

REVIEW ARTICLE

QUO VADIS INDONESIAN LABOR ACT: HOW FAR THE PROTECTION FOR LABORS?

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CITED AS

Pambudi, K. (2021). Quo Vadis Indonesian Labor Act: How Far the Protection for Labors?. *Journal of Law and Legal Reform*, 2(4), 591-602. <https://doi.org/10.15294/jllr.v2i4.48762>

Submitted: December 7, 2020 **Revised:** March 11, 2021 **Accepted:** July 11, 2021

ABSTRACT

Basic human rights for Indonesian workers are set out in constitution both in the 1945 Constitution, Law Number 39 Year 1999 regarding Human Rights, as well as in Law Number 13 of 2003 on Employment. Although there are regulations that regulate human rights for the people labor, but in fact many violations occur. Proven with the existence of Article 64 of the Manpower Act regulating Outsourcing, where in its development with the outsourcing system there are many shifts in the application of outsourcing system. Outsourcing is initially only imposed on that type of work not directly related to the production process of that activity relating outside the core business of a company, will but in reality, almost all types of jobs are subject to outsourcing This research will describe in relation to the protection of human rights for the workforce especially for outsourcing in labor Indonesia. The research method used is normative Juridical with the approach used is the Legislation Approach. The results obtained that

with the Decision of the Constitutional Court Number 27 / PUU-IX / 2011 concerning Request for Testing of Law Number 13 of 2003 on Employment of the 1945 Constitution, is one form of legal protection for outsourced workers. Because in the verdict states that outsourcing only is permitted for the types of work listed in Article 59 of the Manpower Law.

Keywords: *Labor Protection, Labor Act, Outsourcing Worker*

INTRODUCTION

Indonesia is a developing country that seeks to increase development in all areas of life including wrong is the only development in the economic field. Deep development. This economic field is carried out by the government through a reform program in the field of economy, but this way is felt not to give results adequate. While development in the economic field is very important because it is one of the supporting factors materialized National development. With development in the economic field, Indonesia is expected to improve the welfare of life its people (Wahyuni, 2011; Suyanto & Nugroho, 2017).

The struggle to gain recognition and assurance against human rights always experience ups and downs in line with human civilization and experienced a long struggle. Since century the 13 safeguards against human rights have begun. Efforts to protect human rights have been pursued by the nation England since 1215 with the signing of Magna Charta by King John Lackland (Syamsi, 2000). Constitution based on Human Rights is the existence of a guarantee of human rights in the constitution. Constitutional law is not a source, but it is consequences of individual rights formulated and affirmed by the judiciary (Kusnadi, 1998).

In the new Law on employment that is Law Number 13 Year 2003 on Labor as well provides an understanding of the labor provided in Article 1 figure 2 that labor is everyone who is capable of doing work to produce goods and / or services well to meet own needs as well as for the community. Understanding labor in Law no. 13 of 2003 on the Manpower has perfected the notion of manpower in Law No. 14 of 1969 on the Basic Provisions of Manpower (Sendjun, 2011). But that often pour in history about the beginning the human rights struggle is the Magna Charta Charter contains some of the rights granted by King

John to some his subordinate nobility and the ecclesiastical over several demands submitted by them with the consequences of limitation on the power of the king and the respect for the rights of the people given to these nobles is compensated from the services of the nobility in support of King John in the field finance (Handoyo, 2002).

The definition of manpower here includes the labor / worker who is related in a working relationship and the workforce that has not worked. While the understanding of the worker is any person who works by receiving wages or compensation in other forms. In other words, the worker or laborer is a worker in a relationship (Rusli, 2003). The term workers are very popular in the world of labor/employment, because this term has been used for a long time even since the Dutch colonial era. In the old rules before Law no 13 of 2003 on Employment for mentioning labor using the term labor. This is reinforced with the notion of labor in the Dutch era: "Workers are hard laborers like coolies, artisans, foremen who do the grunt work. People who do This work is called "Blue Collar". While that doing work in government and private offices referred to as the "White Collar" Employee.

There are several factors that affect the slow process economic recovery, one of which is caused by mixed factors hands by the government that is too big in the implementation economic development. This results in sovereignty. So, on the factor of termination of employment because that company bankrupt / bankrupt, or a company that moved to another country or can also because of the consequences of more and more job seekers who have not channeled. Thus, human resources in Indonesia only superior in quantity terms without the support of quality excellence, the economy is not in the hands of the people (Husni, 2010).

