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Implementation on Transfer of Undertaking Protection of Employment to Outsourcing Labors in Semarang Indonesia: A Legal Approach

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Abstract

Assurance of proper and good job is one of indicators of the success of the State to run the constitution in accordance with the mandate of the Constitution of the Republic of Indonesia. In the era of free trade and economic society, work is a problem that is less of a concern for the state because there is no comprehensive protection. Even in the year 2003 was born a law on employment, at the beginning of the law establishment, a lot of optimism that of the Indonesian population especially workers who have been unprotected related to the rights of workers. But over time, many problems arise in the community one of them is the guarantee of continued work for outsourcing workers, so a thorough legal review of employment protection guarantees is shifted to its work.

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INTRODUCTION

THE recent outsourcing words are increasingly being heard in the world of employment. Recently thousands of workers through trade unions demonstrated on a large scale in which one of the demands of these workers was to abolish the outsourced system that was judged to have provided no guarantee and welfare for the workers. It is constitutionally justified in accordance with the purposes of trade unions, federations and confederations of trade unions namely providing protection, defense of rights and interests, and improving the welfare of workers and families. This demonstration becomes a problem that must be resolved immediately, if left unchecked will affect the investment climate in Indonesia. It is even possible that some companies are threatened to close their businesses due to the unfulfilled problems with this workforce. Even, Khairani (2015) described that the presence of employment law is expected to answer the needs of industrial people, in fact that government found the difficulty in creating an accommodative employment law which can be accepted by all stakeholders

involved especially the workers and employers in the process of forming the employment regulation. Freeman (2015) stated that developing countries, like advanced countries, evince substantial differences in labor institutions that could impact economic outcomes and growth.

What workers usually do is to demonstrate, a demonstration is an act by a worker or a union by shouting a yell or writing, posters to be seen by other workers. In addition there is also a walk with a poster around the company or sitting on the company page with a goal so that employers can cancel or change policies that have been issued, which by the workers considered harm to workers/labors but this activity does not stop the production. However, this is of course to be avoided considering the Government of Indonesia itself wishes to invite foreign investors to invest their capital in Indonesia. In article 64 of Law No. 13 of 2003 concerning Manpower (Manpower Act), it is stated that: "The Company may deliver part of the work to other companies through employment contracts or the provision of services made in writing".

The Manpower Act does not provide a definition of what is meant by outsourcing, but from this sense outsourcing or outsourcing can be interpreted as the transfer or transfer of some business process to a service provider or other party. Basically if run well then the implementation of this outsourcing system can have a positive impact for both employers, workers, even for the government itself. Here are the positive impacts of implementing this outsourcing system: (1) for the Entrepreneur, can improve the company's focus; better capability utilization; risk sharing in labor turn over; cost efficiency, (2) for people and workers, encouraging supporting economic activities in the community; reduce unemployment, prevent urbanization, and (3) for the Government, encouraging national economic growth; and development of small, medium, and cooperative businesses.

Behind the positive impact, it turns out many problems related to this outsourcing workforce. Here are some of the problems that arise as a result of this outsourced workforce: (1) unpredictability of employment status, (2) threat of Termination of Employment for the worker, (3) Absence of career certainty, and (4) Labor exploitation.

Article 59 of the Manpower Law states that "Specific Working Agreement" may be made only for certain occupations which by type and nature or activity of the work shall be completed within a certain period of time, namely:

1. Jobs that are completed or temporarily completed;
2. Work which is expected to be completed in the not too distant and for a period of 3 (three) years.
3. Seasonal work; or
4. Jobs associated with new products, new activities, or additional products that are still in trial or exploration.

In paragraph (2) it is stipulated that a certain time work agreement may not be held for a fixed occupation. Article 65 Paragraph (2) states that

work that may be submitted to another company shall meet the following conditions:

1. Done separately from the main activities;
2. Conducted by direct or indirect command from the employer;
3. It is a supporting activity of the company as a whole; and
4. Does not impede the production process directly

But in reality, some of these rules have not been felt enough to solve the various problems that exist. This issue has even been submitted to the Constitutional Court and as a result the Constitutional Court has issued the Decision of the Constitutional Court No 27/PUU-IX/2011 where in essence the decree states that: "The phrase of a specified employment agreement" in article 65 (7) and the phrase "Employment Agreement for a Certain Time" in article 66 paragraph (2) sub-paragraph b of the Manpower Law:

1. is contradictory to the 1945 Constitution insofar as in the employment agreement it is not implied that there is a transfer of rights protection for workers whose work remains in place, in the event of a substitution of a company that executes part of the wholesale work of another company or service provider
2. have no binding legal force as long as the work agreement is not hinted that there is a transfer of rights protection for the worker whose work object still exists, although there is a change of company that executes part of the wholesale job from another company or service provider company

It should be noted that the Constitutional Court's decision does not deprive the applicable provisions of the Manpower Law regulating outsourcing, but only limiting the interests of these outsourced workers to be protected. This Constitutional Court Decision has also been followed up by the Ministry of Manpower and Transmigration by issuing Letter Number B.31 PHIJKS/I/2012 concerning The Implementation of Constitutional Court Decision No. 27/PUU-IX/2011.

