of globalization. Contract workers and outsourcing are part of market mechanisms intended to make efficiency in business activities or processes. But on the other hand this practice leads to work uncertainty.

Contract labor and outsourcing has become a global phenomenon and implies one of the greatest challenges faced by trade unions in the world. This became a problem for trade unions in developed countries early in the 1980s, when companies demanded labor market flexibility (flexibility). In the end, it has become a problem in developing countries in Asia, Africa, Latin America, Central Europe and Eastern Europe.

Today, companies concentrate on their main production or service areas. This resulted in large employee reductions, acquisitions and mergers as they concentrated on one or more key businesses in order to fulfill their ambitions to be the top ten in related businesses in the global market share. This concentration results in their attempts to operate by hiring as few employees as possible. The "Peripheral" activity is done rapidly through the cheapest possible option which means avoiding the responsibility of an employer. In order to get the service cheap, the company gives the contract as he wishes.

For the Indonesian context, changes in the world of work are not only the result of competition between companies, but also as something that the government is encouraged (and legitimized) through its policies. Starting from the phenomenon of contract labor through Minister of Manpower Regulation no. Per-06 / Men / 1985 on Daily Labor and Regulation of the Minister of Manpower no. Per-05 / Men / 1986 concerning Specific Working Agreements. Then also the introduction of the model of sub-contract work through Decree of the Minister of Trade no. 135 / KP / VI / 1993 on Import and Export of Goods to and from Bonded Zone, and the last by Law no. 13 of 2003 on Manpower.

On behalf of addressing the high unemployment rate, the Indonesian government's policy since 2003 is based on the creation of the largest possible employment opportunities, by reducing the protection of certain job security and trade off between job security and job opportunities. The employment creation is pursued by the softening of labor regulations in three areas, reducing the increase in UMR to no more than 4% and done every two years, layoffs are facilitated and severance pay is reduced, the extension of contract work and outsourcing to the production of the company.

Labor contracts and outsourcing are a tangible form of the principle of labor market flexibility and can be found in almost all parts of the series of production processes. The concrete situation found in the field shows the form of labor market flexibility is by replacing the status of permanent workers into contract labor. The rights of contract laborers and outsourced become unclear. The contract period that comes out of the rule of law (eg 1 year contract) in practice continues to be extended more than 3 times. Companies often release permanent workers who are active in unions and replace them with contract laborers.

The widespread practice of contract labor and outsourcing causes the degradation of the welfare and working conditions of the workers. Their working conditions deteriorated and there was a decrease in the real wage earned by workers. Contract workers and outsourcing generally do not get any facilities except basic salary, in addition to having to pay some commission to their dealers every month. There is no allowance and facilities for them as permanent workers receive even if they do the same type of work.

II. METHODS OF THE RESEARCH

1. Types of The Research and Methods Approach

The type of The research used in this study is a normative legal research or also referred to as literature law research is research conducted by examining library materials or secondary data.

The approach method used in this research are:

- a. The statutory approach (Statute Approach) is an approach used to review and analyze legislation relating to the issue of contract labor and outsourcing.
- b. Analytical Approach (Analytical Approach) is to know the meaning contained by the terms used in the rules of legislation on contract labor and outsourcing conceptually as well as know its application in practice.

2. Nature of The Research

The nature of this study is descriptive research that describes or explains the existing legislation and is currently valid as a positive law.

3. Data Source

The main source of data in normative legal research is library data. In the legal literature, the data source is called legal material. The legal substances studied and analyzed in normative legal research consist of:

- a. Primary legal material
- b. Secondary law material
- c. Tertiary legal material

Primary legal materials include:

- a. Norms or basic rules, is the 1945 Constitution
- b. UU no. 13 of 2003 on Manpower
- c. Decree of the Minister of Manpower and Transmigration RI Number: Kep.100 / MEN / VI/ 2004 on Implementation of Working Agreement on Certain Time;
- d. Regulation of the minister on manpower and transmigration the Number: 19 of 2012 concerning the Submission Requirements of Part in the Implementation of Work to Other Companies; Partial Delivery of Employment to Other Companies;

Secondary legal materials are legal materials that provide an explanation of primary legal materials, such as academic texts, draft laws, and the results of research by jurists.

