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THE LEGAL POSITION OF THE DIRJEN BINAWAS JAMSOSTEK POST-SOCIAL SECURITY DECREE NO. 27/PUU-IX/2011 OF ARTICLE 59-66 ACT NO. 13 the YEAR 2003 ON EMPLOYMENT

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ABSTRACT: The purpose of this research is to determine the implementation of the post-impact Constitutional Court verdict No. 27/PUU-IX/2011, on the Outsourcing Labor regulation (power-over) in Indonesia. The study uses a normative juridical method of approach, by examining the library material or secondary data, named normative legal research or literature law research (in addition to research on sociological or empirical law which mainly examines primary data. The research results show that with the publication of circular letter number B. 31/PHIJSK/I/2012 The post of Constitutional Court ruling is irrelevant because the circular letter is not included Legislation. With the issuance of the circular letter is a legal action of the Government with the intention that there is no confusion in implementing the rules on outsourcing the post-Constitutional Court ruling and its supervision is implemented by the agency responsible for the field of employment.

Keywords: **Legal Position, Jamsostek, employment**

INTRODUCTION

In article 28D paragraph (2) of the Constitution of the State of the Republic stating that everyone has the right to work and be rewarded and fair and appropriate treatment in the working relationship concerning such arrangements concerning the rights and obligations of workers/workers stipulated in Law No. 13 of 2003 on Employment (labor law) as a positive law in Indonesia[1].

Before the employment Law No. 13 of 2003 applies as positive law, the Labor Field Act does not regulate the outsourcing system. Arrangements about the outsourcing workforce and specific time work agreement (PKWT) was first stipulated in the Minister of Manpower Regulation No. 2 of 1993, then amended in the Minister of

[1] Payaman J Simanjuntak, "Undang-Undang Yang Baru Tentang Serikat Pekerja/Serikat Buruh" (Jakarta: ILO, 2002).

Labour Regulation No 5 the year 1995 and as stipulated in the substance of Article 59 of Act No. 13 the year 2003 on employment[2].

In particular, concerning the specific time employment Agreement (PKWT), the legislator adopts the contents of the two ministerial regulations of the manpower above. As the implementation of Article 59 Act No. 13 the year 2003 on employment, concerning the employment agreement of certain time the Ministry of Manpower issued a decree of the Minister of Manpower and Transmigration of the Republic of Indonesia number: Kep100/Men/VI/2004 concerning Terms of implementation of certain time work agreement[3].

But in the implementation of the field, there are still things that deviate from the decree of the Minister, as for the frequent irregularities as contained in chapter VII of article 15, paragraph (4) by the entrepreneur, that is where the outsourcing workers who should be in the article as a certain time work agreement changed into a work agreement of no particular time, but in its execution is not in

While in section 64, the Company may submit some implementation to the other company through the agreement of the contract of employment or the provision of services of workers/personnel made in writing. Regarding the implementation, regulation is poured into the regulation of the Minister of Manpower and Transmigration Republic of Indonesia number 19 the year 2012 about the submission terms of most of the implementation of work to other companies. In addition to not providing a guarantee of the certainty of work and effort, this must have been illegal in the act as contained in Law No. 13 of 2003 on employment imposed or as a positive law, therefore as many as 37 unions/trade unions filed a resistance to the legalization of outsourcing system and this particular time work agreement (PKWT). How to submit material test (judicial review) to the Constitutional Court (MK) as registered with the request of No. 12/PUU-I/2003. At that time, the Constitutional Court rejected the petition. One consideration in verdict No. 12/PUU-I/2003 says, the outsourcing system is no modern slavery in the production process[4].

Labor efforts against the outsourcing system and contract work seemed never to cease. The proof, the demands to remove the outsourcing system and the contract labor re-enters the Constitutional Court building[5].

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[2] I Wayan Nedeng and Lokakarya Dua Hari, "Outsourcing Dan PKWT, PT," *Lembangtek, Jakarta*, 2003.

[3] Sumiyati Sumiyati, Susanti Ita, and Purwaningsih Purwaningsih, "Model Perjanjian Kerja Yang Memberikan Perlindungan Hukum Bagi Pekerja Kontrak Di Perguruan Tinggi Negeri Badan Layanan Umum," in *Prosiding Industrial Research Workshop and National Seminar*, vol. 4, 2013, 16–21.

