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Legal Protection for Outsourced Workers at PT PLN (Persero) UID Sulselrabar Makassar Area

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ABSTRACT

Outsourcing, the transfer of part of a company's work to another party, is not permitted for core or continuous activities, yet the weak bargaining position of workers leaves many outsourced employees exposed to arbitrary treatment by employers. This study examines (1) how national legislation provides legal protection for outsourced workers in Indonesia and (2) how that protection is implemented for outsourced workers at PT PLN (Persero) UID Sulselrabar, Makassar Area. It employs normative juridical research with a statute approach, analysing labour laws and regulations, journals, books and court decisions, supplemented by direct interviews with relevant parties. The results show that (1) legal protection for outsourced workers is regulated in national legislation, but sanctions against those who violate it are not firmly enforced, to the detriment of outsourced workers; and (2) this protection has not been fully implemented by the user company and the contractors (vendors). Outsourced workers still perform core or continuous work, such as command center operation and technical services (yantek), while remaining on fixed-term contracts (PKWT) with the vendor; occupational safety and health facilities are inadequate and workplace accidents go unreported; and the user company indirectly suppresses trade unions through union busting, transfers and dismissals of unionised workers. The study concludes that the rights of outsourced workers guaranteed by law are not yet respected in practice and require firmer enforcement.

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1. INTRODUCTION

Outsourcing (outsourcing) is a work system that is developing as employers increase the need for flexible employment relationships, easy to recruit, and easy to terminate employment (PHK) for their workers (Budiartha, 2016, p. 5). Terms *outsourcing* in fact, it has been known since the Dutch East Indies colonial period.

Terms *outsourcing* has been commonly used in Indonesia since President Megawati Soekarnoputri signed Law Number 13 of 2003 concerning Manpower (Republic of Indonesia, 2003). The birth of the law raised concerns among workers about the return of the capitalistic work system in Indonesia.

Brown and Wilson (2005) stated that outsourcing is the act of obtaining services for a certain job that comes from an outside party. In other words, the employer submits the work to be done by another party based on a certain agreement. The same thing is expressed by Anggraini (2016) who states that outsourcing is the activity of handing over part of the implementation of certain activities to another party based on a certain agreement, which is carried out through signing or often emphasized by the contract system (Safitri et al., 2024, p. 79).

In employment contracts *outsourcing* The provisions of Article 1320 of the Civil Code (Civil Code) remain valid, which states that an agreement is valid if it meets the following conditions (Republic of Indonesia, 1847):

a. there is an agreement between the two parties;
b. the existence of legal competence to make an agreement;
c. the existence of a certain thing or object that is agreed; and
d. the existence of a cause that is permissible and/or does not contradict laws and regulations, public order, and morality.

The birth of legal products is expected to be able to create legal protection and guarantees for every citizen so that their rights and obligations are balanced. However, in reality, the implementation of labor law has not been able to create a harmonious relationship between workers or employees and employers. This is due to the lack of regulations issued by the government and the injustice in the implementation of employment relations between employers and workers/employees (Safitri et al., 2024, p. 75).

Job protection for outsourced workers is an absolute must. To realize protection in the outsourcing system, the role of the government and the activeness of workers in fighting for their basic rights are urgently needed.

Based on the above description, the author examines the legal protection of outsourced workers in outsourced companies in PT PLN (Persero) Distribution Main Unit (UID) South Sulawesi, Southeast Sulawesi, and West Sulawesi (Sulselrabar) Makassar Area, with the formulation of problems: (1) how national laws and regulations provide legal protection for outsourced workers in Indonesia; and (2) how to implement legal protection for outsourced workers in PT PLN (Persero) UID Sulselrabar Makassar Area.

2. METHODS

In accordance with the title and problems discussed, this research uses the normative juridical law research method, which is legal research that lays down law as a building of a system of norms. The norm system in question includes principles, norms, and rules from laws and regulations, court decisions, agreements, and teachings (doctrines). Peter Mahmud Marzuki explained that normative legal research is a process to find legal rules and legal principles to answer the legal problems faced, thus producing new arguments, theories, or concepts as prescriptions (Lecture Reference, 2022).