Tertiary legal materials are materials that explain the law of primary legal materials and secondary legal materials such as the Great Dictionary of Indonesian Dictionary and Dictionary of English Law.

4. Techniques Of Collection Data

The technique for reviewing and collecting secondary data is using documentary study which is a study that examines the various documents, both related to the existing laws and documents.

5. Method Of Analysis Data

Data analysis in this research is done by using qualitative descriptive analysis, that is an analysis that explain or describe about the prevailing rules, then connected with reality that happened in society and finally taken conclusion.

III. RESULTS AND DISCUSSION

3.1 Regulation of Contract Workers in the Manpower Act

When seen in Law no. 13 of 2003 on Manpower or commonly referred to as the Manpower Law (UUK) does not recognize the term contract laborer. The term of contract labor is just an ordinary expression spoken by ordinary people based on the facts found in the social environment of society where there are some unscrupulous workers / laborers whose status of employment is made in the form of contract. This phenomenon is called the society as a contract laborer. Regarding the arrangement of contract laborer, it can be seen in UUK that is starting from Article 56 s / d 63 which regulate certain working time agreement (PKWT). According to

the provisions of Article 56 paragraph (2) of the UUK it is stated that: "Working agreements for a specified time as referred to in paragraph (1) shall be based on: a) durations; or b) the completion of certain work;

The above provision means that PKWT can only be applied for work that has a term of its work or there is a period of completion. This is confirmed under the provisions of Article 59 of the Law which states that:

1) A work agreement for a specified period may be made only for certain occupations which by type and nature or activity of the work shall be completed within a certain time:

- a. a job that is once completed or temporary
- b. work that is expected to be completed in the not too distant future and for a maximum of 3 (three) years;
- c. work that is seasonal; or
- d. work related to new products, new activities, or additional products that are still in trial or exploration.

2) A work agreement for a certain time cannot be held for a fixed occupation.

The PKWT system in the Labor Law indicates that the government is now directing a flexible labor market policy. This reinforces this statement can be seen from the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.100 / Men / VI / 2004 on Implementation of Working Agreement of Certain Time. The provision is made as implementer of Article 59 paragraph (1) UUK which divides PKWT only for 4 (four) types of work only that is :

- a) PKWT for work completed once or temporarily completed for a period of 3 (three) years;
- b) PKWT for seasonal work;
- c) PKWT for work relating to new products;
- d) PKWT for casual workers.

PKWT for work completed once or temporarily is PKWT which is based on the completion of certain work and made for a maximum of 3 (three) years. If certain work contracted in the PKWT can be completed sooner than the agreement then PKWT is broken by law on upon completion of the work. However, if the work has not been resolved, PKWT can be renewed. This type of PWTT is usually implemented for contractor companies making roads or buildings with time limits for completion.

While the meaning of a seasonal job is work that its implementation depends on the season or the weather. This type of PKWT can only be done for one type of work in a particular season, such as *rambutan* canning plant that exist during rambutan season. Rice mill that can be done during season the harvest arrives and the weather is hot. PKWT for this seasonal job can also be done for the work to be done to fulfill certain orders or targets, for example for the syrup factory which, on the eve of Idul Fitri or New Year, receives many orders or orders.

PKWT for work relating to new products may be undertaken to undertake work relating to new products, new activities or additional products that are still in trial or assessment. These CAWT may only apply to workers who perform work outside of the activity or outside the usual corporate work. Take for example the bakery factory wants to produce the soup, so to make it happen need to experiment or exploration first. This type of PKWT may be made only for a period of two years but may be renewable for one time a maximum of one year.

For certain jobs that vary in time and volume of work and wages based on attendance can be done with daily employment contracts (PKHL). The latter type of PKWT is done under the terms of the worker / laborer working less than 21 (twenty one) days in 1 (one) month. If the worker / laborer is working 21 (twenty one) days or more for 3 (three) months in a row or more then PKHL is changed into PKWTT (uncertain employment agreement or commonly called permanent worker) .

Based on the above provisions, it can be understood that out of 4 (four) types of work cannot be made in the form of PKWT. That is, if there is a PKWT created by businessmen outside of the above provisions, then the status of the employment relationship turned into PKWTT, or with In other words, if there is an employment contract made outside of the above types of work, then the status of the employment relationship of the worker becomes permanent or permanent employee.