Thus, the Constitutional Court has decided that every outsourced worker should get the same rights as a non-outsourced worker. In addition, the outsourcing company shall take into account the existing working period as a reference for determining wages and other rights in the relevant outsourcing company, including the occurrence of transfers to other recipient companies. In fact, Sitompul and Agus (2015) emphasized that the position of employers and workers is not the same, and juridically the position of labor is free, but economically the position of labor is not free especially for unskilled labor workers rely solely on the energy attached to him to carry out the work.

If viewed in terms of rules, then the rule should have been able to protect the outsourcing workers and PKWT. But in its development, many parties still refused the application of outsourcing system and PKWT this. It should be realized that a law/rule that is made must be implemented and requires a supervisory system. Therefore, the rules should be able to protect the interests of both parties of employers and workers. In addition to this, a

strong supervisory system is required so that the entrepreneurs of these services are not arbitrary and it is certain that the company has complied with the law and the established rules. With the current supervisory system that is still considered weak, many of these outsourcing service providers that do not comply with the law or rules that have been established, as a result the workers do not get adequate protection. Governments should be firm against outsourcing service providers that are still unlawful. If necessary, the Government is expected to revoke the company's license.

In addition to this, the government is also expected to socialize its policies to both workers and employers so that they can understand the rights and obligations of each party. The participation of the public in overseeing these "rogue" companies is also urgently needed and the Government is unlikely to be able to properly supervise the need for community participation to support this oversight process. Finally, an independent complaints body is required where the community or workers who feel they are not entitled to the right can report to this agency for follow-up.

Outsourced workers or workers employed by workers' placement service providers are legally protected. Some important things, for example, the certainty of employment relationship, welfare pay has been regulated in Law 13/2003 on Manpower (Manpower Act). In the Manpower Act it is mentioned that private service providers must be legal entities and have written permission from the minister of labor or appointed officials. Workers from a service provider company may not be used by a service user to work on the principal activities or activities directly related to the production process. Workers from a service provider company may only work for supporting services or activities that are not directly related to the production process. The service provider must meet the following requirements:

1. There is a clear working relationship between workers and labor service provider companies.
2. Working agreements applicable in the employment relationship as referred to in letter a may be in the form of a employment agreement for a certain time (PKWT) that meets the applicable requirements or an uncertain time employment agreement (PKWTT) made in writing and signed by both parties.
3. The protection of wages and welfare, the terms of employment, and the disputes arising are the responsibility of the enterprise service provider; and
4. Agreement between company of service user of labor and other company acting as provider of labor services is made in writing.

If there is a violation of these provisions then by law the status of employment relationship between labor that had occurred between the company providers of labor services and workers turned into a working relationship between workers and employer companies (companies where workers work). Furthermore, the Constitutional Court has provided a

meaningful verdict relating to the protection of outsourced workers. Considering the decision of the Constitutional Court No. 27/PUU-IX/2011, the entrepreneur who will enter into agreement with the employment agreement for a certain time (PKWT) system shall stipulate the terms of guarantee of the transfer of right protection as referred to the Constitutional Court Decision at the next winning bidder. In this way, outsourced workers have a guarantee of continuity of employment at the expiry of the charter agreement and the guarantee of wage receipts that are not lower than the previous company. Responding of Constitutional Court Decision (No MK. 27/PUU-IX/2011), the Ministry of Manpower issued Letter No. B.31/PHIJSK/I/2012 affirmed the existence of the Constitutional Court's decision.

WORKING RELATIONSHIP IN THE CONTEXT OF OUTSOURCING LABORS IN INDONESIA

Working Relationship: General Principles

Working relationship is a legal relationship conducted by at least two legal subjects on a job. The legal subject that performs the employment relationship is the employer with the worker/labor. Work relation is at the core of industrial relations. Based on Law No. 13 of 2003 Article 1 point 15, is a working relationship is a relationship between employers and workers/labors based on employment agreements, which have elements of work, wages and orders.

From the definition of working relationship (work agreement) has three elements, namely as follows:

1) There is work: in an employment agreement there must be a contracted work (the object of the covenant) and the work must be done solely by the worker/labor. In general, work is all actions that must be done by workers/labors for the interests of employers in accordance with the contents of the employment agreement.
2) There is wage: wages must be in every working relationship. Wages are the right of workers to be received and expressed in cash or other forms in return for employers or employers to workers or labors who are established and paid under an agreement, agreement or law, including benefits for workers and her family for a job and/or service that has been done. Thus, the bottom line of wages is the rewards of achievement paid by the employer to the worker/labor for the work done by the worker/labor.
3) There is a command: The command is the most typical element of the employment relationship, meaning that the work done by the worker / labor is under the orders of the employer. In practice, elements of this

order for example in companies that have many workers/labors, namely the existence of rules of conduct that must be obeyed by workers/labors.

