



# Legal Certainty on the Form of Outsourcing Work Agreements Based on the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Part of the Implementation of Work to Other Companies

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## Abstract

The falling economic condition has forced the government and business to be more creative in creating business climate, government has created the legal instruments for the development of the investment through business activities. On the other hand, business actors try to catch every single business opportunity available, for example to make efficiency to cut the operational expenses. Outsourcing system becomes the trend used by several companies. Many big companies hire their workers through this system. The problems occurred were the employment of the Regulation of Ministry of Labor and Transmigration No. 19 of 2012 concerning Terms on Distribution of Work Partly to Other Corporation; the legal protection for the outsourcing worker under the Law No. 13 of 2003 concerning Labor jo Regulation of Ministry of Labor and Transmigration No. 19 of 2012 concerning Terms on Distribution of Work Partly to Other Corporation; the settlement to be taken by the government to protect the outsourcing workers. The method of research used in this was descriptive analytical specification in which the researcher described or illustrated a case that was analyzed with the laws using juridical normative method of approach. Stages of research used included library and field research. Data collecting technique was throuddocument study and field study in the form of interview. The findings of the research concluded that both has violated Article 17 section (3) of the Regulation of Ministry of Labor and Transmigration No. 19 of 2012 in which both corporations did not place the outsourcing workers in supporting job, instead, they were posted for main job. The protection given by in general was similar namely health insurance, holiday allowance, overtime incentives. While at the other company, they gave one more incentives that was end of contract pension. The judgment of Constitutional Court No. 27/PUU-IX/2011 deciding in favour of the interest of the workers, ordered that every outsourcing worker should have their rights equal to the rights of the non-outsourcing workers. In addition, outsourcing company should count the working time into the guidance to determine the wages and other rights at the outsourcing companies including the transferof from the company receiving other works.

**Keywords:** Implementation, Legal Protection, Settlement

## A. Introduction

The Unitary State of the Republic of Indonesia is a state of law, this can be seen in Article 1 point 3 of the Constitution of the Republic of Indonesia which reads: "The State of Indonesia is a state of law". In the understanding of the rule of law, the law holds the highest command in the administration of the state. This means that what actually leads in the administration of the state is the law itself in accordance with the principles of the Rule of Law. The concept of the rule of law in Indonesia, aims to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice based on the One Godhead, just and civilized humanity. , Indonesian unity, democracy led by wisdom in representative deliberation and social justice for all Indonesian people.

The concept of the rule of law is to provide legal certainty for the entire Indonesian nation, so that there is no arbitrariness committed by one person against another. The law must be returned again based on its function, namely to achieve a goal. As social problems that arise in society must be dammed by a rule that binds the community at large. Mochtar Kusumaatmadja said that: "Law is a tool to maintain order in society".

Manpower is an inseparable part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Manpower has a very important position as actors and targets of national development. The rights of workers as regulated in Indonesian labor regulations, which include the protection of workers, are things that must be fought for so that the dignity and humanity of the workforce are raised. Labor protection is intended to guarantee the basic rights of employees while taking into account the progress of the national and international business world. Based on the 1945 Constitution Article 27 paragraph (2) states "Every citizen has the right to work and a decent living for humanity". Furthermore, Article 28D paragraph (2) states "Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship".

Life and work are two sides of a coin, so that humans can live, humans must work. Humans as social creatures (zoon politicon) have diverse needs, which include clothing, shelter, food. In order to fulfill various needs, humans are required to work because with their work they can earn an income. In this case, the right to work has been explicitly regulated in Article 27 of the 1945 Constitution. In doing a job, a person can do business by himself (entrepreneur) or can work for other people and this is related to Labor Law. Labor Law is part of the applicable law (all regulations) which forms the basis for regulating the working relationship between workers (workers) and their employers or companies, regarding life and work procedures that are directly related to the employment relationship. Meanwhile, based on the definition of employment, the Manpower Law is:

"All legal regulations relating to labor, both before the employment relationship during or in the employment relationship, and after the employment relationship".

The meaning of the definition above is that prior to the existence of a working relationship, both parties have not been bound by an employment relationship and there are no rights and obligations from both of them, then during or in the

employment relationship there have been rights and obligations between the workers and the employer, and if the relationship The work has ended, meaning that the working relationship between the two parties has ended and the rights and obligations of both parties have ceased.

