

Legal Protection of Outsourced Workers on Outsourcing Agreements with Pt. X in Sidoarjo

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ABSTRACT

The focus of the problem is divided into (1) analysis of the legal relationship of the parties in the outsourcing agreement Company X in Sidoarjo City, (2) legal protection of workers in outsourcing agreement Company X in the city of Sidoarjo. This study uses type of normative juridical research, based on analysis of legal facts, supported by legal literature and legislation as empirical data. The results of this study are (1) legal relations focusing on worker and also Company X, because they have agreed in the work Agreement and become a strong legal basis and must be obeyed by both parties, Company Y can not be sued because the company is only a labor user company only. (2) legal protection for outsourcing workers can be done preventively with legal protection set by government, because there has been dispute over rights in industrial relations. So repressive legal protection is more appropriate to be applied by fighting for the normative rights of outsourcing workers through non-litigation and litigation, this issue raised by this author finally completed through mediation from Sidoarjo City Disnaker with an agreement of Company X will pay compensation for the remaining wages as contained in the employment agreement.

ABSTRAK

Fokus masalah dibagi menjadi (1) analisis hubungan hukum para pihak dalam perjanjian outsourcing Perusahaan X di Kota Sidoarjo, (2) perlindungan hukum pekerja dalam perjanjian outsourcing Perusahaan X di kota Sidoarjo. Penelitian ini menggunakan jenis penelitian yuridis normatif, berdasarkan analisis fakta hukum, didukung oleh literatur hukum dan peraturan perundang-undangan sebagai data empiris. Hasil dari penelitian ini adalah (1) hubungan hukum yang terfokus pada pekerja dan juga Perusahaan X, karena telah disepakati dalam Perjanjian Kerja dan menjadi dasar hukum yang kuat dan harus dipatuhi oleh kedua belah pihak, Perusahaan Y tidak dapat digugat karena perusahaan hanya perusahaan pengguna tenaga kerja saja. (2) Perlindungan hukum terhadap tenaga kerja outsourcing dapat dilakukan secara preventif dengan perlindungan hukum yang ditetapkan oleh pemerintah, karena telah terjadi sengketa hak dalam hubungan industrial. Sehingga perlindungan hukum represif lebih tepat diterapkan dengan memperjuangkan hak normatif pekerja outsourcing melalui jalur non litigasi dan litigasi, permasalahan yang diangkat penulis ini akhirnya diselesaikan melalui mediasi dari Disnaker Kota Sidoarjo dengan kesepakatan Perusahaan X akan membayar ganti rugi sisa upah sebagaimana tercantum dalam perjanjian kerja.

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I. INTRODUCTION

The presence of *outsourcing* itself is a practical and simple solution in order to anticipate the competitive competition of various companies that exist today. In today's global competition, many companies are less able to provoke the level of investment used in all company operations to be felt most efficiently. Through *outsourcing* a company can overcome these problems by focusing on their internals or activities which in it create a unique advantage in their workers, and can also reduce expenses to a minimum in their production process. (Imam ST, 2009:324) In the rules of labor law in our own country, we will not explicitly find any understanding and mention of outsourcing, (NLM Mahendrawati, 2009:151) while there is only an implied content that there are two forms of partial submission of work implementation through other companies, (Hidayat Muharam, 2006: 13) with its manifestation in the form of contracting jobs and also the provision of workers / laborers there are certain sectors in the company, which is more familiar to our ears an outbound agreement or *outsourcing*. (Abdul Hakim, 2009:74)

The Existing Labor Law in our country, relating to *outsourcing*, we can see in the agreement that there are three parties involved in it, namely the job contracting company or company that provides worker services, then the worker user company, and also the worker himself who later does the work promised, this employment relationship certainly needs to be stated and agreed in writing by each party. The written Work Agreement can be in the form of a Certain Time Work Agreement (PKWT) and a Non-Tententu Time Work Agreement (PKWTT) which are formal and material requirements contained in Article 59 of Law Number 13 of 2003 concerning Manpower which has been updated through Law Number 11 of 2020 concerning Job Creation. (I Nyoman Putu Budiarta, 2016:3)

In addition to the regulation of the legality of *outsourcing* by law, there are also derivative rules related to the terms and procedures for its implementation in the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Kep.220 / Men / VI / 2004 of 2004 concerning The Conditions for Partial Handover of Work Implementation to Other Companies and Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep.101 / Men / VI / 2004 of 2004 concerning Procedures for Company Licensing Worker/Labor Service Provider. The conditions that need to be met in carrying out *outsourcing*, namely carried out from the main activities of the company, then carried out with direct or indirect orders from the employer, then then placed in the company's supporting activities and do not hinder the production process directly, so these conditions must be met by each party, namely the employer company, then the company receiving the work and later workers *such outsourcing*.

