

PROTECTION OF OFFICE ADMINISTRATIVE RIGHTS WITH CONTRACT WORK BASED ON JOB CREATION LAW NUMBER 11 OF 2022

Cut Nurita¹, Diana Lubis², Rini Novita³, Tengku Mabar Ali⁴

^{1,2,3}Darma Agung University, Medan

⁴Indonesian Community Development University

Email : cutnurita12@gmail.com

ARTICLE INFO

History of the article:

Received: 08/10/2024

Corrected: 13/10/2024

Accepted : 30/10/2024

Published: 30/10/2024

Keywords:

*Legal Protection,
Outsourcing, Work
Agreement*

ABSTRACT

Outsourcing workers have a very important role to support activities within the company. The formulation of the problem in this is how the legal arrangements for outsourced workers (outsourcing) for office administration in Indonesia, how is the legal protection for outsourced workers (outsourcing) according to Law Number 13 of 2003, what are the obstacles and efforts in legal protection for outsourced workers (outsourcing) and how to solve it. The results of the study show that the obstacle to legal protection for outsourced workers is the unfairness of wages for workers who are differentiated by the type of work the worker does. Efforts made by outsourced workers can be extended according to the performance of the workers themselves. Workers who are still able to work can extend the work contract from the start again

INTRODUCTION

The implementation of national development is expected to create a prosperous, just and prosperous society equally both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Of course, in national development, the position of workers has a very important role and position as actors in realizing development goals, so that workers have human rights towards workers and their families in accordance with human dignity and worth.

Labor in Article 1 number 2 of Law Number 13 of 2003 is "every person who is able to do work to produce goods and/or services either to meet their own needs or for the community." Labor (Human Resources) is

an aspect that influences all economic developments in the world, especially in Indonesia. Labor is inseparable from development, labor is inseparable from life, and labor is the main pillar of a nation's economy, in addition to natural resources and technology.

The right to obtain employment is a basic right that every citizen must obtain in accordance with the provisions of Article 27 paragraph (2) of the Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), which states: "every citizen has the right to work and a decent living for humanity."

One form of legal protection and certainty, particularly for workers, is through the implementation of employment contracts. An employment contract is an agreement between an employer and employee that establishes the starting point for an employment relationship. It contains the terms and conditions of employment as stipulated in Law Number 13 of 2003 concerning Manpower.

An employment relationship is a relationship between an entrepreneur and an employee based on a work agreement which has the elements of work, wages and orders. Meanwhile, a work agreement is an agreement made between a worker and an entrepreneur or employer which contains work conditions, rights and obligations of both parties.

Imam Soepomo in Lalu Husni, explains that an employment agreement is "an agreement in which the first party (the worker) binds himself to work by receiving wages from the second party, namely the employer, and the employer binds himself to employ the worker by paying wages."

The existence of an employment agreement in an employment relationship is very important, Aloysius Uwiyono explains that: "... the holding of an employment agreement, then an employment relationship is

established between the employer and the employee concerned, and then the provisions regarding labor law will apply, including regarding work conditions, social security, occupational health and safety, dispute resolution and termination of employment."

An employment agreement between an employee and an employer must contain and accommodate the rights and obligations of both employees and employers reciprocally. Therefore, in carrying out an employment relationship, both employees and employers are bound by the substance of the agreement as outlined in the employment agreement and the provisions stipulated in labor law.

An employment relationship or legal relationship between a worker and an employer occurs because of an employment agreement between the employer and the worker/laborer. As formulated in Article 50 of the Employment Law, it is stipulated that an employment relationship must be based on an employment agreement. According to the provisions of Article 51 paragraph (1), which states: "Employment Agreements are made in writing or orally." Thus, an employment relationship can be based on an employment agreement made in writing or orally. This means that there is no requirement to make a written employment agreement.

An employment agreement, as a form of agreement with special characteristics, is, in principle, a contract. Therefore, as long as it concerns general provisions, general provisions apply to employment agreements, such as those concerning the validity of the agreement, the subject and object of the agreement.

