

Legal Protection of the Rights of Outsourced Workers in Termination of Employment Relations

Bacharudin Aris Setiawan Sumba¹, Hijrah Lahaling², Asdar Arti³

Universitas Ichsan Gorontalo

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Abstract

Legal protection for workers is very important Ensuring employee welfare, especially legal protection for outsourced employees. This happens because outsourcing practices still have no legal protection for outsourced workers. Arrangements regarding outsourcing are contained in Law no. 6 of 2023 regarding the replacement for the Job Creation Law which becomes the legal umbrella for companies and workers in terms of rights and obligations. However, in reality many things are detrimental, especially regarding the rights of workers. The rights of workers such as wages that are below the minimum, BPJS are not given. The purpose of this research was to find out the legal protection for the rights of outsourced workers in termination of employment. This study used an empirical approach. Data collection techniques included interviews with respondents and direct observation to the research location of the Gorontalo City Manpower Office, where primary data was collected, then the data analyzed descriptively. Based on the results of the research that, legal protection and rights for agency workers who work were not in accordance with the applicable rules according to Law Number 6 of 2023 concerning Job Creation.

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Abstrak

Perlindungan hukum bagi pekerja sangat penting Menjamin kesejahteraan karyawan, terutama perlindungan hukum untuk karyawan outsourcing. Ini terjadi karena praktik outsourcing masih belum ada perlindungan hukum bagi pekerja outsourcing. Pengaturan mengenai pengalihdayaan/outsourcing terdapat dalam Undang-Undang No. 6 Tahun 2023 mengenai pengganti Undang-undang Cipta Kerja yang menjadi payung hukum bagi perusahaan dan tenaga kerja dalam hak serta kewajiban. Namun, dalam kenyataannya banyak hal yang merugikan khususnya mengenai hak para pekerja. Hak para pekerja seperti upah yang dibawah minimum, BPJS yang tidak diberikan. Tujuan dilakukannya penelitian ini adalah untuk mengetahui perlindungan hukum terhadap hak-hak pekerja outsourcing dalam pemutusan hubungan kerja. Penelitian ini menggunakan metode pendekatan empiris, Teknik pengumpulan data berupa wawancara dengan responden dan observasi langsung ke lokasi penelitian Disnaker Kota Gorontalo, tempat pengambilan data primer, kemudian data tersebut akan di analisis secara deskriptif. Dari hasil penelitian ini menunjukkan bahwa Berdasarkan hasil penelitian bahwa, perlindungan hukum dan hak-hak bagi pekerja outsourcing yang bekerja tidak sesuai dengan aturan yang berlaku menurut Undang-Undang Nomor 6 tahun 2023 tentang Cipta Kerja.

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Corresponding Author:

Bacharudin Aris Setiawan Sumba

Ichsan University of Gorontalo

Email: dimassumba99@gmail.com

1. INTRODUCTION

Outsourcing is one of the strategic options to support company business processes. In addition to efficiency, for example, business customers benefit from several benefits from outsourcing activities. One of the most important of these is that the user company can thus focus

more on business strategy. The process of achieving company goals can be controlled, measured and ultimately achieved. In outsourcing, especially in labor contracts in Indonesia, it has always been an interesting phenomenon in terms of regulation and implementation. The topic of outsourcing has always been a hot, even hot topic. This problem is caused by the influence of a very dynamic work life. On the other hand, companies want to strengthen external resources (outsourcing),

Violation of the above provisions will result in a violation of statutory regulations or the collective agreement of the company providing the subsidy. Outsourced workers cannot take action against outsourced workers. File a lawsuit against the employer even if he commits the employer's violation, because there is no employment relationship between them according to Article 66(2) . Businessman with outsourced employees.

Likewise, outsourcing for employees actually leads to the problem of insecure Employment relations, as this often means that the employment contract between the worker and the employment agency ends while the job remains. Moreover, if there is no work, There is no work and no salary, ie. H. workers are not paid if they do not work.

The reasons or opinions of these employees are actually based on the employer. They want the flexibility of the labor market and therefore can generate good, bigger profits. In practice, the Manpower Office often finds that subcontract provisions are included. Labor law contains many loopholes, companies that violate them cannot be sued because interlocutory decisions are not appropriate threat of sanctions. This is about suitability, fairness and legal certainty, outsourcing This clearly greatly damages the protection of workers' basic rights. Many employees are disadvantaged by work contracts such as wages that are below the Regional Minimum Wage (UMR), working hours that exceed the limits set by law, and social security that the company does not fulfill.

The Indonesian state protects every citizen in seeking work based on the provisions of the 1945 Constitution of the Unitary State of the Republic of Indonesia. Article 27 (2) of the 1945 Constitution states that "Every citizen has the right to work and a decent life."

As the owner of power over the existence of the state in administering the state, we should regulate all aspects of life protection, leadership, supervision and investigation, while ensuring the realization of workers' rights through laws that encourage workers. However, the opposite is true: the presence of the state gives companies the freedom to regulate all employment issues. An example is the legalization of government outsourcing practices through the 2003 Manpower Law number 13.

Several things that are considered detrimental to workers are suspected or related to outsourcing service providers/sellers who implement several things, such as: For example, lots of pre-employment payments, salary cuts, unclear BPJS and income tax mechanisms, not transparent salary or overtime calculations. Industrial relations mechanisms, unclear work relations or other things that could harm or abuse the position of workers/employees. Or at least weaken the position of workers/employees in employment relations. These issues are the basis for workers who may choose to leave or refuse to outsource in Indonesia.

However, companies must have a way of working when hiring outsourcing services. Every company must offer legal protection to its employees and succeed in outsourcing. Therefore, companies must provide protection to outsourced workers and be able to resolve problems that arise within the company.