With the fulfillment of the three elements above, it is clear there is a good working relationship created in the form of written or verbal agreement.

Employment Agreement on Working Relationship

In the beginning, the work agreement is an agreement made by a prospective worker/labor with the entrepreneur in a mutually agreed term. The contents of the agreement include when workers begin to work and what to do, then the amount of wages to be received and other terms of work agreed upon. The employment relationship between the worker/labor and the employer consists of a permanent employment relationship with a non-permanent employment relationship. In a permanent employment relationship, the employment agreement between the worker/labor and the employer is based on an uncertain time employment agreement (PKWTT, *perjanjian kerja waktu tidak tertentu*), whereas in a non-permanent employment relationship between the worker/labor and the employer is based on a employment agreement for a certain time (PKWT, *perjanjian kerja waktu tertentu*).

a) Employment Agreement for a Certain Time (PKWT)

Employment Agreement for a Certain Time (PKWT) is an agreement between worker/employer and employer to establish a working relationship within a certain time or to be temporary (Article 1 point 1 of Minister of Manpower and Transmigration Decree No. KEP 100/MEN/VI/2004 regarding Provisions Implementation of Working Agreement of Certain Time (hereinafter referred to as Ministerial Decree 100/2004) Thus, the working agreement for a specified period of intention in the agreement has been established a period of time associated with the length of employment relationship between the worker/labor and the employer.

Understanding above in accordance with the opinion of Prof. Payaman Simanjuntak that the PKWT is an employment agreement between the worker/labor and the employer to carry out the employment which is predicted to be completed within a relatively short period of time with a maximum period of two years and may be renewed only once for the longest equal to the time of the first employment agreement, the entire (period) of the agreement shall not exceed three years. PKWT which is made for a period of one year and can only be extended once with a maximum extension period of one year. If the PKWT is made for one and a half years then it can be extended for half a year, so that it is a maximum of three years.

In Law No. 13 of 2003 on Manpower Article 56-63, has been strictly regulated regarding the employment agreement for a certain period of time. The employment agreement for a certain period of time is based on the period of time or the completion of a particular job. Thus it is clear that a PKWT

cannot be freely exercised by the parties, but must comply with the provisions stipulated in the Manpower Act.

The PKWT is a conditional agreement, that is (among others) required that it be written and made in the Indonesian language, with the threat of not being made in writing and not made in the Indonesian language shall be declared as PKWTT (Article 57 paragraph (2) Invite Employment). PKWT cannot be (required) a probation and if there is a probation in the PKWT, the clause is regarded as non-existent (null and void). Therefore, if the termination of employment relationship (PKWT) is due for reason of probation, the employer shall be deemed to terminate the employment relationship before the expiration of the employment agreement. Therefore, the employer may be liable to sanctions to pay compensation to the workers/labors at the wage of the worker/labor until the expiry of the term of the employment agreement.

PKWT cannot be held for permanent employment, but PKWT may only be made for certain occupations by type and nature or activity of work will be completed within a certain time (Article 59 paragraph (2) and (3) as follows:

a. Once-completed work (pack) or temporary work.
b. Jobs that are (time) of completion are estimated in the not too distant future and for a maximum of three years, especially for PKWT based on the completion of certain work packages.
c. Seasonal work.
d. Jobs associated with new products, new activities, or additional products (which are still in probation or exploration)

The PKWT, which is based on a once-completed work package or a temporary job and a work that is (time) of completion is estimated in the not-too-distant future is the PKWT which is based on the completion of certain work. In the PKWT which is based on the completion of the particular work, it is made only for a maximum of three years and in the agreement shall include the limit (package) of the work to the extent to which it is declared complete. If the particular contracted work can be completed earlier than promised, the PKWT is terminated or terminated by law. In other words, the agreement expires on its own accord upon completion of the work.

PKWT for seasonal work is a job which in practice depends on a particular season or weather that can only be done for one type of work during a particular season. Likewise for the work to be done to fulfill orders or specific targets are categorized as seasonal workers. But it can only be done for workers/labors who take additional work (Article 5). Employers who employ workers/labors on the basis of a seasonal PKWT, the execution is done by listing the names of workers/labors doing the work (Article 6).

PKWT for work relating to new products in new activities or additional products still in probation or explanation is further described in Kepmen 100/2004 that the said PKWT can only be made for a maximum period of two years and may be renewed for one time extension in one year.