Like agreements in general, the creation and implementation of an employment agreement must fulfill the requirements for a valid agreement as regulated in Article 1320 of the Civil Code. The Employment Law requires that an employment agreement is valid as long as it does not

conflict with the elements regulated in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Employment.

Workers' rights, namely obtaining decent work for humans as recognized in the 1945 Constitution of the Republic of Indonesia (UUD 1945) are the constitutional rights of citizens (the citizens' constitutional rights) which in this case means that the state or government issues policies, both in the form of laws (legislative policy) and implementing regulations (bureaucracy policy).

Everyone who works certainly hopes to become a permanent employee and receive a pension upon completion. However, the reality is that not everyone can become a permanent employee. This is because the rate of population growth entering the working age is not keeping pace with the availability of jobs that can provide permanent employment for those in need.

RESEARCH METHODS

Research is an effort or work to search again, carried out using a specific method in a careful, systematic, and perfect manner regarding the problem being studied, so that it can be used to solve or answer the problem. Legal research is essentially a scientific activity based on certain methods, systematics, and thinking that aims to study one or several specific legal phenomena through analysis. Therefore, it is also necessary to conduct an in-depth examination of the legal facts arising from these phenomena.

Judging from its nature, this research is descriptive analysis, which describes the facts studied, which are then connected to laws and regulations, theories, and opinions of legal experts. Descriptive analysis, namely a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as

they are without conducting analysis and making conclusions that apply to the general public.

The approach used in this research is a normative juridical approach, namely an approach that uses the main legal materials as the basis for analysis by examining laws and regulations, theories, concepts, legal principles and laws and regulations related to this research.

The approach method used in this research can also be called a library approach, namely by studying books, laws and other documents related to this research. In addition, this research also uses empirical juridical, namely conducting interviews with Mr.Riyadhi, PT supervisory staff.Bravo, Mighty Knight of Medan.

RESULTS AND DISCUSSION

According to Article 50 of Law Number 13 of 2003 concerning Manpower, an employment relationship occurs due to an employment agreement between the employer and the worker/laborer. According to Articles 51 and 52 of Law Number 13 of 2003 concerning Manpower, an employment agreement can be made in writing or verbally. The employment agreement (written or verbal) must be made based on: the agreement of both parties, the ability or competence to perform legal acts, the existence of the agreed work, the agreed work does not conflict with public order, morality, and applicable laws and regulations.

Employment contracts entered into without agreement or if one or both parties are legally incompetent can be cancelled. They are even automatically void if they do not specify the work or if the work is contrary to public order, morality, or statutory regulations. Fixed-Term Employment Agreements (PKWT) must be in writing. Otherwise, they are considered Indefinite-Term Employment Agreements (PKWTT).

In accordance with Article 57 paragraph (1) and paragraph (2) of Law Number 13 of 2003 concerning Manpower, even though PKWTT can be made verbally, employers must still make an appointment letter for their workers. According to Article 63 of Law Number 13 of 2003 concerning Manpower, the appointment letter must contain at least the following information: name and address of the worker/laborer, start date of work, type of work, amount of wages.

Oral employment agreements are valid, but written agreements minimize business risks. A working relationship between a company and an employee only arises after an employment agreement is signed. Employment agreements can be written or verbal, but employers prefer written agreements, as verbal agreements pose various potential risks.

Based on this, an oral employment agreement is valid, and as a result of this agreement, a legal relationship arises between the employee and the employer, giving rise to rights and obligations. The rights and obligations of each party must be balanced. The employee's rights are the employer's obligations, and conversely, the employer's rights are the employee's obligations.

Rights are something that must be received by a person without any conditions that must be met so that it can give rise to a belief that it must be maintained and owned in its entirety, because by obtaining rights it can be used to improve the standard of living of a person and his family.

One of the rights of workers is the right to receive wages. Wages are payments received in return from employers to workers for work or services performed. Therefore, after diligently performing labor that requires energy and thought, workers are entitled to compensation in the form of wages. It is the employer's obligation to provide adequate wages for their work performance. Although sometimes these wages are

insufficient to meet needs, tasks must still be carried out as a consequence of a worker's obligation to carry out the work that was previously agreed upon.