[4] JAKA MULYATA, "Keadilan, Kepastian, Dan Akibat Hukum Putusan Mahkamah Konstitusi Republik Indonesia Nomor : 100/Puu-X/2012 Tentang Judicial Review Pasal 96 Undang-Undang Nomor : 13 Tahun 2003 Tentang Ketenagakerjaan.," *Perpustakaan.Uns.Ac.Id*, 2015.

[5] Uti Ilmu Royen, "Perlindungan Hukum Terhadap Pekerja / Buruh Outsourcing (Studi Kasus Di Kabupaten Ketapang) Perlindungan Hukum Terhadap Pekerja / Buruh Outsourcing (Studi Kasus Di Kabupaten Ketapang)," *Ilmu Hukum*, 2009.

In the decision of the Constitutional Court that the verdict of the Constitutional Court No. 27/PUU-IX/2011 rejected the application of article 59 and article 64 of Law No. 13 the year 2003 on employment. Explicitly the Constitutional Court states the two provisions are not contrary to the Constitution 1945.

If the Constitutional Court ruling is declared retroactive will cause unrest especially among employers because the specific Cooperation agreement that is running correlates with the value of tender work. Therefore, the ruling of the Constitutional Court could be applied to an outsourcing work agreement made after the Constitutional Court ruling was read.

The release of a circular letter of the Director-General of the construction of Industrial relations and Social Security Manpower Ministry of Labour, circular letter number B. 31/PHIJSK/I/2012, where this circular letter is often used as a legal basis in the implementation of the Outsourcing (outsourcing) field[6].

Accordingly, the follow-up of the Constitutional Court's decision into the circular letter is irrelevant as executive compliance carries out the verdict of the Constitutional Court. Given the object that is disconnected by the Constitutional Court is the law, the Government and the DPR must make a joint stance because the Constitutional Court ruling implicates the political product of both institutions.

The provisions on the establishment of the Constitutional Court ruling into its legislation and supervision instruments through judicial review in Indonesia have been sufficiently regulated with various constitutional and legal instruments. According to article 24 C, the Constitution 1945 has the right to test the law on the Constitution while the Supreme Court according to article 24 A undertook the regulation of legislation under the law against higher legislation.

METHOD

This research uses the method of normative juridical approach by examining the library material or secondary data, named normative legal research or literature law research (in addition to the research of sociological or empirical law Mainly researching primary data). According to Hotma P. Sibuea[7] secondary data is data that has been processed and documented. In the field of law research, the legal material is divided into three. First, the primary legal material is binding legal materials and consists of the Constitution 1945, Law, PERPU, government regulation, the verdict of judges, treaties and others. Secondly, the secondary legal material is a legal material that provides

[6] Ayi Sopwanul Umam, "Tinjauan Yuridis Atas Implementasi Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011 Dengan Penerbitan Surat Edaran Kemenakertrans Nomor B. 31/PHIJSK/I/2012 Hubungannya Dengan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (UIN Sunan Gunung Djati Bandung, 2017).

[7] Hotma P Sibuea, "Asas Negara Hukum, Peraturan Kebijakan, Dan Asas-Asas Umum Pemerintahan Yang Baik," *Jakarta: Erlangga*, 2010.

explanations about the primary legal materials such as the draft law, research results, works from the law, and so on. Thirdly, a tertiary legal material is a legal material that provides instruction as well as explanations of primary and secondary legal materials such as dictionaries.

In this normative legal research, the author takes steps by collecting a variety of written legal materials in the form of legislation, books, papers, research results, newspaper journals, the Internet, and so on.

At a later stage, after obtaining data and managing the data, it is followed by analyzing the data obtained either from primary legal material, secondary legal material, or tertiary legal material and then discuss the problem. Then the obtained secondary data is arranged with regular and systematic and then analyzed to get a conclusion.

RESULT AND DISCUSSION

Juridical and sociological of application judicial review

Towards and after the May Day basis or Labor May 1, 2008, the news appears in the mass print and electronic media about the demands of the workers/laborers voiced through the leaders of the Trade Unions: Abolish Contract Work! Stop / Stop Outsourcing! "May Day, the government is asked to be sensitive to the problem of workers' demands do not need much but this one must be fought to be revoked, especially related to outsourcing" Deputy Speaker of the House of Representatives Commission III; "The employment contract or outsourcing system will be abolished because it will harm laborers," Erman Suparno, Minister of Manpower and Transmigration. (Suara Karya Jumat 2 May 2008)[8].