PKWTs for work relating to new products, new activities, or supplemental products that are still within (time) of such experiments or explorations shall only be undertaken by workers/labors engaged in work outside of the activity or outside of the normal work of the work.

In addition to several types of PKWT above, in everyday practice also known as a freelance work agreement. Specific work that varies in time and volume of work and (pay) wages based on attendance, can be done through the daily work contract. Implementation of a daily contract is done if the worker/labor works less than 21 days (work) in one month.

However, if worker/labor continues to work more than 21 working days for three consecutive months or more, the status of the day-to-day work agreement is changed to PKWTT, the daily work contract is the exception (*lex specialis*) from the provisions (especially regarding) to the such period.

Employer who hire workers/labors on certain jobs on a daily basis, are required to enter into a written daily employment agreement. Such work agreement may be collectively made by listing workers who do the work, with contractual materials, containing at least: the name/address of the company or employer, the employer's name/address, type of work performed, the amount of wages and/or other benefits. The list of workers shall be submitted to the agency responsible for the manpower affairs of the district/municipality, no later than seven working days from employing the workers/labors.

The PKWT expires upon the expiration of the period specified in the working agreement clause. In the event that either party terminates the employment relationship prematurely or before the specific work package specified in the employment agreement completes or terminates the employment relationship not because the worker/labor dies and not because of the termination of the employment agreement (PKWT) based on the decision of the PPHI court or institution or not circumstances (certain) then the party terminating employment is required to pay the wage of the worker / labor until the expiry of the term of the employment agreement (Article 162 Manpower Act).

The Minister of Manpower and Transmigration may stipulate (with the decree of the Minister of Manpower and Transmigration) separately for specific business sectors and / or occupations, such as in the oil and gas sector regulated in a certain time minister's regulation on an oil and natural gas mining company.

b) Uncertain Time Employment Agreement (PKWTT)

Uncertain Time Employment Agreement (PKWTT) is an employment agreement between the worker/labor and the employer to establish a permanent employment relationship. In this PKWTT can be indicated the existence of a trial period (maximum of three months). Workers/labors employed on probation must be kept in compliance with the prevailing minimum wage standards. If PKWTT is made (meaning promised)

orally then the employer is obliged to make a letter of appointment (Article 63 paragraph (1) of the Manpower Law).

c) Collective Labor Agreement (PKB, *Perjanjian Kerja Bersama*)

Collective Labor Agreement (PKB) made by trade/labor unions or some trade unions/labor unions that have been registered with the agency responsible for manpower affairs with employers or some employers. In making a collective bargaining agreement there are several things that must be considered, among others, as follows:

1. In one company only a single collective agreement can be made applicable to all workers in the enterprise.
2. Unions / labor unions entitled to represent workers in the negotiation of collective bargaining with employers shall be members of more than 50% of the total number of workers/labors in the enterprise concerned.
3. Collective labor agreements shall not be contrary to the prevailing laws and regulations and if the contents of the collective agreement are contrary to the prevailing laws and regulations, such contradictory provisions shall be null and void and the applicable provisions of the law shall prevail.

d) Outsourcing Contractor Agreement (PPP, *Perjanjian Pemborong Pekerjaan*) and Service Provider

In Law No. 13 of 2003 on Manpower, there are two legal institutions in a newly recognized working relationship, namely Outsourcing Contractor and Workers Services Provider.

1. Outsourcing Contractor Agreement

The Manpower Act, specifically concerning the chartering agreement is only stipulated in two articles, in particular Articles 64 and 65. In the law there is no understanding of the contract of employment is an agreement between the contractor and the party that entitles the work which contains the rights and obligations of the party.

In this contracting agreement there are three related legal subjects: the contractor, the contractor, and the worker performing the work. The employment contract is a contract of delivery of a portion of the worker's employment from the employer to the other company (the contracting receiving company).

The main reason for the legal relationship in job procurement between employer and job/worker is the need of experts who can assist the implementation of work, on the contrary the implementation of work or charter providing services in accordance with the skills and skills required. Implementation in carrying out their professional duties both contractor and employer must always provide the provisions of applicable legislation. The Agreement is solely a press of purpose recognized by law. Approval is of fundamental importance in the business world, and is the basis of most transactions and so far involves labor.

Regarding the understanding of the agreement, Subekti (2005) argued that a covenant is an event in which a person promises to another or where the two men promise to do something. This Agreement publishes an engagement between the two people who made it. In its form, the agreement is a series of words containing promises or abilities that are spoken or written.

To be able to carry out the delivery of work (chartering/outsourcing) must meet the requirements:

(a) The PPP is made in writing.
(b) The work that may be submitted to the contracting company shall meet the following requirements:
    1) Done separately from the main activities.
    2) Conducted by direct or indirect orders from employers.
    3) It is a supporting activity of the company as a whole.
    4) Does not impede production process directly.
(c) The contracting receiving company must be a legal entity.