The approach used is the legislative approach (*statute approach*), which is an approach that is carried out by examining all laws and regulations related to the legal issues being handled (Pujiati, 2024).

The materials used include laws and regulations, journals, books, and court decisions related to legal protection for outsourced workers. The materials are complemented by data from direct interviews with related parties, including the management of outsourced labor unions within PT PLN (Persero) UID Sulselrabar.

3. FINDINGS AND DISCUSSION

National Laws and Regulations in Providing Legal Protection to Outsourced Workers in Indonesia

Employment development in Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Based on Article 4 of Law Number 13 of 2003 concerning Manpower, employment development aims to (Republic of Indonesia, 2003):

a. empowering and utilizing the workforce optimally and humanely;
b. realizing equal distribution of employment opportunities and the provision of labor in accordance with the needs of national and regional development;
c. provide protection to the workforce in creating well-being; and
d. improve the welfare of workers and their families.

Basically, every worker has an equal opportunity without discrimination to get a job, and every worker has the right to the same treatment without discrimination from employers (Republic of Indonesia, 2003). Legal protection for workers/laborers is the protection provided by the law to workers/laborers for the actions of employers before work, during work, and after work.

Legal protection for workers is very important considering that the position of workers/laborers as subordinates is very weak. Workers often receive discrimination from employers, especially workers who are known to be members of trade unions. The presence of unions is often considered a trigger for problems by employers, especially when unions voice workers' rights.

The importance of legal protection for workers/laborers can be seen from the outsourcing problems that occur today. These problems are quite varied along with the increasingly widespread use of *outsourcing* in the business world.

The government has a very important role as a guide, protector, and conciliator when there is a dispute between employers and workers/laborers. The government is required to play the role of a good "parent" for its two "children", namely entrepreneurs and workers/laborers.

Legal protection for workers is an absolute matter and is expressly regulated in the following laws and regulations:

1. Constitution of the Republic of Indonesia of 1945, Article 27 and Article 28 (Republic of Indonesia, 1945);
2. Law Number 1 of 1970 concerning Occupational Safety (Republic of Indonesia, 1970);
3. Law Number 21 of 2000 concerning Trade Unions/Trade Unions, Article 27, Article 28, and Article 29 (Republic of Indonesia, 2000);
4. Law Number 13 of 2003 concerning Manpower (Republic of Indonesia, 2003);
5. Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes (Republic of Indonesia, 2004); and
6. Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for the Partial Handover of Work Implementation to Other Companies (Republic of Indonesia, 2012a).

Implementation of Legal Protection for Outsourced Workers in Outsourcing Companies at PT PLN (Persero) UID Sulselrabar Makassar Area

Contractor *Outsourcing*

Arrangements regarding contracts *outsourcing* contained in Article 64 of Law Number 13 of 2003 concerning Manpower, which states that companies can hand over part of the implementation of work to other companies through a work outsourcing agreement or the provision of workers/laborer services made in writing (Republic of Indonesia, 2003).

In contract *outsourcing* the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement (Republic of Indonesia, 1847), namely:

a. there is an agreement between the two parties;
b. the existence of legal competence to make an agreement;
c. the existence of a certain thing or object that is agreed; and
d. the existence of a cause that is permissible and/or does not contradict laws and regulations, public order, and morality.

The first and second conditions are called subjective conditions because they are attached to the self or concern the parties, while the third and fourth conditions are called objective conditions because they concern the object of the agreement.

Failure to meet the subjective conditions results in the agreement being canceled by either party. This means that even if the agreement has been signed, the party who objects to the process of the agreement can apply for cancellation in court. On the other hand, if the objective conditions are not met, the agreement is null and void, which means that the agreement does not bring any consequences for both parties because it is legally considered to have never existed.

According to Article 1601b of the Civil Code, a work outsourcing agreement is an agreement that the first party, namely the contractor, binds himself to complete a work for another party, namely the assignee, at a predetermined price (Republic of Indonesia, 1847).