Manpower has a very important role and position as a component of actors to achieve national development goals, thus it is necessary to protect their rights. Employees are the backbone of the company who have an important role in the company. Recognizing the importance of workers for employers, government and society, it is necessary to think so that workers can maintain their safety in carrying out their work. Based on Article 2 of Law Number 13 of 2003 concerning Manpower, it is stated that: "Manpower buildings are based on Pancasila and the 1945 Constitution". The principle of manpower development is basically in accordance with the principles according to national development, especially the principles of democracy, fairness and equity. This is done because manpower development involves multi-dimensional and is related to various parties, namely between the government, employers, workers or laborers. Therefore, manpower development is carried out in an integrated manner in the form of mutually supportive cooperation so that the principle of labor law is the principle of integration through cross-sectoral and regional research functional coordination.

One of the polemics in employment that gets a lot of attention is the issue of outsourcing. The slumping economic conditions have forced the government and the business world to be more creative in creating a business climate. Through various regulations, the government has created legal instruments for the development of investment through the business world. On the other hand, entrepreneurs are also trying to capture every business opportunity that exists, either through the use of various business facilities provided by the government or through internal efforts, such as making efficiencies to save operational costs. The use of this outsourcing system has become a separate trend used by several companies. Many large companies employ workers using an outsourcing system, both those with national private status or state-owned companies (BUMN) and even in government agencies.

Lately, the implementation of outsourcing has been discussed a lot by actors in the production process of goods and services, as well as observers because outsourcing is mostly done to reduce labor costs with the protection and working conditions provided are far below what should be given so that it is very detrimental workers/labor. The implementation of such outsourcing certainly creates a lot of anxiety for the workers/laborers and is often followed by strikes, so that the purpose of outsourcing as mentioned above is not achieved, due to disruption of the production process of goods and services.

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Outsourcing in Indonesian is translated as "outsourcing" in practice, the basic understanding of outsourcing is the transfer of part or all of the work and authority to other parties in order to support the strategy of outsourcing service users, either personal or company or a unit within a company unit. So the definition of outsourcing is for each user of outsourcing services, whether individuals, companies or divisions or units. In Law No. 13 of 2003 there is no explicit term outsourcing. Article 64 of Law No. 13 of 2003 mentions outsourcing with the term job chartering or the transfer of worker or labor services. Based on Article 64 of Law Number 13 of 2003, it is regulated that "companies may submit part of the implementation of work to other companies through a written contract of employment or worker/labor service provider.

An agreement similar to outsourcing in BW can be found in Article 1601 b BW which explains that a contracting agreement (outsourcing) is "an agreement in which the contractor binds himself to carry out a job for another party, namely the party who buys work for a certain fee. Khairani in his study of the position of outsourcing after the issuance of the Constitutional Court Decision Number 27/PUU-IX/2011 provides a definition of outsourcing through an illustration which he describes as follows:

"Simply put, outsourcing can be illustrated by the existence of a service provider company that recruits prospective workers to be placed in user companies but workers have a working relationship only with companies that use workers based on an engagement. The service provider company commits itself to placing workers in the user company and the user company reminds itself to use these workers. Based on the employment placement agreement, the service provider company will get a certain amount of money from the user".

The pattern of work agreements in the form of outsourcing in general is that there are several jobs from one company which are then handed over to other companies that have legal entities where one company is not directly related to workers who are not working, but only to the supplier company or labor recruiter. Outsourcing is the transfer of authority from a company to another company to carry out part or all of the business function processes by placing a specific target or goal. Submission of task or service activities to other parties. There are two types of chartering, namely:

1. Full employment contracting agreement (full outsource or pure work contracting) or business process outsourcing;
2. Workers or labor service providers (labor contract/supplier).

The practice of outsourcing systems in the cleaning service sector in general itself often violates Article 59 Number 4 of Law Number 13 of 2003 concerning Manpower, in the event that the work agreement between the company and the worker exceeds 3 years (one year of work contract which is extended by two years). These legal violations are due to the fact that the outsourcing system itself does not have a clear legal umbrella. The legal rules for the outsourcing system are only vaguely explained in Law Number 13 of 2003 Articles 64 to 66, Decree of the Minister of Manpower and Transmigration of 2004, Decree of the Minister of Manpower and Transmigration in 2004. Minister Number 220 of 2004 concerning Transfer of Work Implementation.