The employment relationship in the employment contract and the resulting legal consequences are as follows:

1) The employment relationship in the implementation of the work shall be stipulated in the written work agreement between the employer and the employed workers.
2) The employment relationship between the recipient company and the worker/labor employed may be based on an unspecified period of time (PKWTT) or a specified employment agreement (PKWT) if it meets the terms of a specified period of employment agreement.
3) Employment protection and work conditions for workers/labors in the employment company shall be at least equal to the work protection and working conditions of the employer or in accordance with the provisions of the law.
4) In the event that the provisions concerning the terms of employment that may be submitted are not fulfilled then by law the status of employment of the worker/labor and the contracting company shall be turned into a worker/labor's employment relationship with the employer.
5) In the case of employment relationships to employers, employment of workers/employers with employers may be based on certain time work agreements if they meet the requirements for a specified period of employment agreement.

2. Worker Services Provider

Under the terms of providing this service the employer shall not use the worker/labor to carry out the principal activities or activities directly related to the production process and shall only be used to carry out the activities of supporting services or activities not directly related to the production process.

The activities of supporting services or activities that are not directly related to the production process are those that relate outside the core business

of a company. These activities include cleaning service business, supporting service business in mining and petroleum, as well as business of transportation provider of worker/labor. To be a provider of workers/labors must meet the following requirements:

(a) There is a working relationship between workers/labors and workers/ labors' service companies.
(b) A work agreement between a worker/labor and a worker/labor service provider is a specified period of employment agreement made in writing and signed by both parties.
(c) The protection of wages and welfare, the terms of employment and disputes arising are the responsibility of the enterprise service provider.
(d) Agreement between enterprise of service user/worker and company of service provider of worker/labor can in writing.
(e) A provider of workers/labors is a legal entity and has the permission of the agency responsible for the manpower field.

Further, if the employer/service provider does not comply with the provisions of a, b, c, d, e above by law, according Sutedi (2009) the status of employment relationship between the worker/labor and the employer company (the user of the worker/labor), was failed.

LEGAL PROTECTION TO THE OUTSOURCING WORKERS IN INDONESIA AND GLOBAL CONTEXT

AFTER collapse of the Berlin Wall, the world became increasingly united in the absence of a power block that offset western powers. Since then, it can be said that a new international system emerged. The new system has its own unique logic, various rules, pressures and incentives labeled as globalization. Globalization is not only related to the economy but is related to other matters such as politics, law, environment and defense. The international system that replaced the cold war system after the fall of the Berlin Wall dominated all sectors of life (Pakpahan, and Damaihati 2010: 62).

The impact of globalization has not only changed technology but changed lifestyles, rooted in the world of business affecting the labor-power world, and affecting industrial relations systems. Since the emergence of globalization, the more open markets that make the domicile / capital to be flexible with the main characteristics of easy to move places, not only between cities, but between countries and even between continents. Similarly, what happens in the system of labor relations and industrial relations systems. With the strengthening of globalization, the system of working relationships was made to be flexible. This was done to overcome labor surplus and then introduced a labor market flexibility system.

According to Guy Standing (as cited by Pakpahan and Damaihati 2010: 65), the labor market is the process of selling one's ability to work. As in

general there are sellers, buyers and goods sold. Guy likes the buyer as an employer who has a job, the seller is the prospective worker and the goods sold are the person's ability to work, unlike in the days of slavery where the goods traded were the person himself. After meeting the agreement between the seller and the buyer, then the transaction was passed into a work contract.

In the labor market, free interaction between the labor users and the worker (employer or job seeker) is seen as a necessary condition for economic growth. The free labor user is looking for workforce in accordance with the rational needs of the users, while the free workforce selects the labor users in accordance with the rational needs of the workforce. The rational need of the user is determined by the type and production capacity required in accordance with the competition it faces in the commodity market. The rational need of the workforce is determined by how far the income provided by the users of labor can meet the necessities of life.

In theory the flexible labor market is an institution where the users of workers and workers and job seekers meet at a certain level of wage where both parties have the discretion in deciding to work together without social and political barriers. This flexibility is a form of adaptation strategy of each of the changes that occur in the environment. In a flexible labor market system, flexibility and these needs are assumed to be mutually met. This is because the work user gets the convenience to recruit and lay off the workforce in accordance with their needs. Regulatory barriers and state intervention to recruit and dismiss are reduced or even eliminated.

Forms of outsourcing and contractual relationships, according to Pakpahan and Damaihati (2010), are ways to realize a flexible labor market. Such flexibility will create production efficiency and capital profit maximization. The flexibility of the job market refers to the speed of the job market adjusting fluctuations and changes in society, economy or production. This adjustment ability causes labor market institutions to achieve a sustainable balance determined by the intersection of the demand and supply curves.

