LEGAL PROTECTION FOR THE OUTSOURCING WORKERS IN THE PROVINCE OF BENGKULU

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ABSTRACT

The purpose of this study is to describe and analyze the implementation of legal protection towards outsourcing employees, and to describe and analyze the obstacles in implementing legal protection towards outsourcing employees in Bengkulu Province. The method of this study is the empirical law research which is the type of research with non doctrinal approach. It is an empirical study to find the theories regarding to the happening process and mechanism process of law in society. The result showed that the implementation of legal protection towards outsourcing employees in Bengkulu Province related to aspects of employment conditions, salary and wage conditions, working hours, breaks, and overtime wages, employee social security (jamsostek) conditions, work accidents compensation, and safety and health conditions of outsourcing employees in Bengkulu Province, has not been appropriate according to the constitution. This impacts on employees both economically and socially, unfair and inhumane treatment along and after work period. The obstacles in implementing legal protection towards outsourcing employees in Bengkulu Province are: many outsourcing agencies that do not have offices in Bengkulu, legal penalty for agencies that commit violations is too weak. In act No. 13 of 2003 concerning on Manpower and Regulation of Minister of Manpower and Transmigration No. 19 of 2013 concerning on Conditions for Outsourcing the Implementation of Work to Other Companies, the legal penalties are not strongly implemented. These are related to the fulfillment of work conditions including outsourcing companies operational license, thus many outsourcing agencies in Bengkulu province that hire employee without the concern from Department of Manpower and Transmigration of Bengkulu province. When the problems appear, these such companies will disappear and cannot be accessed for any explanation, meanwhile there is not any budget allocation from Bengkulu provincial government for guidance on such companies, up until now the technical team conducts the guidance on companies based on complaints and information from outsider by using personal budget.

Keywords: Legal protection, Outsourcing
A. INTRODUCTION

1. Background

National economic development performed based on economic democracy with the principles of togetherness, just efficiency, continuity, environmental insight, independency and progress balance and national economic unity to create society prosperity\(^1\). Basically, every citizen shall have the right to work and to earn a humane livelihood as it is mentioned in article 27 paragraph (2) of The 1945 Constitution of the Republic of Indonesia:

\textit{Every citizen shall have the right to work and to earn a humane livelihood.}

Based on the article above, the protection towards the employees is proposed to guarantee the employee’s basic rights and equal treatment without any discrimination to create employees’ and their family prosperity through considering the development of business world and businessmen interest\(^2\).

Problem concerning outsourcing is varied. It is caused by the outsourcing companies are widespread in Business world in Indonesia and have become the immediate needs for businessmen, meanwhile the available regulations are not adequate to manage outsourcing agency running in the society.

One of the efforts to do by those companies with outsourcing system is to outsource certain works to third party by managing the risk and decreasing workload of its company. The work relation legally is not as companies’ employer but outsourcing companies\(^3\).

Outsourcing according to Law of Manpower in Indonesia is divided into two categories, outsourcing of work and outsourcing of workers/ labor supply. The law mechanism of outsourcing is arranged in Act No. 13 of 2003 concerning on Manpower (articles 64, 65, and 66) and Regulation of Minister of Regulation of Minister of Manpower and Productivity, No. 34 of 2010 and the related regulation.


\(^2\)Considerant part d, Act No. 13 of 2003 concerning on Manpower.