This concern was felt and followed up by the Alliance of Indonesian Electric Charge Readers (AP2ML) represented by the general chairman Didik Supriyadi, a request for the promulgation of Law Number 13 of 2003 concerning Manpower Article 59, Article 64, Article 65 and Article 66 of the Constitution 1945 was submitted to the

Constitutional Court. The application then resulted in the Constitutional Court Decision Number 27/PUU-IX/2011 which was followed up by the Ministry of Manpower and Transmigration in Circular Letter Number B.31/PHIJSK/I/2012 as a technical guideline for implementation and the Constitutional Court's ruling was interpreted as follows:

1. If the work agreement between the company that receives the job charter or the company that provides services for the worker/laborer and his/her workers/labor does not contain any transference of protection of rights for the worker/laborer whose object of work remains (the same), to the company that receives another job chartering or another worker/labor service provider company, then the working relationship between the company accepting piece work or the worker/labor service provider company and the worker/labourer must be based on a Specific Time Work Agreement (PKWTT);
2. If the work agreement between the company that receives the job charter or the company that provides services for the worker/laborer and his/her workers/labor contains a condition that there is a transfer of protection of rights for the worker/laborer whose object of work remains (the same), to the company that receives the job charter or company. another worker/labor service provider, the working relationship between another worker/labor service provider company, then the working relationship between a wholesale job recipient company or a worker/labor service provider company and their workers/labourers may be based on a Specific Time Work Agreement.

This is also in line with the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 Article 32 Paragraph 1 concerning the obligation for new service providers to continue the existing work agreement without reducing the initial agreed provisions. Furthermore, in paragraph 2, that if there is a transfer of workers/ laborers to a new company, the working period of the workers/ laborers they have passed must be taken into account by the company providing services for the new workers/ laborers. On the one hand, with the existence of these two provisions, the outsourcing workers can take a moment to breathe because they have a basis to fight against arbitrary actions that could be carried out by the company. However, on the other hand, this is a relief from the outsourcing system, which from the beginning made workers/laborers solely as a commodity that traded but was humanized by the procurement of work contracts which were also legalized.

The pros and cons regarding outsourced workers have become a dilemma because on the one hand, outsourced workers are seen by employers as a way out in finding an efficient and safe workforce, but on the other hand, the position for the workers themselves by working on an outsourcing system is not getting enough. legal protection, almost all outsourced workers work on the basis of a PKWT (Specific Time Work Agreement) or with an employment contract system. Currently, many employers prefer to use the contact work system, even though this choice has its pros and cons. The government's policy of allowing the implementation of a contract work system and outsourcing in Indonesia, on the one hand, benefits employers. This is because the employer does not need to be burdened with the obligation to provide certainty regarding the work of the employee or worker. The various guarantees and employee benefits are not the responsibility of the company that uses the services of this

workforce. So from the point of view of the entrepreneur, outsourcing is considered to be able to make the company more effective and efficient in carrying out its business activities.

While on the other hand, the workers feel disadvantaged because they do not have legal force. This can be seen in the agreement which from the beginning tends to pressure the workers not to be able to demand anything from the company by using a letter of agreement. In addition, the workers also do not have a sense of security and prosperity while working, because they are always burdened with thoughts of being suddenly fired by companies that use outsourced labor services. As the results of a study by Bambang Nopiando, the safety factor (unencumbered mind) will be positively correlated with the performance of the workers who work in a company. The safety factor can actually start from the process of making (signing) a work contract between workers and the company.

The problems in this paper that the author raises are:

1. How is the implementation of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to other Companies?
2. What is the legal protection for outsourcing workers based on Law Number 13 of 2003 concerning Manpower in conjunction with the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies?

## **B. Method**

This research will use a qualitative approach as the method to be used. Sources of data are secondary data originating from different research results or previous research that is still related to Legal Certainty in the Form of Outsourcing Employment Agreements Based on the Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 concerning Requirements for Submission of Partial Job Implementation in Other Companies The data that has been collected will analyzed to find out the results to be achieved.

## **C. Result and Discussion**

### **1. Implementation of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Part of the Implementation of Work to Other Companies**

Article 64 of Law Number 13 of 2003 concerning Manpower states that: "Companies may submit part of the implementation of work to other companies through a written agreement for contracting work or providing workers or laborers". Based on Article 66 of the Manpower Act, outsourcing is allowed for activities that are not directly related to the production process. In the elucidation of Article 66, what is meant by supporting activities or activities that are not directly related to the production process are activities related to other than the main (core business) in a company.

In Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies, it is explained that: outsourcing can only be carried out with supporting service activities or those that are not directly related to the production process. In this case, there are 5 (five) kinds of work that can be done with the outsourcing system, including the following:

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

As for the implementation of Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies to 2 (two) companies, the results are as follows. In practice, many companies do not implement Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Requirements for Submission of Partial Work Implementation to Other Companies, because almost all outsourced employees/labor are placed in almost all areas. field of work, one of which is to be placed in the marketing department, the main task of the marketing field. This clearly violates Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012, because these outsourced workers are not placed in supporting work but in the main work.