3.2 Outsourcing Arrangements in Labor Law

Talking about contract workers is incomplete if not all about outsourcing. The term outsourcing is increasingly popular when workers give hard reactions to the birth of the UUK that is considered legalize this working system. However, the term outsourcing is not mentioned specifically in the Law. Article 64 of the UUK refers to the handover of part of the implementation of work to another company that is a service provider of workers / laborers, this is what is called outsourcing (outsourcing).

Regarding the terms of outsourcing can be seen in Article 65 paragraph (1) and (2) Labor Law which requires that in writing and meets the following requirements:

- a. done separately from the main activities;
- b. carried out by direct or indirect orders from the employer;

- c. a support activity of the company as a whole; and
- d. does not impede the production process directly.

Currently, outsourcing requirements have been strictly regulated in Regulation of the minister on manpower and transmigration RI Number 19 Year 2012 regarding Terms of Submission of Part of Implementation of Work to Other Companies. This regulation has limited the flexibility of outsourcing companies under strict conditions. The subjective requirement only allows an outsourcing company to be a limited liability company (PT), has a corporate register, has a business license, has evidence of compulsory labor report in the company, has operational permit, has a fixed office and address and has a NPWP on behalf of the company. In addition, there is also an obligation of outsourcing companies to register their employment agreements with local manpower institutions in which the work agreement shall contain provisions which ensure the fulfillment of workers' rights.

While the objective requirements are also reinforced in Article 17 paragraph (3) Regulation of the minister on manpower and transmigration RI Number 19 Year 2012 which explains in detail about the types of work that can outsourcing include:

- a. business cleaning services (cleaning service);
- b. business of providing food for workers / laborers (catering);
- c. business of security personnel (security / security unit);
- d. business support services in the mining and petroleum; and
- e. business transportation for the workers / laborers.

3.3. The Use of Contract Labor and Outsourcing Distorted

If we look closely at the rules of bad contracts and outsourcing that are regulated in the latest legislation in Indonesia, there is really nothing to worry about. The terms are quite clear and resolute, but in practice it is always made unclear. In all types of jobs in this country are made to form contracts or outsourcing to the taste of individual users. This contract and outsourcing contract is like an infectious disease that rapidly attacks all business sectors such as food and beverage, furniture, metals, retail), hotels and even have entered the banking sector.

Although Article 66 Paragraph (1) of the UUK explicitly prohibits companies from hiring outsourced workers on basic activities and activities directly related to the production process, in practice many outsourced workers are employed on the main activities or part of the company's production process. Outsourcing out sourcing companies employ long-term, continuously extended contracts. The duration of the contract varies from 3 months to 1 year. Recruited workers must be prepared if their contracts are interrupted at any time. It is not uncommon for an outsourced worker to work for many years in the same company, with short-term contracts repeated continuously, with no chance of being promoted to permanent labor.

The often heard complaints of contract laborers and outsourcers that make us sad are the very unfair treatment they often feel. It is common knowledge that a worker working on a contractual status or outsourcing his normative rights must be ignored. Wages are paid under the terms of wages minimum, not to mention the wage deductions for the service provider company. Usually a number of outsourcing service providers cite a certain amount of money from prospective workers to be placed on the user's company.

Other workers' rights such as overtime pay, annual leave, religious THR, menstrual leave for women workers, social construction etc. are just a dream they will never enjoy. It is commonly heard that contract or outsourcing workers are not entitled to get it all. Finally the impression that contract workers and outsourcing is a frightening specter for workers / laborers but there is no other choice than the unemployed contract. That pessimistic slogan is often spoken from their mouths.

There is an inherent impression in the community that if a worker / laborer is working with a contract or outsourcing status, it can be assured that he has no normative rights. As wages received under the minimum wage provisions, are not registered in the social security program of labor, overtime paid wages, THR is not granted, maternity leave and maternity leave for female workers are not provided according to the rules, especially leave and much more other neglected normative norms. Unfortunately no workers / laborers dare to rebel for fear of being sanctioned termination of employment (PHK).

4. Un-optimal Supervision

Years of trade unions both nationally and regionally have taken various technical and political steps to reject the contractual and outsourcing work system. Demonstrations have taken place primarily in commemoration of international labor day. But like the saying goes: "dogs barking caravans pass, barking again throw take stone". That is the right proverb given to the government that never ignored the aspirations of workers / labor. The government is powerless in the face of political pressure in the making of UUK. Must recognize our legal politics is not independent and independent but still dependent on various interests, especially the global interests and owners of capital.