\(^3\)Libertus Jehani, 2008, \textit{Hak-Hak Karyawan Kontrak}, Forum Sahabat, Jakarta, p.1
Manpower and Transmigration of Republic of Indonesia No. 19 of 2012 concerning on Conditions for Outsourcing the Implementation of Work to Other Companies. Government believes that those regulations are adequate though in its implementation, the violations are still found indicating the weak legal protection on employees. This has become the real national issue of outsourcing problem. Major problem concerns on unavailable guarantee of work continuity for contract workers and also company has no responsibility to pay compensation of work termination (PHK)\(^4\), other violations are:

1. Salaries and wages for Contract workers is under the rate of Provincial minimum wage
2. Contract workers do not get privilege to have employment insurance (BPJS Ketenagakerjaan)
3. Contract workers from outsourcing agencies work in continuous divisions
4. Outsourcing companies demand some fee charge from prospective workers
5. Outsourcing companies cut the salary/ wage from the workers

6. Contract workers do not get Religious Holliday Allowance/ THR\(^5\).

The policy on manpower in both local and national level seems not very adequate as legal protect efforts to outsourcing workers. Problem related outsourcing is varied concerning its widespread in Business world meanwhile the available regulations are not adequate to arrange legal protection for outsourcing workers. It is expected that workers would never be indicated as production subject for exploitation but the ones that need to be protected. In the implementation, work contract with outsourcing system is write by outsourcing companies, thus it will be unilateral agreement of outsourcing companies that could cause problem for other parties to decide the content of agreement.

In Bengkulu Province, the violations on outsourcing workers’ rights are also found. The violations include of wage under minimum rate, unavailable life and health insurance, unavailable annual leave, type of work that should be fix work, or work agreement that contradict the law regulation of

\(^4\)Ibid, p. 3
\(^5\)Ibid, p. 3
manpower, and unilateral work termination (PHK) before contract period ends, workers demand for permanent employee in one company.

The violations done by outsourcing companies to their employee in Bengkulu are still found such as work agreement on certain period is not registered in Department of Manpower and Transmigration of Bengkulu Province, work termination (PHK) before contract period ends, wage under minimum rate, and unclear company regulations that are not authorized by qualified agencies concerning on manpower or at this point refer to Department of Manpower in municipal or provincial level in Bengkulu Province. Those problems are caused by the weak legal protection for workers in both outsourcing and government companies.

Juridically, legal protection for workers is a protected basic right fulfillment, thus any violations on it is indicated as human right violation.

The protection of labor is intended to guarantee the basic rights of workers and ensure commonality and treatment without discrimination on any basis for the prosperity of workers and their families and business interests.

The application of legal protection of the outsourced workers in the Province of Bengkulu in particular, was a chore for the central government and the regional government of Bengkulu, in which the government must immediately find a solution of how to minimize the negative impact of the increasingly widespread practice of outsourcing. For a long time it has been going on erroneous perception that the companies engaged in outsourcing are benefit for entrepreneurs and capital owners only. In fact, the public has an interest in the existence of the company in terms of providing products and services, creating job opportunities and employment. The government itself is obliged to create a prosperous society to create a sense of peace and safety.

The application of the legal protection for outsourced workers / laborers in the Province of Bengkulu requires special attention, because in the practice of contracting this work there were many irregularities or
violations of the terms and conditions of outsourcing. Therefore, the function of government intervention in labor issues has an important role as a government agency that protects labor outsourcing in Bengkulu Province, due to workers / laborers are one of the subjects of development so that it requires safeguards to ensure the fundamental rights of workers / laborers who must be protected and to ensure commonality and treatment without discrimination.

Based on the description above, the writer interested in conducting a study entitled: **Implementation of Legal Protection for the Outsourcing Workers in the Province of Bengkulu.**

B. Identification of the Problems

1. How is the implementation of the legal protection for the outsourced workers in Bengkulu Province?
2. What are the barriers to the implementation of the legal protection for the outsourced workers in Bengkulu Province?

C. Method of the Research

According Soerjono Soekanto, empirical legal research is research by trying to see how the related parties are responsive and consistent in using the rules concerned. According to Ade Saptomo this empirical research pertained to the legal effectiveness research that is legal research which examines certain legislation. Therefore, this Empirical Legal Research was directed to the identification of the implementation of the legal protection for outsourced workers in Bengkulu Province. Empirical legal research is a type of research with non-doctrinal approach, which is the research in the form of empirical studies to find theories about the process and about the workings of law in society or is often called associo-legal research.