The current application of *outsourcing* in the field is not perfect, including which jobs can be transferred to *outsourcing* companies, there are still those who violate the provisions in article 66 of Law Number 13 of 2003 concerning Manpower where outsourcing activities should only be allowed only supporting activities, not entering the realm of production and operations, (Bungasan, 2010: 297) we can see the supporting fields themselves such as the fields of service, hygiene, food supply business for companies, it is true that it has been re-regulated in Law Number 11 of 2020 concerning Job Creation related to these restrictions, but until now there are no derivative rules from the law that clearly accommodate the limitations on the field of *outsourcing* workers.

In addition to these problems, this *outsourcing* system also causes other problems in the field of labor, especially for workers, because the *outsourcing* system is indeed tended to benefit the company a lot, and is quite problematic for workers, the welfare of many workers is not fulfilled because indeed when signing the PKWT with the company, the PKWT contains a standard agreement and inevitably they finally agree to it with the various shortcomings of the *outsourcing* work system, the *Job Security* itself is not guaranteed, and also often defaults arise from *the outsourcing* company when the worker tries to obtain his rights in the future from the results of his work at the company, especially now that it is still in the condition of the Covid-19 Pandemic which has been going on since early 2020 until now, where with the presence of the Covid-19 Pandemic, it certainly has a destructive effect in various sectors of human life, including in the company's economy/industry, (M Ricky S, 2021:121) which also brings the opportunity for agreements to be terminated unilaterally regarding the condition of the company which is not possible to survive with many employees, because indeed their income has also fallen.

Based on the author's own preliminary observations, one of them is a legal case study studied by the author related to the problem of *outsourcing* at PT. X (*Company sources do not allow mentioning the name of the Company*) in the Sidoarjo city area with 5 *outsourcing workers namely BA, BC, MD, MUA, WN*, where in fact these five of them were given the same term contract, but only WN whose contract was stated in the PKWT but in its implementation it was very opposite and instead a default arose by the labor provider company about what was agreed in the PKWT which happened termination of employment on the grounds of the Covid-19 Pandemic unilaterally and also a security deposit that is not clear on the return by PT. X, in this case, of course, makes the worker wonder about the confusion of this matter and is also confused about the legal relationship between the parties and also what the resolution of the case will be.

II. RESEARCH METHODS

In this journal article using normative juridical research methods, where the focus of this research is to discuss existing problems with a theoretical study or we can also call legal research doctrinally and also the core of the analysis will be supported by material for the study of legislation, legal literature, legal facts and also with an approach related to the problem understanding it conceptually. (Zainal Asikin, 2016:118) The legal material apart from the legislation, is also supported from the law book and also other relevant legal materials.

Based on the formulation of the problem described above, there are issues that need to be discussed with a legal study related to the analysis of the implementation of *outsourcing* agreements between PT. X and the aggrieved workers, with, among others, How to Analyze the Legal Relationship of the Parties in the *Outsourcing* Agreement in PT. X in Sidoarjo City, then how is the Legal Protection of workers in the *Outsourcing* Agreement of PT. X in Sidoarjo City.

III. RESULT AND DISCUSSION

Analysis of the Legal Relationship of the Parties in the *Outsourcing* Agreement of PT. X in Sidoarjo City

Based on the brief description of the case above, which was appointed by the author of the party from PT. X in Sidoarjo City is as an *outsourcing* party or he who provides workers for PT. Y as the

company that uses *outsourcing* services in the form of him using individual workers provided by PT. X, where in hiring the worker, an employment agreement is carried out by company X as a company that recruits workers with the company that accommodates and as a place to work for the worker, then before work, training will usually be carried out before directly working at the user company.