Indrajit and Djokopronoto (2006) emphasized that outsourcing is the delivery of corporate activities to third parties with a view to achieving professional and world-class job performance. Dimanik (2006) underlined that outsourcing practice as stressed by Inrdajit and Djokopronoto, that outsourcing is the delegation of daily operations and management of a business process to an outsourcing company, through delegation then management is no longer done by the company but instead delegated to the outsourcing service company.

Outsourcing is another result of business process reengineering (BPR). BPR is a fundamental change done by a company in the process of management, not just make improvements. BPR is a new approach in management that aims to improve performance, which is very different from the old approach that is continuous improvement process. BPRs are conducted to respond to global economic developments and rapid

technological developments resulting in a highly competitive global competition.

Whereas according to other literature, outsourcing as stated by Khakim (2007) is an employment relationship in which workers or labors are employed in a company with a contract system, but the contract is not provided by an employer but by a labor steering company. The outsourcing system includes employment relationships based on shipping or lending agreements (*uitzendverhouding*). In this working relationship found three parties, namely the company provider or sender of labor, enterprise users of labor, and labor or workers.

In article 1601b of the Indonesian Civil Code, outsourcing is equated with a charter agreement so that the definition of outsourcing is an agreement whereby the contractor engages in the work of another party, the party who buys, by accepting a specified price. Based on the above understanding it can be drawn an operational definition of outsourcing is a form of employment agreement between service providers, where the service user company asks the service provider company to provide the labor required to work in the company of service users by paying some money and wages or a fixed salary paid by the service provider company.

Indrajit (2006) explained that the pattern of outsourcing in general terms of employment is that there is some work then submitted to another company that has a legal entity, in which one company is not directly related to the worker but only to the channeling company or labor director. In the field of employment, outsourcing can be translated as the utilization of labor to produce or implement a job by a company, through a provider or employer. Here there are two companies involved, a company that selects, trains, and employs a workforce that produces a particular product or service for another company's interests.

Thus, the second company does not have a direct working relationship with the workforce working on it. Working relationships are only through employer-supplying companies. Outsourcing is an alternative in doing the job yourself but outsourcing is not just casual contracting, but it goes far beyond that. Under Article 64 of Manpower Act it is stipulated that outsourcing shall be conducted by written agreement in two ways, namely employment contracting agreement and the provision of services of workers or labors. To be able to submit the execution of work through employment contracting agreement, must comply with the provisions in Article 65 paragraph (2), namely:

(1) Done separately from the main activities;
(2) Conducted by direct or indirect orders from the employer;
(3) It is a supporting activity of the company as a whole; and
(4) Does not impede the production process directly

All of the above requirements, based on Khakim (2007) are cumulative so that if one of the conditions is not met, then the job part cannot be outlined. The employer must be a legal entity. This provision is necessary

because many recipient companies are not responsible in fulfilling the obligations and rights of workers or labors as they should so that workers or workers become displaced. Therefore, the legal entity becomes very important in order not to avoid the responsibility. In this case the employer, by law, turns to the employer.

The terms of employment for workers or labors at employment companies are at least equal to that of workers or labors in employer companies. It is useful to have equal treatment of workers or labors in both the employer and the recipient company because essentially together to achieve the same goal, so that there is no longer the requirement of work, wage, and lower work protection.

Under Article 66 of the Manpower Act, outsourcing is permissible for activities not directly related to the production process. In the explanation of Article 66, the meaning of supporting activities or activities that are not directly related to the production process is a cure-related activity on a company. These activities include: cleaning service, food catering business, and the business of security personnel or security units, supporting services business in mining, and petroleum as well as the business of providing workers or labors.

Protection to the Indonesian Outsourcing Worker under Indonesian Manpower Act: Problems and Challenges

Outsourcing arrangements when viewed from the aspect of employment law is to provide legal certainty of the implementation of outsourcing and at the same time provide protection to workers/labors. Thus, the assumption that the employment relationship on outsourcing was always used a certain time work agreement, so that the industrial relations blur is not true. Implementation of work relation on outsourcing has been regulated clearly in Article 65 paragraph (6) and (7) and Article 66 paragraph (2) and (4) of Law No. 13 of 2003 on Manpower. Indeed, in certain circumstances it is very difficult to define or indicate the types of work categorized as supporting.

This can be happened because of differences in perceptions and sometimes backed by the interests represented in order to benefit from the condition. In addition, the varied forms of business management and several multinational corporations in this globalization era bring a new form of partnership, increasing the complexity of the confusion. Therefore, through a Ministerial Decree as referred to in Article 65 paragraph (5) of Law no. 13 of 2003 on Manpower is expected to accommodate or clarify and answer everything that caused the confusion by considering the input of all parties of the process of production of goods and services.