News about the demonstration to eliminate outsourcers seems to have never stopped since the enactment of Law Number 13 the Year 2003 regarding Manpower, especially those relating to Specific Time Work Agreements/contracts or Outsourcing. The demonstration held by the Metal Workers Union Federation (FSPMI) has not been successful. Demands to eliminate outsourcing were not fulfilled, such as what was conveyed by the Director-General of Industrial Relations Development Mira H to receive demonstrators at his office on Jalan Gatot Subroto, Jakarta, Thursday, August 14, 2008, as follows that "It can't be, there are these rules of the game (outsourcing) in the legislation it cannot be erased just like that "hearing that answer, the demonstrators numbering around 500 people immediately shouted," huu ". "Yes, we know, but the problem with the implementation of the law is that there has been fraud in the regions. What is the Department of Labor's action? " asked one of the orators named Nani. Mira also tried to explain the matter of supervision in the area. He also said the law was made

[8] "GONJANG GANJING TENTANG PEKERJA KONTRAK/PKWT Dan OUTSOURCING | Out Sourching PT. Aetra Air Jakarta," accessed February 20, 2020, https://osaetra.wordpress.com/2010/01/01/gonjang-ganjing-tentang-pekerja-kontrakpkwt-dan-outsourcing/.

by the legislature (DPR). "So, whether or not it rejects it is also in the hands of the legislature, not only the government," he continued [2].

In the mandate of the 1945 Constitution, namely Article 27 paragraph (2) "every citizen has the right to work and a decent living for humanity" and Article 28D paragraph (2) "every person has the right to work and get fair and fair compensation and treatment and feasible in work relations "we can further see in Law Number 13 of 2003[9].

The statement of protection for workers/laborers as referred to in the law on labor is required in "weighing in," namely:

1. that in the implementation of national development, manpower has a very important role and position as an agent and development objective;
2. that following the role and position of the workforce, employment development is needed to improve the workforce and its participation in development as well as to improve the protection of workers with human dignity and dignity;
3. that protection of labor is intended to guarantee the basic rights of workers/laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still taking into account developments in the progress of the business world;

The concern of workers/laborers in Indonesia is very clear about how efforts to protect labor are increasingly lost, this is stated in Article 59 of the Manpower Act where the substance of the article is to regulate certain employment agreements for certain jobs. Also, the protection for workers is increasingly uncertain where Article 64 of the Manpower Act stipulates that "the company may submit a portion of the work to other companies through an agreement on the employment contract or the provision of services of workers/laborers in writing".

The aforementioned articles are very contrary to the 1945 Constitution contained in Article 27 paragraph (2) "every citizen has the right to work and a decent living for humanity" and Article 28D paragraph (2) "everyone has the right to work and get rewards and fair and proper treatment in employment relations ", thus giving rise to initiatives from Non-Governmental Organizations (NGOs) of the Alliance of Indonesian Electric Meter Reading Officials (AP2MLI) conducting a review of Law Number 13 of 2003 concerning Employment to the Constitutional Court[10].

Outsourcing Practices After the promulgation of Law No. 13 of 2003 concerning Manpower

Competition in the business world between companies makes companies must concentrate on a series of processes or activities to create products and services related to their main competencies. With the concentration on the main competencies of the

[9] R I Undang-Undang, "Nomor 13 Tahun 2003," *Tentang Ketenagakerjaan*, 2003.

[10] WAHYU KURNIAWAN, "KONSTRUKSI HUKUM OUTSOURCING DAN PKWT MENURUT MAHKAMAH KONSTITUSI" (UNIVERSITAS AIRLANGGA, 2013).

company, a number of quality products and services will have quality that are competitive in the market. In an increasingly fierce business competition environment, the company is trying to improve production costs. One solution is the system outsourcing, where with this system the company can save expenses in financing the human resources (HR) working in the company concerned.

According to Maurice Greaver's definition, outsourcing is seen as an act of transferring some of the company's activities and making decisions to other parties (outside providers), where this action is bound in a cooperation contract. Some experts and practitioners of outsourcingoutsourcing () from Indonesia also provide a definition of outsourcing, including mentioning that outsourcingoutsourcing () in Indonesian is called outsourcing, is the delegation of operations and daily management of a business process to outsiders (service companies outsourcing), a similar opinion was expressed by Muzni Tambusai who defines the notion of outsourcing as outsourcing a part or several parts of a company's activities that were previously self-managed to another company which was later called the recipient of work [6].