We can see here contained the principles that apply in the legal rules of the agreement, namely both parties, be it PT. X and PT. Y before recruiting workers both bind themselves by agreeing in an agreement which later the agreement becomes law for both parties. In this regard, we can see the agreement as freedom of contract, which remains in the agreement must not conflict with the laws and regulations of justice and justice, but indeed in the Civil Code itself there is no limit on which work can be applied with the *outsourcing* system. This is in line with the renewal of the rule of Manpower law which lies in Law Number 11 of 2020 concerning Job Creation, in which several articles of amendments to Law Number 13 of 2003 concerning Manpower are regulated, precisely in Article 64 and Article 65 are deleted and there are also changes to article 66. However, indeed, the derivative rules in the form of ministerial regulations have not regulated and made clear which restrictions on work the outsourcing system can apply.

In an *outsourcing* agreement, of course, when it is made and signed the parties involved and also what are the objects in it, the term of the employment agreement. In terms of providing and managing *outsourcing* work carried out by PT. X he in this case as the party providing manpower for PT. Y, then on the *outsourcing agreement between PT. X and the outsourced workers* who will work at the company that uses the labor, the workforce cannot do much to change its contents because of what PT. X is in the form of a standard agreement in which its contents and terms have been unilaterally determined by PT. X as an *outsourcing company*. So later when you want to work in a company that uses pt. Y in general, the workforce can only express rejection or approval of the *outsourcing* work contract offered by PT. X and can't change it.

After passing through this stage with the binding of the employment agreement by each party, in this case even though the worker / laborer daily he works in the user company but the status of their worker remains under the auspices of the *outsourcing* company, because the employment relationship is in accordance with what is regulated in the legislation, (M Fauzi, 2006, 121) so the rights of workers become the full responsibility of the *outsourcing company*, because indeed in this case the company that uses the labor has paid the basic salary and the addition to the *outsourcing* company so that it is indeed processed by the *outsourcing* company itself before the salary / wages are given to the workers who are sheltered in the *outsourcing* company. In addition, *the period of work of the worker / laborer follows what is regulated and mutually agreed upon in the employment agreement contained in the PKWT between the worker and also the outsourcing company.*

Even though the worker has a working status at an *outsourcing* company and also does not have a direct employment relationship with the user company, the worker/laborer is still obliged to comply with the regulations regulated by the company, namely the Company Regulation (PP). There are contained rights and obligations between *outsourced workers* So the rules need to be obeyed by the worker / laborer, claiming that the rule also has consequences if it is not obeyed and also in this case the user company can reprimand the worker / laborer if it violates the content of the company Regulation. (Amelia SP, 2019:94) In addition, if the company that uses the service if it wants to

terminate cooperation with workers because of certain things, it can also end the employment agreement between the worker and the company providing the worker / *outsourcing*, of course it is quite heartbreaking with a strong power relationship the company can be unilateral to *the outsourcing* workers, even though they work in the user company usually there is no career path.

So based on the above explanation of the Legal Relationship of the Parties in the *Outsourcing* Agreement of PT. X, first before the existence of the OUTSOURCING AGREEMENT (*Outsourcing*) PT. X with manpower, of course, begins with a cooperation agreement between PT. Y and PT. X relates to the procurement/labor provider agreement carried out by PT. X who will later work in the company PT. Y, with the amount and nominal agreed by both parties, is also regulated regarding the duration of this agreement. Then the *Outsourcing* Agreement of PT. X with the workers, the main legal relationship between PT. X as and the labor, because indeed the legal agreement is bound by the written standard employment agreement signed by both parties, where the employment status of the labor force is at PT. X is not on the company PT. Y because it is indeed labor and PT. Y the employment relationship is indirect, even though the worker's daily life is working at PT. Y, so related to the rights of workers who are obliged to fulfill them is PT. X.

Because indeed in this case it is related to the provision of salaries and other benefits have been outsourced and paid from PT. Y to PT. X is then paid to these workers, of course, the nominal will not be the same as that given by PT. Y because it experienced cuts due to the services of PT. X was as an *outsourcing* company that provided these workers. So even though the worker's working status is under the auspices within the PT. X as an *outsourcing* company that provides its labor but the worker remains subject to the Company Regulations. But sometimes due to the lack of knowledge of *outsourcing* workers in the rule of law, *outsourcing* workers often with their normative rights are deprived by *outsourcing* companies, (Nicky Lumingas, 2013: 297) When problems arise due to non-fulfillment of workers' rights, then the worker can drag the *outsourcing* company i.e. PT. X as a labor provider both in litigation and non-litigation, because the company is responsible through an employment agreement that was previously agreed through PKWT because the agreement has legal force as evidence.