Nurachmad (2009) emphasized that outsourcing is a business partnership with the aim of obtaining mutual benefits, one form of implementation of outsourcing is through employment contracting agreement. In carrying out its activities, the contracting company has a working relationship with the worker, while the relationship between the user

company and the contracting company is only related to the work it is engaged in. Broadly speaking there are two types of employees, namely contract and fixed employees. Contract employees are based on Article 59 of Law Number 13 of 2003 on Manpower and Decree of the Minister of Manpower and Transmigration KEP.100/Men/VI/2004 on the Implementation of Certain Working Time (PKWT). Certain working time agreements may only be made for certain occupations which by type and nature of work activities will be completed at a specified time.

Furthermore, concerning to the employment relationship, Husni (2015) highlighted thay the employment relationship established in the delivery of part of the work to the outsourcing under the Manpower Act, whether through employment or worker or labor service providers is fixed under a written employment agreement between a work contractor or a service provider company or labors with workers employed. Workers or labors working for a worker or labor services provider obtain the same rights in accordance with employment agreements, company rules or collective bargaining agreements on wage and welfare protection, terms of employment, and disputes arising with workers or other workers in the enterprise services of workers or labors. Working agreements that may be made in oral and written form (article 51 (1) of Law No.13 of 2003 on Employment). Normatively the written form assures the certainty of the rights and obligations of the parties, so that if there is a dispute it will greatly help the process of proof. But it is undeniable there are still many companies that do not or make a written agreement in writing due to the inability of human resources and because of custom, so on the basis of the trust to make an employment agreement orally.

The term of the employment agreement may be made for a certain period of time for a work relationship with a limited period of validity, and indefinite periods for unrestricted employment periods or the completion of certain employment. Agreements made for a specified period are commonly referred to as contractual or non-permanent employment agreements. His job status is a contract worker. While non-specified time-employment agreements are usually fixed employment agreements and employment status are permanent workers. Trial period is the time or time to assess performance and sincerity, a worker's skill. The probationary period is three months, during probation the employer may terminate the employment unilaterally (without permission from the competent authority) in this provision is not allowed to execute a probationary period for certain time workers because the work agreement is relatively short.

Obligations constitute a duty of responsibility of the parties, as to the obligations of the workers or labors as set forth in the Indonesian Civil Code of Article 1063, article 1603a, article 1603b and article 1063c which in essence are as follows:

(1) Workers or labors do the work, doing the work is the main task of a worker to do alone, though with the permission of the employer can be represented. For that reason given the work done by workers who are very

personal nature because it is related to his expertise, then under the provisions of legislation if the worker dies, then the employment relationship ends by itself (layoff by law).

(2) Workers or labors shall comply with the rules and instructions of employers, in the conduct of work of workers or labors shall comply with the instructions given by employers. Rules that must be obeyed by workers or labors should be set forth in company regulations so that it becomes clear the scope of the instructions.

(3) Liability for damages and fines, if workers or workers commit acts that adversely affect the company either by intent or negligence, in accordance with the legal principles of workers or labors shall be compensated and fine.

While the obligations of employer in essence are as follows:

(1) The obligation to pay wages, in employment relations the primary obligation for employers is to pay wages to their workers in a timely manner. This wage provision has also undergone a change in regulation towards public law. This can be seen from government intervention in determining the lowest wage to be paid by employers known as minimum wage, as well as wage setting in government regulation no. 78 of 2015 on wage protection. Government intervention in determining the size of this wage is important in order to keep the wages received by the workers too low so that they cannot meet the living needs of the workers even with the smallest things.

(2) The obligation to provide rest or leave, the employer is obliged to give the workers annual breaks regularly. The right to rest is important to eliminate the worker's saturation in doing the work. Thus it is expected that the passion of work will remain stable. Annual leave of 12 working days. In addition, workers are also entitled to a sabbatical for 2 months after continuous work for 6 years in a company (Article 79 of Law Number 13 Year 2003 on Manpower)

(3) Obligation to take care and treatment, employers must take care or treatment for workers who live in the employer's house (article 1602 Indonesian Civil Code). In the development of labor law, this obligation is not limited only to workers residing in the employer's home, but also to workers who do not reside in the employer's home. Protection for sick workers, accidents, deaths has been guaranteed through Jamsostek protection as stipulated in Act Number 3 of 1992 on Jamsostek. The obligation to provide a certificate, this obligation is based on the provisions of Article 1602a of the Indonesian Civil Code which requires that an employer or employer is obliged to provide a date and signature certificate. In the certificate is explained about the nature of work done, duration of employment relationship (employment). The certificate is also given although the initiation of termination of employment comes from

the workers. The certificate is very important as the provision of workers in finding new jobs, so he was treated according to his experience.