Labor issues are regulated in Law Number 13 of 2003 concerning Manpower and specifically for contract workers or laborers with a specified time agreement orlabor outsourcing, the Minister of Manpower and Transmigration of the Republic of Indonesia issued Decree of the Minister of Manpower and Transmigration Number: 100. Men / VI / 2004 concerning Provisions for Implementing Specific Time Work Agreements, then Kep 220 / Men / X / 2004 concerning Conditions for Submitting Part of Work Implementation to Other Companies, and Kep 101 / Men / VI / 2004 concerning Procedures for Licensing of Service Provider Companies Workers/laborers Implementation of certain time work agreements as referred to in Article 3 paragraph (2) of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 100.Men/VI/2004, as follows [7] :

1. PKWT for work that is once completed or is temporary in nature is PKWT based on the completion of certain jobs.
2. PKWT as referred to in paragraph (1) shall be made for a maximum of 3 (three) years.
3. In the case of certain work promised in PKWT as referred to in paragraph (1) can be completed earlier than promised, the PKWT is terminated by law upon completion of work.
4. In PKWT based on the completion of certain jobs, the limits of a job must be stated as completed.
5. In the event that PKWT is made based on the completion of certain jobs, but due to certain conditions the work cannot be completed, PKWT renewal can be carried out.
6. Renewal as referred to in paragraph (5) is done after exceeding the grace period of 30 (thirty) days after the termination of the work agreement.

7. During a period of 30 (thirty) days as referred to in paragraph (6) there is no employment relationship between workers/laborers and employers.
8. The parties may stipulate other provisions in paragraph (5) and paragraph (6) as set forth in the agreement.

Deviations from certain time work agreements or outsourcing in the field are very high for workers/laborers because guarantees for decent income are not met. For example, PT. Chrysanthemum employ outsourced part of cleaning service at the timethe agreement for six (6) months and when the completion of the agreement the workers/laborers are still working.

Legal relations of companies outsourcing servicesoutsourced () Article 3, Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: 100 / Men / VI / 2004 Outsourced workers/laborers must follow the rules or work instructions that exist at the employer company

1. welfare provided by employers are very different companies with well-being earned by workers/laborers outsourcing
2. worker /workers outsourced working on location/place of companies employer

Reasons Judicial Review

The Petitioner is the Chairperson of the Indonesian Electric Meter Reader (AP2ML) Alliance of East Java Province which is a legal entity, which grows and develops independently of its own will and desire in the community, which moves and is founded based on a concern to provide protection and enforcement of justice, law and
human rights in Indonesia, especially for workers/workers as weak parties [8], and have reasons for conducting a judicial review as follows:

1. The overemphasis on efficiency to merely increase investment to support economic development through this low wage policy results in the loss of job security for Indonesian workers/workers because most workers/workers will no longer be workers/workers remains, but becomes a laborer/contract worker who will last his entire life. This is what some consider as a form of modern-day slavery.
2. That status as a laborer/contract worker means also the loss of rights, benefits, work and social guarantees that are usually enjoyed by those who have status as permanent workers/workers, which thus has the potential to reduce the quality of life and welfare of Indonesian workers/workers and therefore workers/workers constitute the largest part of the Indonesian people, ultimately also reducing the quality of life and welfare of the Indonesian people in general.
3. In an employment relationship based on a Specific Time Work Agreement (PKWT) as stipulated in Article 59 of Law Number 13 Year 2003 and the surrender of part of the work to other companies (outsourcing) as also regulated in Article 64 of Law

Number 13 Year 2003, laborers/workers are seen merely as commodities or merchandise, in a labor market. Workers/workers are left alone to face the ferocious market forces and capital forces, which will eventually result in an increasingly gaping social gap between the rich and the poor and does not rule out the possibility that our children and grandchildren will become slaves in their own country and enslaved by their nation and this is contrary to Article 27 paragraph (2) of the 1945 Constitution, "Every citizen has the right to work and livelihood that is worthy of humanity". And Article 28D paragraph (2) "Everyone has the right to work and to receive fair and equitable rewards and treatment in work relationships".