Legal Protection of Workers in PT X Outsourcing Agreement in Sidoarjo City

Workers should be treated like human beings and also kept away from all forms of slavery, so it is quite important that there is legal protection. Our government provides legal protection through the rule of labor law through laws and derivative rules such as equal distribution of employment opportunities, empowerment, welfare, work supervision and law enforcement. (Titi HS, 2019:201) *Outsourced* workers in our country get legal protection both preventively and repressively. (Philipus M Hadjon, 2007:2-4), Preventive legal protection in this case can guarantee legal certainty for them and also certainty on normative rights such as obtaining equality without discrimination, wages, welfare, life safety, health, social security and many others according to the rule of labor law. (Heru Suyanto et al, 2016:2) Meanwhile, legal protection is repressively present to help *outsourced* workers after the emergence of an industrial relationship dispute with the company, with the *outsourcing* company where the worker is sheltered agreeing on their PKWT, so the protection focuses on solving problems that arise by bringing evidence in the form of PKWT / PKWTT to be resolved both in litigation and non-litigation.

In relation to the above regarding legal protection for *outsourced* workers, before the analysis is connected with the problems raised by the author, it is necessary to first dissect the sitting of the case, starting with the holding of a PKWT in early 2020 between workers, namely MD, MUA, BC, and WN with PT. X as a service provider/outsourcing company, where the manpower will then be distributed and work as a driver at PT. Y one of the transportation companies in Sidoarjo City, in the PKWT, the contents and articles are clearly related to the Working Period from January 1, 2020 to June 30, 2020, then the Duties and Placement of Workers, Working Days and Hours, Workers' Rights, Obligations, Prohibitions, Performance Evaluation, Expiration of Agreements, others and when we review it is in accordance with what is required in the rules of labor law, Actually, at the beginning of the work agreement, the work agreement worked as it should, but with the presence of the Covid-19 Pandemic in Indonesia, which was enough to make the industri sector dependent. After 4 (four) months of the agreement PT. X shows a bad attitude by not obeying the PKWT and also Law Number 13 of 2003 concerning Manpower, where PT. This X defaulted by terminating the employment agreement contract with the Sdr.WN worker before it expired.

Seeing this, it is certainly quite clear that a legal problem arises where the normative rights of the *outsourced* worker such as wages, working hours, social security of the workforce will not be fulfilled by the layoffs. legal relations in this matter, of course, the main focus is on PT. X as the company providing the labor with WN workers, because both parties are binding themselves in the PKWT, so in this case it will not be possible for WN workers to sue or ask for compensation to PT. Y because of the status of WN workers working at PT. X as the *outsourcing* company that brought him to work. Whereas legally with the existence of PKWT between PT. X and WN workers, the juridical consequence is that the two parties who bind themselves in writing should have agreed and willingly carried out this agreement to the end and be responsible for the existing agreement because indeed this employment agreement already has legal force based on applicable customs. (Munir Fuadi, 2002:86) Seeing this, of course, the worker's position is quite weak in this case because when he was terminated from his employment relationship, the worker was suddenly given a unilateral resignation form by PT. X without being accompanied by a deliberation first, therefore indeed legal protection for *outsourced* workers is very important in order to protect the normative rights that they should get.

Legal protection for WN as *an outsourced* worker if we look at it preventively, one of them already exists through a written employment agreement in pktw on HRD / PKWT / XII / 2019 on Tuesday, December 31, 2019, it has become law for each party to be obeyed both WN as *an outsourcing* worker and also PT. X as the provider of such workers. Because indeed in the PKWT, normative rights for *outsourced* workers have been contained in accordance with the rules of labor law. However, in this case, the problem arises after the work agreement is executed, where PT. X unilaterally terminated the employment of WN even though the rest of the contract was still about 2 months from the agreed 6 months. So based on this, of course, repressive legal protection is more suitable to be applied in this matter, because this problem has entered the realm of industrial relationship disputes, and it is also more appropriate if legal measures are applied both non-litigation and litigation to resolve it.