According to an employment agreement, an employee is a party who binds himself to perform work under the orders of another party (the employer) for a specified period of time in exchange for wages. This agreement creates reciprocal rights and obligations between the employee and the employer.

Employers have the right to demand that employees perform their work properly in accordance with what was agreed upon in the previous employment agreement. Furthermore, employers also have the right to employ workers in jobs that align with their skills.

In addition to obligations, workers also have rights that are the employer's obligation to fulfill. A worker can sue an employer if the employer does not fulfill what has been agreed, such as the right to receive wages, the right to receive compensation for accidents, and others. Workers' rights are normative rights of workers which are basic rights in employment relations that are protected and guaranteed by applicable laws and regulations. Included in normative workers' rights are rights that are also regulated in the Employment Agreement, Company Regulations, Collective Labor Agreements or Collective Labor Agreements.

Workers and employers are two inseparable factors. Only when these two factors synergize will a company function well. Conversely, however, workers without companies will only lead to unemployment. On the other hand, employers, as company owners, are in a strong position because they are supported by substantial capital, while workers are in a weak position because they only have their labor and expertise. This is often exploited by unscrupulous employers to abuse workers in obtaining their

rights, such as the right to a decent wage, the right to rest/leave, the right to leave, the right to social security/employment insurance, and the right to severance pay.

The government is obligated to provide protection for all legal relationships within the community. Hence, the term "legal protection" emerged and developed. The term "worker" is more often associated with the term "employee," used by employers, and is very popular in employment or labor-related scholarship.

If a company does not use a written agreement made with the worker, the company or employer can be sued to continue providing work to the worker/laborer so that the employment relationship changes into an employment relationship for an indefinite period (PKWTT) known as a permanent worker/laborer. This is explained in Article 57 paragraphs (1) and (2) of the Manpower Law. The employment agreement must be made in writing and must be agreed upon by both parties.

The process of forming an employment agreement requires certain conditions, where these certain conditions must follow the regulations and/or statutory rules in accordance with the procedures for making a mutually beneficial contract agreement for employers and workers, workers will still have the right to receive decent wages and living without differentiating gender, religion, ethnicity, race (SARA) in accordance with the interests and abilities of the workers or workers concerned including equal treatment for people with disabilities (disabilities) which is the meaning of legal protection for workers. Shelter, protective measures, assistance and care are important aspects in the protection of workers in Indonesia.

The real reality is that outsourcing workers creates uncertainty in employment relationships with employers or companies. This can be seen

from the provisions of Article 66 paragraph (2) a, which is not in line or harmonious with the wording of Article 1 number 15 of Law Number 13 of 2003 concerning Manpower. If discussed or viewed through the theory of legal protection, if one party is weaker or not equal to the other party, then the party in the weak position receives protection from the state or government through legal instruments in the law.

The disharmony of the two articles can be seen as follows. Referring to Article 66 paragraph (2) letter a of Law Number 13 of 2003, it states that the employment relationship between workers/laborers and the company providing worker/labor services or outsourcing companies. In fact, the workers/laborers carry out the work given and ordered by the company providing the work as written in Article 1 number 15 of Law Number 13 of 2003. Furthermore, the legal relationship of workers/laborers can be transferred from the company providing worker/labor services to the company providing the work, this is in accordance with what is regulated in Article 65 paragraph (4) and Article 66 paragraph (8) of Law Number 13 of 2003. Thus, it can be seen that the position of outsourcing workers is on the weak side with the company or entrepreneur. So in this case, it is clear that it has not provided legal protection for outsourcing workers.

Legal uncertainty in this case can be seen in Article 65 paragraph (2) of Law Number 13 of 2003 which gives rise to multiple interpretations, namely in this article it explains that the work that is handed over is a supporting activity for the company as a whole. Where in Article 6 paragraph (1) c of the Minister of Manpower and Transmigration Decree No. Kep 220/Men/X/2004 it explains that supporting activities are activities that can support and provide smooth implementation of work in accordance with the work flow of the company that provides the work. The same thing can also be seen in Article 66 paragraph (1) namely that

workers/laborers may not carry out work related to main activities or activities related to the production process, except for "supporting service" work activities or activities that are not directly related to production activities or processes.