2. RESEARCH METHOD

Research on Legal Protection of Outsourced Workers Based on Workers' Rights in Termination of Employment was research using an empirical juridical approach, namely this research method was to find real legal phenomena from the gap between theory and field reality, from the gap between theoretical concepts and legal facts, and /or from a situation of learned ignorance for academic satisfaction. Living in society.

3. RESEARCH RESULTS AND DISCUSSION

A. Legal Protection for Outsourced Workers in Termination of Employment

Termination of employment is considered as termination of employment due to certain circumstances resulting from it. Termination of rights and obligations between employee and employer. Based on this understanding, it is certain that the majority of employees also do not want this situation to ensure continuity of employment when a worker's position is on the other hand weak compared to the employer in the employment relationship.

Based on the provisions of Article 153 Paragraph 1 of Law No. 13 of 2003, stating that the notification was not fulfilled for the reasons regulated in Article 153 is an effort to provide legal protection for workers, including agency workers, so that continuity of work in the company where they work does not result in termination of their relationship. work by the employer. arbitrarily This was explained 13 years ago in Article 153 Paragraph 2 of Law No. 2003

Therefore, legal protection for workers, including agency workers, in the event of termination of employment requires serious attention to ensure the comfort and legal certainty of employees to obtain their own rights in connection with redundancy.

Based on Juridical, employers are required by statutory regulations to provide reasonable protection to their workers/laborers. According to Zainal Asikin, protection for workers is very necessary considering their weak position.

Legal protection against the power of entrepreneurs is realized if labor laws and regulations that compel or coerce employers to act in the manner regulated in the laws and regulations can be enforced by all parties, because the enactment of the law is not only legal in nature. , but it also cannot be assessed it is measured sociological and philosophical.

According to Zaeni Asyhadie, worker/employee protection can be implemented either by guiding, replacing or strengthening recognition of human rights and physical and socio-economic protection through standards implemented in companies.

Labor market disputes are disagreements that result in conflicts between employers or groups of employers and workers/employees or trade unions regarding legal claims, benefit disputes, employment termination disputes, and worker-employee union disputes. Trade unions in one company (Article 1(1) Law No. 2 of 2004 concerning Settlement of Labor Disputes). The following disputes arise:

- a) rights disputes: disputes arising from non-fulfillment of rights due to differences in the implementation or interpretation of the provisions of laws and regulations, work agreements, company regulations, or collective work agreements.
- b) disputes of interest: disputes that arise in employment relationships due to a lack of agreement regarding the creation and/or changes to work conditions stipulated in work agreements, company regulations or collective work agreements.
- c) employment termination dispute (PHK): a dispute that arises due to a lack of agreement regarding the termination of the employment relationship carried out by one of the parties.

Based on the description, legal protection for subcontracted workers is not only limited to payment of wages, but also protection of workers or workers' rights in statutory regulations, such as the involvement of workers and their families. Social Security and Occupational Health and Safety (K3) Programs.

As in the case that the author will use as the object of analysis, this is reflected in the results of an interview with one of the outsourcing workers at CV. Arka That when he was laid off, there was no mistake or no clear reason, he only got a message via Whatsapp saying no to continue working in the office without any reason. Even the wages earned are cut. If you work for less than 1 year, you will not receive BPJS guarantees. This results in workers not getting rights or forms of legal protection.

Fulfilling the rights of non-permanent workers or legal protection for non-permanent workers is the responsibility of the recipient company (outsourcing company). However, in certain cases, there is an opportunity to challenge the employer's responsibility to fulfill

workers' rights. This is possible, for example, if it turns out that the employer transfers work to a recipient company that is not a legal entity, or if the outsourcing is not made in writing as described above. Due to the negligence of the employing company which violates workers' rights, the employing company is forced to bear this responsibility.

Law Number 13 of 2003 also provides the right to wages to workers/laborers who do not carry out work because they are in the process of terminating their employment relationship. The wages given during the employment termination process are referred to as process wages. In accordance with the provisions of Article 155 paragraphs (2) and (3) of Law Number 13 of 2003.

If everything has been done, but the end of the employment relationship cannot be avoided, then the purpose of terminating the employment relationship must first be negotiated voluntarily with the employer and the trade union, or with the worker/employee if the worker/employee concerned is not a member of the union/union, with deliberation to reach consensus.

Employment disturbs the peace of mind of workers/employees, who at any time can be threatened with termination of employment (HK), and reduced to a mere commodity, so that worker/employee protection is increasingly reduced. This means that the Employment Law is not in accordance with the human protection paradigm contained in the preamble to the 1945 Constitution and is contrary to Article 27 (2) of the 1945 Constitution.

From the description above, it can be concluded that the employment contract is the basis of the employment relationship. The employment agreement made by the employee with the employer/employer must comply with the basic provisions of contract law and the terms of the employment contract, and most importantly, the employment contract must comply with the provisions of the principles of contract law, which include the principle of consent, the principle of freedom of contract and the principle of belongingness. The principle of freedom of contract involves freedom of will, which implies a minimum of equality. Workers and employers must be treated equally and not in a lower position (according to instructions) as work partners. Based on the binding force of a contract, it is determined by the contents of the contract itself, fairness or good faith, customs and statutory regulations.

4. CONCLUSION

The previous descriptions were the starting point for drawing conclusions regarding the main problem of this research, namely:

Outsourced workers have the right to occupational health and safety (K3) and the formulation of sanctions (criminals) is a good effort to increase the realization of the rights of outsourced workers. These rights are regulated in Employment Law no. 13 of 2003. However, employers and entrepreneurs (outsourcing companies) do not fulfill these rights, because there are no sanctions or serious penalties for violations of the rights of subcontracted workers or criminal acts.

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