D. Research Results and Discussion

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1. Implementation of the Legal Protection for the Outsourcing Workers in Bengkulu Province

Legal relationship between outsourcing company and employer corporate engage in a form of Public Works Agreement where in the agreement contains at least Rights and Obligations of the Parties, as well as ensure the fulfillment of work protection and work requirements for the workers/laborers. Outsourcing companies that prepare workers to be employed in the employer company would be bound also to workers/laborers through Certain Period Employment Contract or Uncertain Period Employment Contract for legal clarity on the employment relationship and responsibilities as well as the protection of the company for its workforce where in the agreement must guarantee the rights of workers/laborers as needed. Application of Industrial Relationship involving the outsourcing power is of course also demanded protection from the Government in this case the Department or agency in charge of employment.

The legal protection of government is essential for Industrial Relationship in general and workers in particular, the protection of the government may be in the form of monitoring and firm action to companies who neglect even distort the rights of workers/laborers. Things like this in order to provide safety and comfort for workers/laborers in doing the duty responsibilities, both at work and in the family of workers/laborers. So there will be harmonious relationship between workers/laborers, the recipient company or companies chartering services provider of workers/laborers employed by the contract of work.

2. Barriers to the Implementation of the Legal Protection for the Outsourcing Workers in Bengkulu Province

The use of outsourcing system that seemed to have become a trend in many large companies both national private-status or state-owned enterprises (SOEs) and even government agencies is motivated by the company's strategy to reduce their costs of production. Companies are trying to save expenditure and
financing of the costs of the Human Resources (HR) who work in their company. This is because economic conditions do not allow the company to give salaries to workers in large numbers so that one of the ways of savings that can be done is to outsource most of the work to another party through chartering services or a service provider of workers/laborers or known as outsourcing. During this time, the implementation of the outsourcing system more detrimental to the workers, in which it can be seen from the working relationship that is always in the form of a contract or temporal, lower wages, lack of social security, the lack of labor protection and no guarantee of career development. Therefore, it was need a legal protection which is the rights of workers guaranteed by the government, which if breached could lead to legal consequences.

Based on interviews, barriers to implementation of the legal protection for outsourcing workers in Bengkulu Province are as follows:

a. There are still many outsourcing companies that does not have an office in Bengkulu, it is usually going for outsourcing companies headquartered in other provinces and employs only its workforce in the Province of Bengkulu.

b. Legal sanctions are still too weak for companies which violate the regulations.

c. There are no special funds budgeted by the Bengkulu provincial government to undertake manpower development to companies, during this time, the technical team provided guidance to companies only on the basis of complaints and information with their own funding initiatives. Problematic about outsourcing as above is quite varied.

This is because the use of outsourcing in the development of business in the Province of Bengkulu is increasingly widespread and has become an advanced need by businesses in the Province of Bengkulu. Meanwhile the existing regulations have not been too inadequate to regulate outsourcing that has been underway. In the practice of outsourcing, aside from
causing suffering on workers / laborers, it also eventually has an impact on the progress of the company productivity. Series of workers / laborers attitudes in the working relationship are very influential on productivity because it is associated with motivation to improve work performance. Therefore there are two efforts to protect workers / laborers.

Talking about the rights of workers / laborers meant we talk about both human right and not. Human right is the inherent right of self-worker / laborer owned inborn and if this rights apart / separated from the workers themselves, the degree and dignity will be descended as human beings.