Outsourcing contracts that are unclear and undetailed about the nature and type of work handed over are what cause the employer (*user*) to freely and arbitrarily hire *outsourced workers* for the company's core activities. Although freedom of contract is one of the principles in contract law, the content of the agreement must still meet the essential elements, the natural elements, and the incidental elements.

As a company that provides employment (*user*), PT PLN (Persero) in handing over work to other companies must be guided by the applicable regulations. Chapter IX concerning Employment Relations, Article 66 paragraph (1) of Law Number 13 of 2003 concerning Manpower states:

> "Workers/laborers from worker/labor service providers companies may not be used by employers to carry out main activities or activities that are directly related to the production process, except for supporting service activities or activities that are not directly related to the production process." (Republic of Indonesia, 2003)

Furthermore, Article 17 of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning the Conditions for the Partial Assignment of Work to Other Companies stipulates that (Republic of Indonesia, 2012a):

(1) The employer company can hand over part of the implementation of the work to the worker/labor service provider company through an agreement for the provision of workers/laborers services made in writing.
(2) Work that can be handed over to a company providing workers/labor services as intended in paragraph (1) must be a supporting service activity or that is not directly related to the production process.
(3) Supporting service activities as intended in paragraph (2) include:
    a. cleaning *service business*;
    b. efforts to provide food for workers/laborers (*catering*);
    c. security personnel;
    d. supporting services business in mining and petroleum; and
    e. Efforts to provide transportation for workers/laborers.

Facts in the field show that there are several main jobs that are transferred to the wholesaler/worker service provider, including the following.

a. Operator Command Center

Command Center is a form of innovation to increase the effectiveness of handling customer reports. Since its implementation *Command Center* at PT PLN (Persero), the handling of customer complaints and disturbance reports shows a positive influence on improving service quality and customer satisfaction, as well as supporting the achievement of unit performance. Implementation of innovation

customer focused It is expected to meet customer expectations for excellent service from year to year (Boncel, 2024).

b. Yantek Officer (Engineering Services)

Yantek officers are officers who serve customers for 24 hours which are divided into several *Shift* work. "We (PLN) will be considered a failure or considered successful in serving customers, it is in their hands (Yantek)," said Darmawan (Iswara, 2024). As a 24-hour service, can yantek work still be said to be a supporting job?

c. Revival

Electricity generation is a type of business that provides electricity for the public interest, in addition to the transmission, distribution, and sale of electric power, as stipulated in Article 10 paragraph (1) of Law Number 30 of 2009 concerning Electricity (Republic of Indonesia, 2009). Thus, the operation and maintenance of the plant is part of PLN's core business activities which are directly related to the electricity production process and take place continuously. The placement of outsourced workers in power generation work is not included in the five types of supporting service activities specified in Article 17 paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 (Republic of Indonesia, 2012a), so that it is not in line with the prohibition on the use of service providers/laborers for basic activities.

PKWT Contract

The rights of every worker have been regulated in Law Number 13 of 2003 concerning Manpower, (Republic of Indonesia, 2003), so it is appropriate for workers to obtain every thing that is their right as a worker. Basically, employment relations are relationships that contain rights and obligations between workers/laborers and employers that must be balanced. In employment relations, the obligations of employers are the rights of workers/laborers, and vice versa, the obligations of workers/laborers are the rights of employers.

In employment law, employment agreements are divided into two types (Shalihah, 2016, p. 75):

1. A work agreement for a certain time, which is a work agreement between a worker/laborer and an employer to establish a working relationship for a certain time or for a certain job, hereinafter referred to as PKWT.
2. An indefinite employment agreement, which is a work agreement between a worker/laborer and an employer to establish a permanent employment relationship, hereinafter referred to as PKWTT.