## **2. Legal Protection for Outsourcing Workers Based on Law Number 13 of 2003 concerning Manpower in conjunction with Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies.**

With the existence of a working relationship between the entrepreneur and the worker/laborer giving birth to rights and obligations from both parties, with the existence of these rights and obligations there must be a protection, workers who work in a company must obtain the same rights to a protection/welfare . Protection of workers is intended to guarantee the basic rights of workers or laborers and guarantee equality, opportunity and treatment without discrimination on any basis to realize the welfare of workers or laborers and their families while still paying attention to the progress of the business world. Some of the reasons for deviant outsourcing practices include the following:

- a. As a result of the Minister of Manpower and Transmigration Regulation Number 19 of 2012 which authorizes employers to determine the types of core and supporting work. This limit was previously regulated in Law Number 13 of 2003 concerning Manpower. Article 65 Paragraph (2) which states:

"The work that can be submitted to another company as referred to in Paragraph

(1) must meet the following requirements:

- 1) Done separately from the main activity;
- 2) Done by direct or indirect order from the employer;
- 3) It is a supporting activity for the company as a whole; and
- 4) Does not hinder production directly.

- b. Unclear job chartering or labor service providers, the practice of outsourcing in companies with the division of sub-contractors in the form of job chartering and current labor providers is distorted and unclear, a lot of work that is core in nature is handed over to job chartering companies and carried out by a service provider company.

With the existence of deviant outsourcing practices in some of these companies, there is a need for protection for outsourcing workers so that arbitrariness and unwanted things do not occur. Legal protection for workers/labor is social security according to Article 1 Paragraph (2) of Law Number 24 of 2011 concerning the Social Security Administering Body, namely:

"Social security is a form of social protection to ensure that all people can fulfill their basic needs for a decent life".

We can hear the guarantee/protection for workers/labor with the term BPJS, Article 1 Paragraph (1) of Law Number 24 of 2011 concerning Social Security Administering Bodies states that "Social Security Administering Bodies, hereinafter abbreviated as BPJS, are legal entities established to implementing a social security program". Article 3 of Law Number 24 of 2011 concerning Social Security Administering Bodies states that BPJS aims to realize the provision of guarantees for the fulfillment of the basic needs of a decent life for every Participant and/or family member. The BPJS consists of:

- 1) BPJS Health;
- 2) BPJS Employment, which consists of:
  - a) Accident insurance
  - b) Pension plan
  - c) Pension Guarantee
  - d) Life insurance

To carry out the efforts referred to above, the government and regional governments in accordance with their respective functions and duties may cooperate with the community or other social institutions. Likewise, everyone who hears, sees, or knows of the occurrence of domestic violence is obliged to make efforts within the limits of his ability to:

- 1) Preventing the occurrence of criminal acts;
- 2) Provide protection to victims;
- 3) Provide emergency assistance; and
- 4) Assist in the application process for the determination of protection.

In the context of efforts to recover victims of criminal acts of domestic violence, companion volunteers play a very important role in the recovery of these victims. One way to recover victims of domestic violence is to establish cooperation between related parties. According to Government Regulation No. 04/2006, cooperation is a systematic and integrated way among recovery providers in providing services to recover victims of domestic violence. Furthermore, the recovery organizers are health workers, social workers, companion volunteers and/or spiritual guides.

Recovery services and technical implementation that can be carried out by companion volunteers are:

- 1) Assistance for victims is carried out by health workers, social workers, volunteer companions and/or spiritual guides by providing therapeutic counseling,

spiritual guidance and advocacy for the strengthening and self-recovery of victims;

- 2) Counseling is provided by social workers, companion volunteers and listens empathetically and explores problems for psychological strengthening of victims.

#### **D. Conclusion**

In practice, many companies do not implement Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Requirements for Partial Implementation of Jobs to Other Companies, because almost all outsourced employees/labor are placed in almost all field of work, one of which is to be placed in the marketing department, the main task of the marketing field. This clearly violates Article 17 Paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012, because these outsourced workers are not placed in supporting work but in the main work.

With the existence of a working relationship between the entrepreneur and the worker/laborer giving birth to rights and obligations of both parties. With the existence of these rights and obligations there must be a protection, workers who work in a company must have the same rights to a protection/welfare.

Companies, both state-owned and private, should comply with the applicable laws and regulations in order to avoid arbitrariness to the workforce, because it is clearly stated that outsourcing should only do supporting work, not main work and it is preferable that companies employing outsourcing workers must be professional. and obey the law so that they become a reliable business partner based on their competence and productivity and the company that accepts the job must improve the quality of human resources for workers or outsourced workers. However, the company accepting the job must also provide proportional compensation to the outsourced worker or laborer in accordance with the period of service. Every company should further improve the protection provided to outsourced workers so that the welfare of employees can be leveled.

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