Protection against this workplace aims to guarantee the basic rights held by the workers and guaranteed equal opportunity obtained by labor and treatment without discrimination on any ground in bringing about prosperity workers and their families with due regard to progress of the business world. As we know that the general purpose of the nation Indonesia contained in the Preamble of the 1945 Constitution is to protect the entire Indonesian nation and the whole spill Indonesian blood and to advance the general welfare base Pancasila for the creation of social justice for all Indonesian people (Djumadi, 2005).

Type of approach used in this research is normative juridical, that is research which conceptualize law as what which is stipulated in law in book, or the law is conceptualized as a rule or norm which is a benchmark behave man

who is considered appropriate. As for that approach done that is by approach of Legislation (Marzuki, 2009). **Standpoint:** studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. Besides setting the standard, procedures, provisions, and guidelines in implementing the rule of law, so what exactly there is in the face of what which should and end by providing formulas certain. **Paradigm:** the paradigm of economic, social, and cultural rights can be sustained by civil and political rights. the reform period has tried to do that. This is evident from several facts that the press as an instrument when it is free and no longer banned. However, again, there are other problems where the conflict that occurred when it is no longer public to the state but the public with the public. Secondary law material in the form of all publications about the law that is not an official document, including textbooks, legal dictionaries, legal journals, and comments on court decisions. **Research Strategy:** the method used is only used for the process of collecting data is to inventory the rules Legislation to be studied as a unified whole and with literature study, internet browsing, has scientific articles, studies documents, including scientific papers and journal letters news.

LABOR PROTECTION IN THE CONTEXT OF HUMAN RIGHTS IN INDONESIA

In Indonesia, all laws and regulations are applying to either constitution or written constitution or unwritten. The basic written law that applies to Indonesia is the 1945 Constitution. However, after the second amendment of the 1945 Constitution in 2000 and the issuance of MPR Decree No. XVII / MPR / 998 on Human Rights, the development of human rights has increased which is fast. Moreover, after the issuance of the Act Number 39 Year 1999 on Human Rights. In the preamble of the 1945 Constitution there is a revelation on human rights which is stated as follows: "*That indeed freedom is the right of all nation and therefore, then colonization over the world should be removed because it does not comply with humanity and justice* "

The sound of the first paragraph of the Preamble of the Constitution 1945 shows that human rights are primarily rights freedom for all nations to be guaranteed and in junjung high by all the nations of the world. As mentioned earlier, that rights man is the right that God is naturally given to human. But rights are not just related to human relationships with God, but the right is the recognition of society, country, and even other countries for the rights we have.

It has also been mentioned in the definition of human rights according to Law No. 39 of 1999 on Human Rights Man that human rights are a set of rights which attached to the essence of human existence as God's creature The One and Only. That right is his obligatory grace to respected, upheld, and protected by the state, the law, government and everyone for honor and protection human dignity and prestige.

In detail, human rights are already listed in World statements about human rights at proclaimed by the UN on December 10, 1948 that between others stated: "That everyone has the right to life, freedom and security of the body, to be acknowledged personality, to get the same treatment with people other according to law to obtain legal guarantees in the case criminal, as examined in public, is considered innocent unless there is valid evidence, the right to enter and exit a territory state, the right to gain a nationality, the right to acquire property rights over an object, the right to freedom expressing a thought and feeling, the right to be free to embrace religion, the right to own and issue opinions, the right to get social security, the right to get a job, rights to trade, the right to education, the right to participate as well as in the cultural movement of the people, the right to enjoy art and participate in scientific progress" (Naning, 1983).

The idea of outsourcing first arose around 1970s-1980s when many companies experienced global competition in the business world. Many companies do not ready with the business competition so that the management structure the company becomes swollen. This results in a deep risk everything is ever-increasing. Not apart from the risk to the work also continues to increase. So, at this stage it arises thinking about outsourcing in the business world. The initial idea of developing outsourcing is for share business risks in a variety of issues, including problems employment. In the early stages, outsourcing has not been identified formally as a business strategy. This happens because a lot of companies that simply prepare themselves on the parts certain that they can do, while for the parts which cannot be done internally, done through outsource (Latupono, 2011; Sonhaji, 2020; Sujoko, 2018; Mahila, 2017).

The longer the outsourcing begins to grow and play a role as supporting services. Due to continued global competition increased resulting in the company to perform calculations cost reduction. The company started outsourcing important functions within the company, but not related directly with the company's core business. Utilization of outsourcing cannot be avoided any more by many companies in Indonesia. Legalize the use of services outsourcing occurred in 2003 with the issuance Law Number 13 Year 2003 regarding Manpower. Where the arrangement of outsourcing is contained in article

64 which states that: "*The company may submit part of the implementation work to other companies through the agreement job vacancy or worker/labor provider which is made in writing*".