Based on this description, an indefinite time work agreement occurs because of the following things (Shalihah, 2017, p. 151):

a. PKWT is not made in Indonesian and Latin letters;
b. PKWT is not made for work that according to the type and nature or activity of the work will be completed within a certain time, namely:
    1. work that is once completed or that is temporary in nature;
    2. work that is expected to be completed in a not too long time, a maximum of 3 (three) years;
    3. seasonal employment; or
    4. work related to new products, new activities, or additional products that are still in experimentation or exploration;
c. PKWT is held for permanent employment;
d. PKWT which is based on a certain period of time is held for a period of more than 2 (two) years and extended for more than 1 (one) year;
e. employers who intend to extend PKWT do not notify the employee/labor concerned in writing no later than 7 (seven) days before the end of the PKWT; or
f. PKWT renewal is held not to exceed the grace period of 30 (thirty) days after the end of the old PKWT, and PKWT is held more than 1 (one) time and more than 2 (two) years.

Occupational Safety and Health (K3)

Every worker/laborer has their own work risks, both those working in the office and in the field. Workers/laborers must work in accordance with the standard operating procedures (SOP) that have been set by the service provider/wholesaler and the employer (*user*). The risk of work accidents can occur anywhere and anytime, and the risk will be greater if the company does not provide K3 facilities.

Safety knowledge is essential in shaping occupational safety behaviors, as the knowledge gained about safety can be applied in the work environment.

Article 1 number 2 of Government Regulation Number 50 of 2012 concerning the Implementation of Occupational Safety and Health Management System defines Occupational Safety and Health (K3) as all activities to ensure and protect the safety and health of workers through efforts to prevent occupational accidents and occupational diseases (Republic of Indonesia, 2012b).

The laws and regulations do not mention in detail the responsibility of the employer (*user*) for outsourced *workers/laborers* who have a work accident or illness due to work in the company's environment. However, if the work accident or illness arises due to the employer's negligence in providing K3 facilities or due to the poor working environment conditions in the employer's company, then morally the employer (*user*) also bears responsibility for all the consequences of work accidents and work-related illnesses experienced by outsourced workers/laborers in their company.

As workers who provide direct services, outsourced workers are very vulnerable to health problems and work accidents, as illustrated below:

- Command Center *officers* work in two *shifts*, namely 08.00–20.00 and 20.00–08.00 the next day, in front of a computer with the responsibility of monitoring reports at all times, making them very susceptible to visual impairment (minus eye) and kidney disease.
- Technical officers who work in the field are required to provide services with PS4 standards, namely a neat appearance (uniform), a friendly attitude, giving greetings and greetings, and giving smiles to customers. On the other hand, the demand for patching/tree trimming targets automatically drops PS4 points because the officer's clothes become wrinkled during patching.

Technical officers work regardless of sunny weather or rain, because it has become the demands and responsibilities of officers in serving customer reports/complaints. Until now, many officers have become victims, ranging from minor injuries to serious injuries, including officers who were electrocuted due to incomplete personal protective equipment (PPE) and *safety* equipment .

Occupational safety aims to protect workers for their right to safety in doing work for the welfare of life and increase national production and productivity, ensure the safety of everyone else in the workplace, and ensure that production resources are maintained and used safely and efficiently (Republic of Indonesia, 1970).

According to Reason (1998), the work safety culture functions among other things to (Setiono & Andjarwati, 2019, p. 57):

1. minimizing the possibility of accidents due to individual mistakes;
2. increase awareness of the dangers of making mistakes;
3. encourage employees to carry out every procedure at all levels of employment; and
4. Encourage workers to report the slightest error/deficiency to avoid accidents.

Work Accidents in the Field

The biggest cause of work accidents is the human factor, namely the lack of awareness of employers and the workforce themselves, especially in implementing various laws and regulations.

Work accidents can occur anywhere, anytime, and to anyone. The risk is even greater if the company does not provide K3 facilities and does not maintain a good work environment. Work accidents that occur in the field, especially those experienced by yantek officers, are often hidden by the employer (*user*), and even the victim is asked to remain silent about the incident. Some of these work accident cases include:

1. burns on the officer's hands due to not wearing gloves due to the unavailability of 20 kV gloves;
2. gallstone disorders experienced by one of the officers due to fatigue working with a 1×24-hour shift, who is still resting after undergoing gallstone removal surgery;
3. the officer was a victim of a hit-and-run while on duty as a motorcycle *shift* officer who worked alone according to the *shift schedule*;
4. the officer is exposed to a voltage of 20 kV due to lack of communication and supervision of work at the time of the execution of the work; and
5. The officer died while carrying out his duties because he fell from the stairs.