4. In a work relationship based on a Specific Time Work Agreement (PKWT) as stipulated in Article 59 of Law Number 13 of 2003 and handover of part of the work to other companies as also regulated in Article 64 of Law Number 13 of 2003 (outsourcing) of labor/workers are placed as factors of production, so easily employed when needed and terminated when they are no longer needed. Thus the wage component as one of the costs (cost) can still be kept to a minimum. This is what will happen with the legalization of the work system "outsourcing, which would make the worker merely a cash cow of the owners of capital and this is contrary to Article 33 paragraph (1) of the 1945 Constitution which states "The economy is structured as a joint effort based on the principle of kinship". In his explanation, it was emphasized again that this means that our economy is based on economic democracy, where production is carried out by all, for all with the prosperity of society it takes precedence. This is exactly where modern slavery and the degradation of human, labor/labor values as commodities or merchandise, will take place officially and will be formalized through a law. The prosperity of the people mandated by the constitution will also be empty words or just a decoration of pearls of wisdom.
5. system Outsourcing, the legal construction is the existence of a worker service company recruiting prospective workers to be placed in the user company. So here begins a legal relationship or an agreement between the workers 'service providers and the workers' companies. The worker service provider company binds itself to place the worker in the user company and the user company binds itself to use the worker. Based on the employment placement agreement, the employer service provider company will get a sum of money from the user. For 100 people for example Rp. 10,000,000, then the worker service provider company will take a percentage, the rest is paid to workers who work in the user company. So this kind of legal construction is slavery because these workers are sold to users for a sum of money. This is modern slavery.
6. On the other hand, outsourcing also uses a Specific Time Work Agreement. Certain Time Work Agreement does not guarantee job security, there is no continuity of work because a worker with a Certain Time Work Agreement must know that at

some time the employment relationship will break up and will not work again there, consequently workers will look for another job again. So the continuity of work becomes a problem for workers who are outsourced with a Specific Time Work Agreement. If job security is not guaranteed, it contradicts Article 27 paragraph (2) of the 1945 Constitution, namely the right to obtain decent work.

7. Outsourcing in Article 64 shows that there are two types of outsourcing, namely outsourcing of the work done by the contractor and outsourcing of the work done by the worker service company. The outsourcing first regarding work, the legal construction is that there is a main contractor who subordinates the work to the subcontractor. Subcontractor to do the work that is subordinated by the main contractor who needs workers. That is where the subcontractor recruits workers to do the work that is subordinated by the main contractor. So there is a working relationship between the subcontractor with the workers.
8. That if it is related to the constitution, it is clear that this enforces a working relationship between the company providing workers' services and their workers, which does not fulfill the elements of the employment relationship, namely the existence of orders, work and wages, thus showing that workers are only considered as goods, not as a legal subject.
9. That slavery to outsourcing is absolute because here the company providing worker services sells humans to users. Some money will benefit from selling humans.
10. Whereas Article 59 and Article 64 of Law Number 13 the Year 2003 concerning Manpower is not following Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, because the people who must be protected are humans the whole thing. Work should be to provide a decent life but when the worker is only as part of the production and especially with contracts made, then only as a part of the production, so that protection as human beings becomes weak [18].
11. That based on the facts above, it is clear that this request was submitted convincingly and appropriately because it departs from the real concerns of most workers/workers and so that it is appropriate for the Court to exercise its right to review Article 59 and Article 64 of the Law Law Number 13 of 2003 concerning Manpower against Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution [19].
12. Whereas because Article 65 and Article 66 of Law Number 13 of 2003 concerning Manpower have to do with Article 64 of Law Number 13 of 2003 concerning Manpower, automatically Article 65 and Article 66 of Law Number 13 of 2003 concerning Manpower also contradicts Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution [20].

According to the Petitioner, the application of Article 59 of Law 13/2003 concerning Work Agreements for Specified Times (PKWT) and Article 64, Article 65 and Article 66 of Law 13/2003 concerning the surrender of part of the work implementation to other companies (chartering /outsourcing) causes contract workers /outsourcing:

1. loss of guarantee for the continuity of work for workers/workers (continuity of work);
2. loss of rights and guarantees of work enjoyed by permanent workers;
3. lost the rights that workers should have received following the employee's tenure due to unclear work period calculations.