Article 28D verse 2 of the 1945 Constitution states that:

“Everyone is entitled to work as well, earn rewards and fair treatment and decent in labor relations”

Everyone is entitled to work as it has been clearly stipulated in the 1945 Constitution above, then the government must strive so that each person gets job and welfare to achieve prosperity. Labor protection supervisory services (outsourcing) further is stipulated in article 65 verse(4) of law No. 13 of 2003 on Manpower reads:

“Employment protection and working conditions for workers / laborers in other companies referred to in paragraph 2 are at least equal to employment protection and working conditions in the employer company or in accordance with the applicable legislation”

Protection of the rights of service providers (outsourcing) is based on the protection stipulated in the law No. 13 of 2003 about Employment on the protection of labor rights of other workers. Law protection of the outsourcing workers in Bengkulu province can be done either by providing guidance, coaching, or by enhancing the recognition of human rights, social and physical protection of the economy through the norms prevailing in the company.

E. Closing

1. Conclusion

Based on the explanation in previous chapter, it could be concluded that:
1. Implementation of the legal protection of the outsourcing workers in Bengkulu province is not fully in accordance with the applicable legislation. Implementation of outsourcing involves three (3) parties; they are company of outsourcing labor provider (vendor), companies outsourcing labor user (user), and the outsourcing labor itself. Law protection includes: employment, wages, working time, rest periods and overtime wages, participation of BPJS Employment, work accidents, as well as the safety and health of outsourcing workers / labors in Bengkulucity. Therefore, it needs a regulation in order to the parties involved get no harmed, especially the outsourcing labor.

2. The barriers due to the implementation of law protection against outsourcing labor in Bengkulu province, namely:
   a. Limited knowledge of employment law for many workers, and the high fear of losing jobs due to the low competitiveness.
   b. Many outsourcing companies that do not have an office in Bengkulu, it is usually going for outsourcing companies headquartered in other provinces and employs only its workers in Bengkulu province.
   c. Law penalties are less strict and deterrent effect for the company. In Law No. 13 of 2003 on Employment and the Regulation of Minister of Manpower and Transmigration No. 19 of 2013 on the terms of the Delivery of Some Works to Other Companies, there is no legal sanctions in the fulfillment of the completeness condition of employment as a license to the company's operational service providers, so that many firms of service providers employ workers in Bengkulu province without the knowledge of Manpower office of Bengkulu province. Thus, when there is a problem to the workers of the company such as losing
and it is difficult for questioning.

d. There is no special funds budgeted by government of Bengkulu province to conduct a training to companies. All this time, the technical team provides guidance to companies based on the complaints and the information with their own fund and initiative against companies that violate.

2. Suggestion

1. Due to the workers (outsourcing) in Bengkulu province, they are expected to improve the competence and ability of self in order to be ready to compete in the jobs that will impact the increase of sales value as a reliable and competitive worker on the field, and are expected to increase the knowledge and awareness of the law by participated in the organization of trade unions / labor in Bengkulu province in order to fight together for the rights of workers with wise and polite road in accordance with the applicable legislation.

2. Due to the outsourcing companies in Bengkulu province, they are expected to become law-abiding company in accordance with statutory provisions and regulations. Completing the entire working requirements set in law No. 13 of 2003 on Employment, such as the obligation to certify the Company Regulations to the agency that is in charge of Employment in Bengkulu province, register the Agreement of Specified Time Employment (PKWT) of workers, post an agreement between the outsourcing company and employer company to the agency which is in charge of employment in Bengkulu province, make Operational License of Sourcing Company letter for service providers operating in Bengkulu province. Completeness of employment requirements is useful as the primary data that facilitates the government to protect the rights of outsourcing workers.
3. Local government is expected to further enhance the law protection against the activities of industrial relations in general, particularly in the field of enterprise outsourcing in Bengkulu province. However the outsourcing company is one source of investment that helps building the economy in Bengkulu province. But the existence does not necessarily have a positive impact if it is not guided and supervised. The employment openness should be supported also by policy that can protect the existence of investment and for workers who are mostly the residents of Bengkulu province, such as by creating a supporting legal product which is governing about the existence of outsourcing companies investment in Bengkulu province, and provide a special budget for the agency that is in charge of employment to support its efforts in fostering and preventing the diversion of labor laws in order to improve and create a harmonious working relationship, dynamic, sustainable.

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