There is a lack of clarity in the boundaries between a company's core activities and non-core activities, or what are referred to as supporting services, within an employer. This ambiguity can be seen in Articles 65 and 66 of Law Number 13 of 2003 and its explanations, as well as in Minister of Manpower and Transmigration Decree No. Kep. 100/Men/VI/2004. This ambiguity refers to the lack of details on which activities or jobs can be outsourced. This can lead to differing interpretations.

This lack of clarity regarding the types of work activities that can be outsourced, leading to multiple interpretations, has led to legal uncertainty and has become a tool for companies to exploit to hire outsourced workers according to their own preferences. This has blurred the concept of outsourced contract workers, which is actually quite different.

In this case, there is a conflict of regulatory norms or inconsistency in regulations regarding the form of outsourcing company business entities. Where in Law Number 13 of 2003 requires a legal entity, while the Minister of Manpower and Transmigration Decree No. 220/MEN/X/2004 allows the form of outsourcing companies that are not or not legal entities that do not have binding force or do not have legal validity. However, of course the provisions according to Law Number 13 of 2003 can apply because the Law is a legal norm of a higher level, namely that outsourcing companies must be legal entities.

If an outsourcing company employs workers under a fixed-term employment contract (PKWT), the employment agreement must include provisions for the transfer of workers' rights upon a change in the

outsourcing company, as long as the work remains in place. This is in accordance with the mandate of Constitutional Court Decision No. 27/PUU-IX/2011 concerning the judicial review of Articles 59, 64, 65, and 66 of the Manpower Law.

Previously, the Employment Law regulated the types of activities that outsourced workers could perform. For example, they were not allowed to carry out core activities or activities directly related to the production process; outsourced workers were only allowed to carry out supporting activities or activities not directly related to the production process. However, the Job Creation Law removes these restrictions.

The Job Creation Law eliminates the differences in regulations regarding contractual agreements or labor service providers. Worker protection, wages and welfare, working conditions, and any disputes arising will be implemented in accordance with statutory provisions and are the responsibility of the outsourcing company. Most importantly, for workers employed under a fixed-term contract (PKWT), the employment agreement must stipulate the transfer of protection of their rights if the outsourcing company changes and as long as the work remains in place.

Given that the provisions concerning work contracting agreements and labor service providers in the Manpower Law have been repealed by the Job Creation Law, existing laws and regulations containing these provisions should no longer apply. The Job Creation Law also removes the provision in the Manpower Law that allowed outsourced workers to transfer their employment relationship to the employer company (becoming permanent workers/PKWTT) if the outsourcing requirements are not met. Therefore, there are no longer any restrictions on core and supporting business activities. Outsourced workers can be involved in the company's core (main) or production work.

Employment/labor issues have been persistent throughout history, from protection, wages, welfare, industrial relations disputes, to development and supervision of labor. This is largely due to the government's systemic weaknesses in implementing labor laws, even leading to irregularities. Furthermore, coordination and performance between government agencies are suboptimal and remain a serious concern.

Companies engaged in business require innovation that can support their business activities, one of which is by using outsourcing workers who can be profitable in business, especially in the company's financial sector. In 1998, banking companies began to use outsourced workers in many primary and supporting jobs. However, banking companies have forgotten the principle of prudence that should be implemented.⁷ By employing outsourced workers in their primary activities or jobs, problems began to arise. Bank Indonesia began to act by issuing a circular regarding the use of outsourced workers in banking companies, where banking companies are only allowed to employ outsourced workers for supporting activities only, not for the company's primary activities.

CONCLUSION

Legal regulations for outsourced workers (*outsourcing*) office administration staff in Indonesia are regulated in Law Number 11 of 2020 concerning Job Creation changed the term "outsourcing" from handing over part of a job to another company to "outsourcing." The Job Creation Law eliminates restrictions on the types of work that can be outsourced. The Job Creation Law amends the provisions on outsourcing by removing Articles 64 and 65 and amending Article 66 of the Manpower Law.

