



Legal Protection for Employers Working in a Service Providers in the Economic Law Perspective

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Abstract

This article aims to find out legal protection in the employment relationship between outsourced workers and employers and how the implementation of providing welfare protection by employers/service providers to outsourced workers. The study was conducted using the method of normative legal research or also called doctrinal research using the statute approach, case approach, and conceptual approach. The results showed that legal protection for outsourced workers needs to be improved including law enforcement with very low integrity in case of violations committed by employers or companies against outsourced workers. Provision of welfare protection in the form of labor social security, compensation and benefits that can meet all the socio-economic needs of workers. Then the main purpose of the existence of economic law so that economic growth continues, and is expected to change or transformation of economic structure.

Keywords: *Legal Protection; Outsourcing Workers; Economic Law*

Introduction

Based on the 1945 Constitution of the Republic of Indonesia the government as the organizer of the state has an important and strategic role in economic development aimed at improving the quality of life and welfare of all its citizens. The mandate of the implementation of the state in carrying out people's sovereignty and the implementation of human rights, one of which is carried out with legal protection of citizens' rights to social security protection. The issuance of Law No. 13 of 2003 concerning Manpower to regulate problems that exist in the world of work, including regarding outsourcing. Article 64 to 66 as the legal basis for the implementation of the outsourcing system has made it clear that the company can submit a part of the work to other companies through contracting agreements or workers' service providers that are made in writing by fulfilling the requirements as requested and workers may not carry out the main activities or activities directly related to the production process.

Outsourcing has more problems, as is often found to be a mistake in determining the supporting activities of companies that are outsourced by Bhagwati et al (2004; Maelah et al., 2010). Besides, the lack of attention to the needs, performance, and career path of outsourced workers is a matter of concern, as well as fraud in the wage system of outsourced workers who do not meet minimum standard wages. Therefore, it is not uncommon for these problems to be followed by strikes so that the purpose of holding an outsourcing system is not achieved (O'Rourke, 2003; Shalihah, 2017).

It can be seen in the commemoration of World Labor Day (May Day), thousands of workers took part in a demonstration in the Horse Statue area, Jakarta on Wednesday, May 1, 2019. In their action, they asked the government to reform the social security system, improve workers' welfare, and demand there is a living wage, as well as the elimination of contracts or outsourcing labor systems.

Under these conditions, the existence of an outsourcing system is considered contrary to the 1945 Constitution in providing guarantees for the protection of the rights of every citizen, namely the right to obtain work and a decent living for humanity, the right to work and to receive compensation and fair treatment in work relationships, and the right for prosperity and prosperity.

Noting the above problems, it is suspected that the weak legal protection provided to outsourced workers. So that the government is asked to increase legal protection for outsourced workers because it certainly harms outsourced workers who work for employers. Economic losses as a source of income or welfare for outsourced workers such as laborers (Hendrastomo, 2010). Seeing this situation attracts the author to raise the issue of how legal protection in employment relations between outsourcing workers and employers, and how the implementation of welfare protection by employers/service providers to outsourced workers.

Methodology

The research used is normative legal research or also called doctrinal research (Ali, 2010). The study was conducted qualitatively by relying on library research by using the statute approach, case approach, and conceptual approach as the analysis knife (Marzuki, 2006).

Results and Discussion

1. Legal Protection in Employment Relationships between Outsourcing Workers and Employers

In outsourcing employment relations, it can be understood from article 66 paragraph (2) letter b of Law Number 13 Year 2003 concerning Manpower that the employment agreement in the employment relationship between the worker and the worker service provider company is regulated in a written work agreement and can be a Specific Time Work Agreement or Indefinite Time Work Agreement. In the event of a replacement of a worker service provider company in a company, an agreement in the provision of workers' services must be affirmed that the new employer service provider is willing to accept workers from the previous service provider company for the types of work that continue to be available at the employer work, as stated in Article 4 letter c Decision 101/Men/VI/2004.

There are two important things in the employment relationship relating to the employer company and the workers' service provider company as well as the relationship between the workers' service provider and the workers' company. In a relationship between an employer company and an employer

service company, this can be interpreted as a business legal relationship. The word business itself means as a business activity.

According to Richard Burton Simatupang, the word business is defined as the overall business activities carried out by people or entities regularly and continuously. Regularly, in the form of activities of procuring goods or services or facilities to be traded, exchanged, or rented to obtain profits (Simatupang, 2003).

In this case, there is a mutual relationship between the employer company and the employer service company, which means mutual benefit. Employer companies will feel satisfied if the work provided can be completed properly by the company providing workers' services. On the other hand, the employer service provider company receives a reward in the form of profits from the provision of workers' services to do the work of the employer. On the other hand, an employment relationship as intended in an employment relationship is a relationship between an employee and an employer. Work relations should indicate the position of both parties which describes the rights and obligations of workers to employers as well as the rights and obligations of employers to workers in doing work (Budiartha, 2016).

Workers' rights and obligations according to labor law in Law Number 13 of 2003 concerning Labor, namely: first, every worker has the same opportunity without discrimination to obtain work. Second, every workforce has the right to obtain and/or improve and/or develop work competencies following their talents, interests, and abilities through job training. Third, every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad. Fourth, employers who employ workers with disabilities must provide protection following the type and degree of disability. Fifth, every worker/laborer has the right to obtain protection for: occupational safety and health; morals and decency; and treatment in accordance with human dignity and values and religious values. Sixth, every worker/laborer has the right to earn income that meets a decent living for humanity. Seventh, every worker/laborer and his family are entitled to obtain labor social security.