Workers are part of the Indonesian people who need to be protected. The principle of legal protection for the people of Indonesia is the principle of recognition and protection of the people and the dignity of human beings originating from Pancasila and the principles of the rule of law based on Pancasila. Legal protection for workers is based on the provisions of Article 27 paragraphs (1) and (2), Article 28D paragraph (1) and (2), of the 1945 Constitution. Article 27 (1) of the 1945 Constitution namely all citizens simultaneously their positions in law and government, and must uphold the law and government with no exception. Article 27 paragraph (2) of the 1945 Constitution is that every citizen shall have the right to work and a decent living for humanity. In addition, the guarantee for the protection of work shall also be contained in the provisions of Article 28 D Paragraph (11) of the 1945 Constitution, that is, everyone is entitled to the recognition, guarantee, protection and legal certainty of justice and equal treatment before the law. Article 28 D paragraph (2) of the 1945 Constitution is that every person shall have the right to work and receive fair and reasonable remuneration and treatment in the employment relationship. The provision indicates that in Indonesia the right to work has obtained an important place and protected by the 1945 Constitution.

Legal protection for the workforce is a manifestation of efforts to promote the general welfare, educate the life of the nation. However, the basic philosophy set by the Employment Act lawmakers is inconsistent. This is seen in the consideration d of Manpower Act, namely the protection of labor is intended to guarantee the basic rights of workers or labors and to guarantee equality, opportunity, and treatment without discrimination on any ground to realize the welfare of workers or labors and their families while maintaining the progress of the business world.

The problem of outsourcing is quite varied. This happens because the use of outsourcing in the business world in Indonesia is now increasingly being practiced and has become a requirement that cannot be postponed by the business actors, while the existing regulations have not been sufficient to regulate the outsourcing. The speed of the business (company) in responding to market demands can determine the victory or defeat in winning the market competition. That is why companies are more concerned with the efficiency and effectiveness of the company. One way is to submit some work to other parties through outsourcing. Through the use of outsourcing, companies can focus more on the main activities, companies, so that companies become more competitive.

Outsourcing practices are more profitable for the company, but more harm to the workforce, because the employment relationship is always in the form of non-permanent or contract (PKWT), wages are more redah, social security if only limited to a minimum, the absence of job security, and no guarantee career development. In these circumstances, the implementation

of outsourcing will hurt the workforce. Recognizing the importance of the workforce for the company, the world of outsourcing both the employment and the employment services, the company is required to guarantee the protection of the rights of workers or labors. The protection begins with the obligation that the company must be a legal entity.

The minimum wage setting policy within the wage protection framework still encounters many obstacles as a result of the uniformity of wages, either regionally or regionally or regionally, or nationally. In establishing wage policy it is necessary to be systematically pursued in terms of macro in tune with employment development efforts, particularly the expansion of employment opportunities, increasing production, and improving the living standards of workers or workers in accordance with their minimum living needs.

Law No.13 of 2003 on Manpower Article 88 Paragraph 1 affirmed that every worker/labor is entitled to income that fulfills a decent living for humanity. In the sense that the amount of remuneration received by the worker/labor from his/her employment is able to adequately meet the needs of the worker/labor and his/her family, among other things includes clothing, food, shelter, education, health, recreation, and old age pension in order to realize income that fulfills a decent living for humanity, a wage policy that protects workers. However, such provisions will still be governed by a government regulation concerning wage protection.

The right to receive a wage for a worker, according to Sutedi (2009) arises during an employment relationship between a worker and an employer, and ends when the employment relationship is terminated. Employers in determining wages should not discriminate between male and female workers for work of equal value. Wages are not paid to workers if workers do not do work. This provision applies to all classes of workers, except where the worker concerned does not do the work due to illness, marriage, religious worship, and so on.

CONCLUSION

THERE are several things that can be taken that there are several things that must be met for the transfer of undertaking protection of employment. There are three important steps that a company must perform outsourced in order for the event to succeed. The stages are the planning, implementation and evaluation of the implementation by outsourced companies: (1) planning, (2) implementing, and (3) evaluation. On the planning step, both *vendoor* and principle to outsourcing workers begin to solidify the vision and mission to be achieved. For the *vendoor*, the outsourcing owner tries to be the best company for the principle and does not violate the laws and regulations as *vendoor* from the beginning of work until the employment agreement expires. Meanwhile,

for the principle is a process to determine the reasons for the purpose of a job is diverted to *vendoor* companies, so that the outsourcing of the work is not the only way to escape from the responsibility of the company towards to hire its employees. As for the employees, this is a stage that needs to be matured so that the initial intentions and planning can be done well that ultimately the purpose of registering jobs in *vendoor* companies can be achieved. At the implementation step, is the most crucial in the course of the outsourcing of work carried out by the principle to *vendoor* and will be implemented by the workers. This happens because it contains the stages performed in the outsourcing of work.

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Law Adagium

The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.

Jhon Locke