These various work accidents were not exposed and were not reported to BPJS Ketenagakerjaan or the local Manpower Office because the victims were asked to remain silent and worried about losing their jobs. It was not only the victims who were silenced; *users* also ordered all outsourced workers/laborers not to expose the incident.

Based on the description above, the facts in the field show that there are still workers who work alone, namely motorcycle technicians, who work alone in the field so that they are very prone to work accidents.

Trade unions

One of the elements in industrial relations is the worker. A weak position of the worker requires a forum to be strong, and that forum is the trade union. In the company, the role of the trade union is very important for every worker and is a basic right of the worker that should not be hindered by anyone.

The protection of workers/laborers has been guaranteed in labor laws and regulations. Law Number 21 of 2000 concerning Trade Unions/Trade Unions is an extension of the state to defend the rights and interests of workers (Republic of Indonesia, 2000). The State has guaranteed the basic rights of workers as well as equal opportunities and treatment without discrimination on any basis to realize the welfare of workers and their families, while still paying attention to the progress of the business world (Republic of Indonesia, 2003).

The negative attitude and perception of company management towards unions/laborers that limit their movement space leads to actions to eradicate trade unions. Actions that limit movement space and hinder the function and role of trade unions are management's way of suppressing trade unions. These forms of eradication are very diverse, including layoffs, mutations, and discrimination against workers.

According to one of the speakers in the author's interview, Mr. Fadly Yusuf (Chairman of DPW FSPMI), the eradication of the labor union at PT PLN (Persero) UID Sulselrabar has occurred since outsourced workers carried out a massive action in 2012. The resource person was the leader of the action and became a victim of layoffs; initially he was intimidated in the form of not being given a job and job mutations, until he was finally laid off in 2019. He also stated that until now the outsourced union administrators at PT PLN (Persero) are still intimidated when voicing the rights of workers who are not given and jobs that are not in accordance with labor regulations.

The writer is also one of the union administrators who has been intimidated and *union busting* several times, namely by not being given a job (*non-job*) and being mutated four times.

From these incidents, it is clear that *users* reject the existence of outsourcing unions or eradicate outsourced labor unions through intimidation, *union busting*, and layoffs. The provisions of Law Number 21 of 2000 concerning Trade Unions/Trade Unions and Law Number 13 of 2003 concerning Manpower are not heeded by *users* and *vendors* who are anti-union.

4. CONCLUSION

Based on the results of the research and discussion above, the following can be concluded:

1. Legal protection for outsourced workers is an absolute thing as affirmed in laws, government regulations, and ministerial regulations. However, legal sanctions for those who violate these regulations have not been applied strictly to the perpetrators.
2. The implementation of legal protection for outsourced workers has not been fully implemented by the employer (*user*), namely PT PLN (Persero) UID Sulselrabar, in accordance with the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning the Conditions for Handing over part of the implementation of work to other companies; until now, the main work is still outsourced with PKWT status to a work wholesale company. The working relationship of these workers is essentially a direct relationship with PT PLN (Persero), because the yantek workers, *command centers*, and others work entirely on direct orders from PT PLN (Persero). Discrimination against outsourced workers is one of the ways to eradicate trade unions. Discriminatory and unfair treatment of workers who join labor unions is not in accordance with laws and regulations; The provisions of the 1945 Constitution of the Republic of Indonesia and Law Number 13 of 2003 concerning Manpower are not heeded by employer companies (*users*) and wholesale companies (vendors).

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Conflict of Interest: The author is an administrator of an outsourced labor union within PT PLN (Persero) UID Sulselrabar and has experienced the actions discussed in this article. In addition to this, the author states that there is no conflict of interest.

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