Legal protection for workers (*outsourcing*) according to Law Number 13 of 2003 Legal certainty can be seen in two forms: legal



certainty in preventive protection and legal certainty in repressive protection. Legal certainty in preventive protection includes certainty of the employment relationship, namely regarding the employment status between the outsourced worker and the outsourcing company and the employer's request. Then, certainty of the type of work the outsourced worker does, and certainty of the legal entity form of the outsourcing company.

Barriers to legal protection for workers *outsourcing* (outsourcing) is The unfairness of wages given to workers is differentiated based on the type of work they do. PT. Bravo Satria Perkasa Medan provides wages in accordance with the North Sumatra Provincial Minimum Wage plus overtime pay provided by the North Sumatra Regional Revenue Agency. This wage is indeed in accordance with Law Number 13 of 2003. However, workers still feel that the wages given are not sufficient even though they are both outsourced workers. Efforts made are that outsourced workers can be extended according to their own performance. Workers who are still able to work can extend their work contracts from the beginning again.

Library List

Gultom Maidin, Legal Protection for Children in the Judicial System

Child Crime in Indonesia, Bandung; Refika Aditama, p. 11 (2008)

Soetedjo, Wagiaty, Criminal Law, Jakarta; Refika Aditama, p. 2 (2012)

Article 7 Paragraph (1), Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Criminal System.

Article 1 number 7, Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Criminal System.

Waluyadi, Child Protection Law, Bandung; Mandar Maju, p. 12 (2010)





Marlina, Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and

Restorative Justice, Bandung; Refika Aditama, p. 23 (2009)

Article 8, Law of the Republic of Indonesia Number 11 of 2012 concerning Juvenile Criminal System.

Article 9 Paragraph (2) of the Republic of Indonesia Law Number 11 of 2012 on the Juvenile Criminal System.

Ediwarman, Legal Research Methodology, Medan; Sofmedia, p. 25 (2015)

Utomo, Setyo, The Penalty System in Restorative Criminal Law

Justice, Justitia Tribune, Faculty of Law, Suryakencana University, Cianjur, Vol.

V No. 01, 2016, p. 86

Effendy, Marwan, Legal Theory, from a policy perspective, comparison and *harmonization of criminal law*, Jakarta; Press Reference, p. 85 (2014)

Ibid, p. 86

Supeno, Hadi, Criminalization of Children. Jakarta; Gramedia Pustaka, p. 203 (2015)

Ibid, p. 165

Purba, Jonlar, Law Enforcement Against Minor Crimes

With Restorative Justice, Jakarta; Permata Aksara, p. 61 (2017)

See, Article 6 of the Republic of Indonesia Law Number 11 of 2012 on the Juvenile Criminal System.

[17] Marlina, Op.cit, p. 168

[18] See Article 2 of the Republic of Indonesia Law Number 23 of 2002 on Youth Protection.

See Article 1 Number 7 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal System.

Soedtejo, Wagiati, Op.cit, p. 130



Wahyudi, Setya, Implementation of the Diversion Idea in Reforming the Justice System

Child Criminalization in Indonesia, Yogyakarta; Genta Publishing, pp. 62-63 (2011)

Interview with the Assistant Investigator at the Medan Regional Police Women and Youth Service Unit, on March 15, 2020.

Interview with the Assistant Investigator at the Medan Regional Police Women and Youth Service Unit, on March 15, 2020.

Makarao, Taufik, Legal Review on the Implementation of Restorative Justice

In the Settlement of Criminal Acts Committed by Children, Jakarta; BPHN, pp. 114-118 (2013)

Marlina, Op.cit , p. 207

See Article 10 Paragraphs (1) and (2) of the Republic of Indonesia Law

Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Priyatno, Dwidja, The Face of Criminal Law, Principles and Developments, Bekasi;

Gramata Publishing, p. 308 (2012)

Eliza, Pocut et. al, Final Report and Legal Evaluation in the Framework of

Building a Juvenile Criminal Justice System, Jakarta; Legal Development Agency.