Meanwhile, workers also have obligations, among others: first, in carrying out industrial relations, workers/laborers and their trade unions have the function of carrying out work in accordance with their obligations to maintain order for the continuity of production, channeling democratic aspirations, developing their skills, and expertise as well participate in advancing the company and fight for the welfare of members and their families. Second, employers, trade unions/labor unions and workers/laborers are required to implement the provisions contained in a collective labor agreement. Third, the settlement of industrial relations disputes shall be carried out by employers and workers/laborers or trade unions/labor unions by deliberation to reach consensus. Fourth, at least 7 (seven) working days prior to the strike, workers/laborers and trade/labor unions must notify the employer and the agency responsible for local employment in writing.

2. Implementation of Provision of Welfare Protection by the Employer/Service Provider to Outsourcing Workers

Hasibuan defines workers' welfare as "supplementary services (material and non-material) provided based on wisdom. The aim is to maintain and improve the physical and mental conditions of employees so that their work productivity increases", while prosperity is a state of meeting relative needs and there is a sense of security in enjoying them (Malayu, 2007).

According to Hariandja, benefits and employee welfare programs are not based on employee performance but are based on membership as part of the organization, as well as employees as people

who have many needs in order to be able to carry out their lives normally and work better. Also called welfare programs or benefits and services, complementary compensation (Abramovitz, 2017). Hariandja also stated that whatever terms were used, the purpose and purpose of giving were the same, namely to help employees meet their needs beyond the need for a sense of fairness, physical needs in order to increase employee commitment to the organization, increase productivity, reduce work turnover, and reduce demonstration disruption as a factor which is very important in efforts to increase organizational effectiveness.

Based on some opinions it can be concluded that the outsourcing worker welfare program is a reward other than salary or wages (direct compensation), or in the form of indirect compensation (indirect compensation or also called benefits) given to workers and the rewards are not based on workers' performance but based on membership as part of the organization and its existence as a whole human being that is useful to meet the needs of workers outside of wages or salaries.

3. Providing Compensation for Outsourcing Workers

According to Hasibuan compensation is all income in the form of money, or goods, directly or indirectly received by employees in return for services provided to the company, and compensation (direct) is the right for employees and the company's obligation to pay (Malayu, 2007). Therefore, compensation can be divided into two, namely; First, direct compensation (direct compensation), which is something that is the right of workers and becomes the obligation of the company. This compensation is in the form of salary, wages, and incentive pay. And second, indirect compensation (indirect compensation/employee welfare). This compensation is an additional or complementary compensation (financial or non-financial) because it is not directly related to work performance and is given based on company policy towards all employees in an effort to improve their welfare, this compensation is commonly referred to as a welfare program. Such as holiday allowances, pensions, official clothing, cafeterias, prayer rooms, sports, field trips and others.

4. Outsourcing Worker Welfare Program in Economic Law Perspective

Workers are the most important source of value (assets), therefore workers must be seen as whole people who have a variety of complex needs. The hierarchy of needs theory developed by Abraham Maslow states that humans divide the level of needs into five general categories.

The effect of the law on the economy, especially regarding the welfare of outsourced workers in increasing the income of workers in everyday life. According to Sunaryati Hartono economic law is the overall rules and legal rulings that specifically regulate the activities and economic life of Indonesia. Just as in economics which distinguishes between macro and micro-economics, economic law is also different from business law. Economic law is defined as the overall regulations, court decisions, and customary law relating to the development of macro-economic life. Whereas business law is all regulations, court decisions and customary law relating to the businesses of microeconomic actors (Rizal, 2011).

According to Saleh (1990), law and economics are two sub-systems of a social system that interact with one another. The interaction between the two social sub-systems will be obvious if we approach the study of law and society. In this approach, the law is not only seen as a norm that is autonomous, but also as a social institution that is obviously closely related to various social aspects in society. That means the task of economic law is to always maintain and enforce the rules of security so that economic activity does not sacrifice the rights and interests of the weak. Only in the same way does the law still have a role in economic matters.

For an economist, the source of law is the economic needs in society. Because the existence of economic needs will lead to competition between members of the community itself, which eventually competition, if not regulated, can cause chaos. The law in addition to providing certainty in business, also to achieve a sense of justice for the perpetrators of economic acts wherever they are. Economic actors in question are entrepreneurs and workers. According to Asshiddiqie (2010) law cannot develop without the support of a growing economy. However, the economy will not grow and develop if the law is unable to guarantee certain justice and fair certainty. Thus the law can also function and function as a means of driving and directing to achieve the goals of society in the economic field.

Conclusion

Legal protection for outsourced workers needs to be improved including law enforcement with very low integrity in the event of violations committed by employers or companies against outsourced workers which in such circumstances would be very detrimental to workers, especially on the economic side. Providing protection in order to realize welfare for outsourced workers, a welfare program can be applied, because what is meant by the employee welfare program is compensation outside of salary or wages (direct compensation), or in the form of indirect compensation (indirect compensation or also referred to as benefits) given to workers and the gift is not based on the performance of workers but is based on membership as part of the organization and its existence as a whole person that is useful to meet the needs of workers outside of wages or salaries. The main objective of the existence of economic law so that economic growth continues is expected to change or transformation of economic structure.

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