Initially outsourcing is perceived as a solution for the people job seekers, due to unemployed workers permanent jobs, with outsourcing they can be channeled to companies in need of manpower. For Outsourcing companies are perceived as bringing many benefits like cost savings (cost saving). In addition, the company can also focus on its core business. From this began to happen a shift about function outsourcing. At first outsourcing was given to non-core jobs such as cleaning services or security guards. However, in fact that is happening now, outsourcing is imposed on almost all work. With the outsourcing applied in the company then it reduces the rights of the employees as they should obtained when the employee becomes a permanent employee in the company. Because, with the outsourcing it will close the opportunity for the employee to be appointed permanent employees within the company (Yasa, Budhiarta, & Ujjanti, 2020; Farida, Setiawan, Maryatmi, Juwita, & Muqsith, 2020).

Due to the many violations of rights that occur to employees outsourcing, so that in 2011 and then there is one of the power works applying to the Constitutional Court to re-examine the contents of the Manpower Law the. The worker named Didik Suprijadi who works at the Indonesian Electrical Meter Readers Reader's Alliance (AP2ML). He appealed to the Constitutional Court regarding the contents Article 59, Article 64, Article 65, Article 66 of Law No. 13 of 2003 on Manpower.

Article 59

- (1) Agreement for a specified time may only be made for specific jobs by type and nature or activity work will be completed within a certain time, namely:
 - a. Jobs that are once completed or temporary in nature.
 - b. Jobs that are expected to be settled in time
 - c. which is not too long and for a maximum of 3 (three) years.
 - d. Seasonal work.
 - e. Jobs related to new products, activities new or additional products that are still in trial of exploration
- (2) A work agreement for a specified time cannot be held for work that is fixed.
- (3) A work agreement for a specified period may be extended or can be updated.
- (4) A certain time employment agreement based on a period of time certain can be held for the longest 2 Years and only may be extended 1 (one) time for a maximum period of 1(one year).

- (5) Employers intending to extend the employment agreement the specified time, not later than 7 (seven) days before
- (6) a certain time work agreement expires has been notified meaning in writing to the workers / laborers concerned
- (7) Renewal of specific time work agreements may only be held after exceeding the grace period of 30 (thirty) days termination of a certain long term employment agreement, renewal of this particular time work agreement is only allowed shall be conducted 1 (one) time and no later than 2 (two) years.
- (8) A work agreement for a specified time that does not meet the provisions referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6) then by law becomes agreement work time is not certain.
- (9) Other matters not covered in this article shall be further regulated continued with Ministerial Decree.

Article 64

The company may submit part of the work to other companies through employment contracting agreements or workers' written services providers.

Article 65

- (1) Delivery of part of the work to the company others are carried out through employment contracting agreements made in writing.
- (2) Jobs that may be submitted to other companies as referred to in paragraph (1) shall comply with the following conditions:
 - a. Done separately from the main activities.
 - b. Performed by direct or indirect orders from employer.
 - c. It is a supporting company activity whole.
 - d. Not hampering the production process directly.
- (3) The other companies referred to in paragraph (1) shall in the form of legal entity.
- (4) Employment protection and working conditions for workers.
- (5) in another company as referred to in paragraph (2) at least equal to the employment protection and occupational requirements of the employer or appropriate company with applicable laws and regulations.
- (6) Amendments and/or additions to such terms referred to in paragraph (2) shall be further stipulated by a decision minister.

- (7) Employment relationship in the implementation of work as referred to in paragraph (1) shall be governed by a work agreement in writing written between other companies and workers hired him.
- (8) The working relationship referred to in paragraph (6) may based or non-specified time or employment agreement a certain time work agreement if it meets the requirements as referred to in Article 59.
- (9) In the case of the provisions referred to in paragraph (2) and paragraph (3) is not fulfilled, then by law the status of the relationship worker with accepting company of chartering switch to worker relationship with employer company.
- (10) In the case of a working relationship switched to the granting company the work referred to in paragraph (8), then the relationship worker with employer in accordance with working relationship as referred to in paragraph (7)

Article 66

- (1) Worker / labor service provider should not be used by employers to implement principal activities or activities directly related to production process, except for supporting or service activities that are not directly related to process processes production.
- (2) Worker / labor provider for supporting service activities or activities that are not directly related to the process production must meet the following requirements:
 - a. The existence of working relationships between workers and companies' provider of workers / labor services.
 - b. Working agreements applicable in employment relationship as referred to in letter a is an employment agreement for a certain time that meets the requirements as referred to in Article 59 and /or the employment agreement no time certain made in writing and signed by both sides.
 - c. Protection of wages and welfare, terms of employment, and the disputes that arise are the responsibility of the company provider of workers / labor services.
 - d. Agreement between employer / service user company and other companies acting as provider companies' workers' services are made in writing and must contain the articles referred to in this law.
- (3) Worker / labor provider is a form of business legal entity and have the permission of the authorized agency answer in the field of manpower.