Based on the arguments of the petition, according to the Court, the Petitioner is a private legal entity whose constitutional rights have been impaired by the articles of the Law petitioned for a quo, namely Article 59, Article 64, Article 65, and Article 66 of Law 13/2003 namely the right to work and a decent living for humanity in Article 27 paragraph (2) of the 1945 Constitution, the right to work and to receive fair and fair compensation and treatment in employment as stated in Article 28D paragraph (2) of the 1945 Constitution, and the right to welfare and prosperity in Article 33 paragraph (1) of the 1945 Constitution. Therefore there is a causal relationship between the constitutional impairment of the Petitioner and the norms tested so that the Petitioner has a legal standing to submit the petition a quo

Circular Analysis Of The Director General Of Industrial Relations And JAMSOSTEK Number B.31 / PHIJSK / I / 2012

To realize an orderly arrangement in the field of statutory regulations in Indonesia, Law Number 12 of 2011 concerning the Formation of Laws and Regulations has been established. based on article 7 paragraph (1) of law number 12 of 2011, it states that the type and hierarchy of statutory regulations consist of:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Government Act / Regulation instead of Law; Government regulations;
4. Presidential Regulation;
5. Provincial Regulations.

As explained in the previous sub-chapter, that after the Constitutional Court Decision No.27 / PUU-IX / 2011, the government (executive) through the Director-General of Industrial Relations Development and the Jamsostek Ministry of Manpower and Transmigration issued a Circular Letter which in essence provides a further explanation regarding the Constitutional Court's decision the. Government actions are carried out based on the norms of government authority, whether obtained by attribution, delegation or mandate.

1. Attribution authority: government authority obtained from statutory regulations. Called the principle of legality.
2. Delegation: authority obtained based on delegation of authority from other government bodies/organs.
3. Mandate authority: delegation of authority that is generally in a routine relationship between subordinates and superiors, unless expressly prohibited by statutory regulations.

Government authority which is obtained by attribution is the authority of the government which is regulated in statutory regulations. Therefore all legal actions of the government must always be based on the prevailing laws and regulations / based on the norms of authority that exist in the intended laws and regulations and must not conflict with the authority norms stipulated in the legislation. The legislation is a basic norm in exercising government authority. This basic norm of authority is called legality (legalities), meaning that the legal action of a government if it is based on a statutory regulation, which gives authority to act.

It is certain then because he does not have a higher level of regulation then he is independent of the general legal principles as outlined by Adolf Merkl. Adolf Merkl put forward a theory which he called das Doppelte Rechtsanlitsz that law always has two faces. For him, a legal norm that is above it is sourced and based on the norms above, but below it also becomes a source for the legal norms below. This causes a legal norm to have a relative effect so that if the legal norms on it are removed or revoked the automatic legal norms underneath are also erased. This theory was then continued by Hans Kelsen with Stufentheorie or the theory of the level of legal norms. According to Kelsen that the legal norms are tiered and multi-layered in a hierarchy (arrangement) in the sense that a lower norm applies, sourced and based on higher norms, higher norms apply, sourced and based on higher norms and so on come to a norm that can not be explored further and is hypothetical and fictitious (Grundnorm).

Thus the Circular of the Director-General of Industrial Relations and Social Security Development of the Ministry of Manpower and Transmigration of the Republic of Indonesia Number: B.31 / PHIJSK / i / 2012 concerning the Implementation of the Constitutional Court Decision Number 27 / PUU-IX / 2011 is included in the policy actions of the government based on government authority or state administration officials to act freely (discretion), after the Constitutional Court's ruling on outsourcing. However, the actions of the Director-General of Industrial Relations and Social Security Development of the Republic of Indonesia Ministry of Manpower and Transmigration who adopted the Constitutional Court's decision and published it in Circular Letter are not in harmony and contradictory with Law No. 12 of 2011.

Also, the contents of the third item Circular in the form of regulations that regulate also become its problems, because Circular Letters do not belong to the legislative hierarchy.

With the Constitutional Court ruling Number 27 / PUU-IX / 2011 dated January 17, 2012, and taking into account the existence of an employment agreement agreed by both parties before the issuance of this Constitutional Court ruling, the current PKWT is still going on at a job contracting company or the company providing workers/labor services, remains in effect until the end of the agreed period.

in the context of the application for Judicial review submitted by a non-governmental organization (NGO) of the Indonesian Electric Meter Reader (AP2MLI) concerning the examination of Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 concerning Labor, the Constitutional Court issued its decision Number 27 / PUU-IX / 2011 which partially granted the request for such Material Test. In its Decision, the Constitutional Court offers two models of implementation outsourcing as follows:

1. Require that work agreements between workers and companies that carry out work outsourcing do not take the form of a Specific Time Work Agreement (PKWT), but in the form of an Unspecified Time Work Agreement (PKWTT); or
2. Applying the principle of transferring protective measures for workers who work for companies that carry out work outsourcing. This principle is known as TUPE or Transfer of Undertaking Protection of Employment.