National Law and Human Rights, p. 138 (2016)

Nurul Ichsan, R., & Setiadi, D. (2022). SOCIALIZATION OF STATE CIVIL APPARATUS EMPOWERMENT TO IMPROVE THE QUALITY OF TOURISM SERVICES IN THE MEDAN CITY TOURISM OFFICE. *Jurnal PKM Hablum Minannas*, 1(1), 19-24. Retrieved from <http://ejournal.steitholabulilmi.ac.id/index.php/jhm/article/view/113>

- Nasution, L., & Ichsan, RN (2022). The Influence of Budget on Managerial Performance at PT. Duta Marga Lestarindo. *Journal of Education, Humanities and Social Sciences (JEHSS)*, 4(3), 1274-1280.
- Ichsan, RN, & Nasution, L. (2022). The Influence of Service Quality and Price on Customer Satisfaction at PT. Kurnia Aneka Gemilang Tanjung Morawa. *Journal of Education, Humanities and Social Sciences (JEHSS)*, 4(3), 1281-1288.
- Ichsan, RN, Marzuki, M., & Purba, N. . (2022). LEGAL ANALYSIS OF CRIMINAL PUNISHMENT AGAINST PERPETRATORS OF THE CRIMINAL ACT OF FALSEING ACADEMIC DEGREES (Study of Tanjung Pinang District Court Decision Number 114/Pid.Sus/2021/PN.Tpg). *METADATA Scientific Journal*, 4(3), 285-300. Retrieved from <http://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/237>
- Ichsan, R., Panggabean, N., Syahbudi, M., & Nasution, L. (2022). CREATIVE ECONOMY-BASED INNOVATION DEVELOPMENT STRATEGY. *Darma Agung Journal*, 30(3), 865-882. doi:10.46930/ojsuda.v30i3.2333
- Reza Nurul Ichsan, Lukman Nasution. (2022). THE INFLUENCE OF WORK PROFESSIONALISM ON WORK PERFORMANCE AT THE MEDAN CITY COOPERATIVE AND SME OFFICE. *JOURNAL OF SOCIAL HUMANITIES EDUCATION RESEARCH*, 7(2), 162-166. <https://doi.org/10.32696/jp2sh.v7i2.1607>
- Reza Nurul Ichsan, Lukman Nasution (2022). Human Resources Management Development Strategy at Microfinance Institutions in North Sumatra, 23(191), 10.47750/QAS/23.191.20. https://admin.calitatea.ro/assets/Documents/Archive/PDF/20221109_b33f84d5-5e1c-45ef-bccc-966dabd7f3ae.pdf
- Jonner Lumban Gaol, Reza Nurul Ichsan (2022). Traditional Market Management Model Based on Digital Marketing, 32 (191). 10.47750/QAS/23.191.27. https://admin.calitatea.ro/assets/Documents/Archive/PDF/20221109_badab131-f0a9-4b28-86e3-4d41e2aef5be.pdf
- Pajrin, ZN, Syamsuri, AR, Nasution, L., & Ichsan, RN (2022). The Influence of the Wage System, Work Environment and Welfare Benefits on Employee Work Productivity of PT. Samawood Utama Work Industries Tanjung Morawa, Deli Serdang, North Sumatra. *International Journal of Business, Technology and Organizational Behavior (IJBTOB)*, 2(6), 646-656.

- Nasution, L., & Ichsan, RN (2022). PRACTICAL ADMINISTRATION UNDERSTANDING TRAINING IN ORGANIZATIONAL DEVELOPMENT. *Jurnal PKM Hablum Minannas*, 1(2), 31-36.
- Nst, VFH, Gaol, JL, & Lubis, MA (2022). THE EFFECT OF WORK ETHICS ON SERVICE QUALITY THROUGH WORK PROFESSIONALISM AT CV. SENTOSA DELI MANDIRI MEDAN. *PROINTEGRITA JOURNAL*, 6(3), 201-213.
- Nuritta, C., Lubis, D., Novita, R., & Nst, VFH (2022). SOCIALIZATION OF PREVENTION OF IMPRESSIVE ACTS AMONG MIDDLE AGE CHILDREN IN BANDAR RAHMAT VILLAGE, TANJUNG TIRAM DISTRICT, BATUBARA REGENCY. *Jurnal PKM Hablum Minannas*, 1(2), 42-46.