According to the opinion of the author is not the time again we are struggling to remove the system of contract work and outsourcing because it has become a global phenomenon. What is the reason for the legalization of outsourcing is the main economic analysis that emphasizes the ability of companies to stay afloat in the midst of global competition. With this logic then all things, including human labor is measured by competitive ability and adaptability. The demands of competitive ability encourage companies to reduce production costs in various ways and management strategies in order to capture the world market. Contract labor and outsourcing are the easiest to make.

There is a strong impression that contracted and outsourced workers are natural and unnecessarily heavily debated. Being a contract or outsourced worker is the only option than unemployed. An official of the Ministry of Manpower and Transmigration has even said explicitly that the outsourcing system is beneficial for Indonesian workers. This kind of myth is a lot of enveloping knowledge and information that we often receive. The impression of contract labor and outsourcing is a necessity for workers in the era of globalization and the present era.

Based on this fact, the orientation of the workers / laborers' struggle should be monitored. The use of contract and outsourced workers must be properly monitored to comply with applicable legal requirements. If the use of contract and outsourced workers is appropriate and appropriate, few companies can use contract labor and outsourcing. Retail companies such as Alfamart, Alfamidi, Indomaret, Suzuya, Ramayana, Yuki Swalayan and others can no longer use contract laborers or outsourced. Only on guard and cleanliness department can be outsourced. Moreover, companies in the production sector such as making wood furniture, palm oil factory, metal factory, cigarette factory, instant factory, dairy factory, tire factory, gloves and others engaged in the production sector.

Trade unions can play an active role in becoming external supervisors by collaborating with the local Manpower Office (Dinas Tenaga Kerja Provinsi Provinsi) to list companies that have the potential to violate the law. The data obtained is submitted to the Employment Supervisory Employee for follow-up. For companies that violate the law are sanctioned according to their level of error, either administrative sanctions to criminal sanctions. When this is done optimally and continuously, less than one semester the problem of contract labor and outsourcing can be resolved.

Indeed our UUK is not bad-very bad, even good to say, but its implementation is not good. Therefore, the competent parties as supervisors in the field of employment should be able to work optimally in implementing the mandate of UU. if apparatus implementing the Act works properly and consequently, as bad as any rule of law, will be able to provide optimal results. Conversely, as good as any rule of law if the apparatus that run it is not good, then the results will also be bad.

According to Lawrence M. Friedman, in his book *The Legal System A Social Science Perspective*, the legal system consists of legal structures (legal institutions), legal substance (rule of law) and legal culture (legal culture). If these three components work in a balanced and mutually supportive way to carry out legal institutions, then law enforcement will be optimal. But if one of them does not work well, especially law enforcement officers and the legal culture of society is not good, then law enforcement will limp.

It should be acknowledged that supervision in the field of labor violations in Indonesia is still very weak, especially after labor inspection is left to the region. The mutation system occurring in the era of regional autonomy strongly does not support the program in the field of manpower. Therefore many officials in the field of labor inspection in areas that are less familiar with the duties and functions because previously served on other departments that have nothing to do with the field of employment. Lack of officers in the field is also a constraint plus the mental attitude of government officials who have not changed even though the slogan of the mental revolution is often echoed in the current Jokowi administration era. Overcoming it is necessary the active role of trade unions / labor unions conduct labor inspection in their respective working areas.

IV. CONCLUSION

Based on the above-mentioned descriptions, the following conclusions can be drawn: The use of contract labor and outsourcing in Indonesia can be understood as a necessity, this is because the legal framework has been explicitly regulated in the Manpower Act. Although the use of contract and outsourced laborers has been restricted in the Manpower Act, in practice there has always been a deviation in which virtually all occupations use contract labor and outsourcing unlawfully. To overcome the widespread use of contract labor and outsourcing it is necessary to optimally supervise the local Manpower Office and, if necessary, involve trade unions / trade unions and employers' organizations on a tripartite basis, to ensure that supervision runs more optimally.

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Ibnu Affan "The Phenomenon of Work Contract and Outsourcing Viewed by Sociological and Law, Indonesia." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*. vol. 23 no. 05, 2018, pp. 83-88.