In its legal considerations, the Constitutional Court considers that the position of workers outsourced about companies faces uncertainty about continuing work if the employment relationship is carried out based on a specific time work agreement (PKWT). This employment agreement has implications if the employment relationship between the employer company and the company is outsourcing exhausted, the work period of the worker also ends.

In its Decision, the Constitutional Court stated that the Specific Time Work Agreement (PKWT) still applies as long as there is a clause that requires the transfer of protection of rights for workers whose object of work remains, even though there is a change of company that carries out part of the work of another company or company providing workers' services. Therefore, by implementing the transfer of work tenure protection that has been traversed by workers, outsourced it still exists and is taken into account, the Constitutional Court hopes that workers outsourcing can enjoy their rights as workers appropriately and proportionally.

With the issuance of the Constitutional Court ruling accompanied by the subsequent issued Circular Letter of the Director-General of Supervision of Industrial Relations and Social Security of the Republic of Indonesia Ministry of Manpower and Transmigration Number: B.31 / PHIJSK / i / 2012 concerning the Implementation of the Constitutional Court Decision Number 27 / PUU-IX / 2011 does not necessarily provide protection and certainty legal relation to outsourcing in Indonesia.

This is because another weakness in the substance of labor law is that opportunities and potential are still open that can hamper the fulfillment of workers 'basic rights, this is

due to the many provisions concerning workers/laborers' rights in labor legislation that are not protected by applying sanctions if employers do not meet them. An example is the absence of provisions for criminal sanctions and / or administrative sanctions for violations of Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 Regarding Labor. Violation of the terms and conditions of outsourcing is only in the form of sanctions changes in the status of work relations and accountability for the fulfillment of the rights of workers/laborers, meaning that they are still internal and limited to the good intentions of employers, without any legal remedies that are coercive and cause a deterrent effect for employers who violate these provisions.

In terms of legal principles, the substance of labor law also does not meet the principles of law or principles of legality. According to Lon L. Fuller, as quoted by Esmi, to recognize the law as a system, it must be examined whether it meets the 8 (eight) principles or principles of legality, namely:

1. The legal system must contain regulations meaning that it cannot contain merely ad hoc decisions.
2. The regulations that have been made must be announced.
3. Rules may not apply retroactively.
4. The rules are arranged in a formula that can be understood.
5. A system must not contain rules that conflict with one another.
6. Rules cannot contain demands that exceed what can be done.
7. Rules cannot be changed frequently.
8. There must be a match between the regulations promulgated and their daily implementation. The

shortcomings of the Constitutional Court's Decision are related to the Circular of the Director-General of Industrial Relations and Social Security of the Republic of Indonesia Ministry of Manpower and Transmigration Number: B.31 / PHIJSK / i / 2012 concerning the Implementation of the Constitutional Court Decision Number 27 / PUU-IX / 2011 which does not explain operational techniques in implementing the Constitutional Court's Decision. Likewise in its implementation mechanism, the Constitutional Court does not provide a detailed explanation, where when the worker service provider company has finished its contract with the work provider company, if the object of work remains, then the workers' status switches to being an employee of the new worker service provider company. The problem that arises then is that for a long time worker service provider company, the company will lose its workers, who have been given training by the company and there is no small cost to provide training and of course the workers already have work experience in companies that use workers' services so they certainly have more expertise than workers outsourcing new.

Of course, this can be detrimental to the service provider company workers previously. Another problem is that new service provider companies will certainly question the status of workers who are not workers of their companies. It means that the new worker

service provider company will be burdened by increasing the number of workers outsourced who are completely new to the company. This results in an employment relationship that occurs as a result of an employment agreement made between the company providing the worker and the worker. Whereas workers service provider companies will certainly think the benefits will only be felt by companies that use worker services because by using workers outsourced who previously would not have wasted the user's company time to give direction to new workers because they still used the services of workers outsourcing who previously, while in terms of fulfilling the rights of workers outsourced as mentioned in court considerations in terms of calculating the length of their careers, benefits, and other rights for workers outsourced are the responsibility of the worker service provider company. Of course, the workers 'service provider companies do not want to be harmed unilaterally because more benefits are obtained by companies that use workers' services.