An industrial relationship dispute exists because a breach of one of the parties' promises in terms of rights that have been declared regarding the state of employment / terms of work cannot be implemented properly in accordance with the employment agreement, company regulations,

collective labor agreements and agreed laws. (Faisal Salam, 2009:160) In addition, in Article 1 Number 1 of Law Number 2 of 2004 concerning Settlement of Industrial Relationship Disputes, it is stated that industrial relationship disputes are present because of differences of views between employers and workers and their trade unions related to rights disputes, interest disputes, termination disputes and also disputes between trade unions / workers. (Then Husni, 2007: 86) So it is indeed necessary to understand that it is involved first later when you want to take legal channels, the problem enters into the realm of which industrial relationship disputes according to the above provisions.

Broadly speaking, if an industrial relationship dispute arises, the settlement can be resolved with two channels, namely through the Court / litigation route and also the outer court / non-litigation route. This is intended so that the problem does not dissolve for too long and the matter must be resolved immediately, as well as creating an atmosphere of peace of mind, and the aggrieved party in order to get his rights as he should. (HP. Panggabean, 2007:V) Efforts to resolve such industrial relationship disputes become a right for those who feel aggrieved and guaranteed by law in our country, so these *outsourcing* workers can be repressively legal protection, because in order to maintain and obtain normative rights according to the employment agreement agreed with the outsourcing company. When the parties choose to resolve industrial relationship disputes through non-litigation channels, there are efforts to resolve them in the following ways:

1. Settlement through Bipartrite or Mediation

Settlement in this way is by a negotiation between workers / workers and trade unions with employers to solve existing industrial problems, in this settlement method usually a deliberation is held with a negotiation to find a common solution, so this discussion is focused on solving existing problems internally first.

2. Settlement through Mediation

This settlement is carried out through an intermediary who we can call a mediator usually from the local Disnaker, so this mediator will be neutral and not on the side of the litigant, this mediator will provide views and suggestions on the existing issues.

3. Settlement by Conciliation

This settlement is guided by a neutral conciliator in accordance with Law Number 2 of 2004 concerning the Industrial Relations Court, usually this conciliator is a registered party other than the local Disnaker employee.

4. Settlement by Arbitration

This arbitration is usually the party authorized to resolve the issue appointed by the parties to the dispute by appointing one or three arbitrators, usually an arbitrator registered with the local Disnaker by giving the arbitration agreement and reconciling to each party.

At the level of the government as a country that is present to provide legal supervision and protection and the implementers in the labor structure usually come from the Manpower Supervisory Employee. (Chairunnisa et al, 2020:62) On the issue raised by the author here, the case is resolved through mediation presented from the Sidoarjo Disnaker, regarding a rights dispute between Sdr. WN *outsourcing* workers and PT. X, where Sdr. WN, represented by his legal counsel, conveyed several points containing several rights violated by PT. X such as the remaining salary from April 16, 2020 until the pkwt, namely June 30, 2020, and also WN is entitled to get Religious THR according to the proportion of service period, which is finally based on the Mediator platform

No: 560/337/438.5.7/2020. where the outline is that the Mediator stated that the rights in question by WN are true that they must be fulfilled by PT. X, and after meeting, finally the two sides were found they finally agreed to make peace and agreed on the opinion of the Mediator, and the PT. X is able to compensate for the termination of the employment relationship to WN in the amount of Rp. 12. 600,000,- (Twelve Million Six Hundred Thousand Rupiah by no later than July 29, 2020, thus this industrial relationship dispute is resolved, and the parties agree to submit to the most recent Collective Agreement of the Mediation.

IV. CONCLUSION

In the *outsourcing* agreement between WN Workers and PT. X legal relationship leads to the parties agreeing to this *outsourcing* agreement, namely WN Workers and PT. X, Although indeed this WN is a job placement in pt. Y can't he sue PT. Y because indeed he is only bound and subject to the Company Regulations only, and the status of work and the provision of salaries, the fulfillment of WN normative rights are indeed his obligations to the *outsourcing* company. As for legal protection for *outsourced* workers, it can be preventive and repressive, from preventive legal protection these workers are protected by state rules, both laws and regulations of the minister of manpower, while repressive legal protection for *outsourced* workers is present when there is a dispute over industrial relations during the running of the PKWT where *outsourcing* workers it has the right to take care of the matter either through litigation or non-litigation to sue the defaulting company to court for its normative rights. In the case of a dispute over the industrial relationship between Sdr. WN and PT. X, who was appointed by the author of his repressive legal protection, entered to solve his problems by taking the Mediation route facilitated by the Sidoarjo Disnaker.

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