Thus, the Circular of the Director-General of Industrial Relations and Social Security Development of the Republic of Indonesia Ministry of Manpower and Transmigration Number: B.31 / PHIJSK / i / 2012 regarding the Implementation of the Constitutional Court Decision Number 27 / PUU-IX / 2011 although intended to provide further explanation regarding the Constitutional Court Decision regarding outsourcing, but does not have any binding power as part of the legislation. Thus, the legal consequences of the issuance of this Circular Letter to the regulation of outsourcing are not legally binding, and the regulation of outsourcing is following the ruling of the Constitutional Court.

The technical implementation of the Specific Time Work Agreement is contained in Article 65 of the Manpower Act, as follows:

1. Submission of part of the work to other companies is carried out through an employment contract made in writing;
2. Work that can be submitted to other companies as included in paragraph (1) must fulfill the following conditions:
   - carried out separately from the main activity;
   - done with direct or indirect orders from the employer;
   - is a supporting activity of the company as a whole; and
   - does not impede the production process directly
3. Other companies as referred to in paragraph (1) must be in the form of a legal entity.
4. Work protection and work conditions for workers/laborers in other companies as referred to in paragraph (2) are at least the same as work protection and working conditions at the employer company or in accordance with applicable laws and regulations.
5. Changes and / or additions to the conditions referred to in paragraph (2) shall be further regulated by a Ministerial Decree.

6. Work relations in the performance of work as referred to in paragraph (1) shall be regulated in a written work agreement between the other company and the workers/laborers it employs.
7. Work relations as referred to in paragraph (6) can be based on non-specified time work agreements or certain time work agreements if they meet the requirements as referred to in Article 59.
8. In the case of the provisions referred to in paragraph (2) and paragraph (3) not fulfilled, then by law the status of the employment relationship of workers/laborers with the contracting recipient company changes to the work relations of workers/laborers with the employer company.
9. In the event that the employment relationship switches to the employer company as referred to in paragraph (8), the employment relationship of the workers/laborers with the employer is in accordance with the employment relationship as referred to in paragraph (7).

In addition to Article 65 which regulates certain time-specific work practices, there is another article, namely Article 66, as follows:

1. Workers/laborers from companies providing workers/laborers services may not be used by employers to carry out main activities or activities related to the production process, except for supporting service activities or activities that are not directly related to the production process.
2. Workers/labor service providers for supporting service activities or activities not directly related to the production process must meet the following requirements:
   - there is a working relationship between the workers/laborers and the company providing the worker/labor service;
   - an employment agreement that applies in a working relationship as referred to in letter a is a work agreement for a certain time that meets the requirements as intended in Article 59 and/or a non-specified time work agreement made in writing and signed by both parties;
   - wage and welfare protection, terms of employment and disputes arising from the responsibility of the workers/laborers; and
   - an agreement between a company using a workers/laborers service and another company acting as a provider of workers/laborers services is made in writing and must contain articles as referred to in this law.
3. Worker / labor service provider is a form of business that is a legal entity and has a permit from the agency responsible for manpower.
4. In the case of the provisions as referred to in paragraph (1), paragraph (2) letter a, letter b, and letter d, and paragraph (3) are not fulfilled, then by law, the status of the employment relationship between the workers/laborers and the worker service

provider company/laborers turn to work relations between workers/laborers and employers.

CONCLUSION

Based on the discussion that has been described in the previous chapters, the writer can conclude, as follows:

1. That with the issuance of Circular Letter Number B. 31 / PHIJSK / I / 2012 after the Constitutional Court Decision is irrelevant because the circular letter is not included in the type of hierarchy the order of the laws and regulations. The order of legislation according to Law Number 12 of 2011, Article 7 paragraph (1), namely: 1945 Constitution of the Republic of Indonesia, Stipulation of the People's Consultative Assembly, Laws / Regulations Governing Legislation, Regulations Government, Presidential Regulation, Provincial Regional Regulation, and Regency / City Regional Regulation.
2. That the issuance of a circle is a legal action of the government with the aim that there is no confusion in applying the rules regarding outsourcing after the decision of the Constitutional Court and its supervision is carried out by the agency responsible for manpower.

Suggestions

Following the conclusions above, the authors have the following recommendations:

1. After the Constitutional Court's decision on Law No. 13 of 2003 concerning labor, the labor law must be revoked, because the decision of the Constitutional Court is final and binding.
2. If the Constitutional Court has ruled because of a law that violates the Basic Law, the follow-up to the decision of the Constitutional Court is carried out by the President and the DPR, not by an institution under a government organ.

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