In the case of the provisions referred to in paragraph (1), paragraph (2) a, b, and d as well as paragraph (3) are not met, then for the status of the employment

relationship between the worker and the workers service companies are becoming employment relationship between workers and giver companies work. The Petitioners also put forward several reasons petition for judicial review of the contents of the Employment Act then for that reason the government responded. Top things also, the Constitutional Court issued Decision Number 27 / PUU-IX / 2011 on the Petition for Judicial Review No. 13 of 2003 on employment of the 1945 Constitution. As a follow-up of the decisions that have been issued by the Constitutional Court, then the Ministry Manpower and Transmigration issued Circular Letter No B.31 / PHIJSK/ I / 2012 on the Implementation of Court Decisions Constitution Number 27 / PUU-IX / 2011 ([Herlambang, 2018](#); [Izzati, 2018](#); [Tejomurti & Sukarmi, 2020](#); [Ambarita & Malau, 2021](#)).

As is known, that in the state of the law contains some principles, among others:

1. Recognition and guarantee of human rights
2. Separation of powers to guarantee human rights
3. Governing by law
4. Courts to resolve problems arising as a result violation of human rights. In addition, there are also elements in the legal state, namely:
 - 1) Protection of human rights
 - 2) Separation of powers
 - 3) Any government action should be based on regulations legislation

There is an independent administrative court from some principles and elements about the rule of law, under Article 1 paragraph (3) of the Constitution of 1945 results Amendment IV determines that the State of Indonesia is a country Law ([Febriyanto & Rohman, 2018](#)). The explanation clearly states that the State Indonesia is based on the law (*Rechstaat*), not based on power (*Machstaat*), and mentioned that the Government of Indonesia Under the Constitutional system (the basic law), it is not absolutism (unlimited power). From the explanatory sounds of the Law has a meaning that the state in conducting the activities of the state administration is not may be based on mere power but must be based on law applicable ([Mahasin, Naziah, & Arifin, 2020](#); [Ndun, Helan, & Pekuwali, 2020](#); [Arifin, 2019](#)).

CONSLUSION

With the progress and competition in the business world then They are facing the business. But in practice a lot of irregularities against the implementation of the

system outsourcing. Lots of labor rights and for people unearned labor. Moreover, the outsourcing system now cleared by all types of work by the Company outsourcing. With the issuance of Decision Number 27 / PUU-IX / 2011 by The Constitutional Court on Perm Treasuring the Act Number 13 of 2003 on Employment Against the 1945 Constitution filed by Didik Suprijadiyang Head of the Alliance Officers' Center Electrical Meter Reader (AP2ML) Indonesia, then become wrong one form of legal entity for the workforce outsourcing. In the verdict stated that outsourcing only used for selected projects Article 59 of the Manpower Act. Not all Outsourcing appeals work as it is today. Creating rights for workers is also expressly articulated in the Decision of the Constitutional Court as a form. Human rights workers for the workers outsourcing.

REFERENCES

- Ambarita, L. M., & Malau, P. (2021). Legal Protection of Outsourcing Labor Companies in Medan City. *International Journal of Social, Policy and Law*, 2(1), 65-71.
- Arifin, R. (2019). Indonesian Political Economic Policy and Economic Rights: An Analysis of Human Rights in the International Economic Law. *Journal of Private and Commercial Law*, 3(1), 38-49.
- Djumadi, D. (2005). *Sejarah Keberadaan Organisasi Buruh di Indonesia*. Jakarta: Raja Grafindo Persada.
- Farida, I., Setiawan, R., Maryatmi, A. S., Juwita, M. N., & Muqsith, M. A. (2020). Outsourcing Policy in Indonesia. *American Research Journal of Humanities & Social Science (ARJHSS)*, 3(10), 26-31.
- Febriyanto, T., & Rohman, A. T. (2018). Perlindungan Hak-Hak Tenaga Kerja Indonesia (TKI) yang Bekerja di Luar Negeri. *Lex Scientia Law Review*, 2(2), 139-154.
- Handoyo, H. C. (2002). *Hukum Tata Negara, Kewarganegaraan dan Hak Asasi Manusia*. Yogyakarta: Universitas Atma Jaya.
- Herlambang, P. H. (2018). Implementation on Transfer of Undertaking Protection of Employment to Outsourcing Labors in Semarang Indonesia: A Legal Approach. *JILS (Journal of Indonesian Legal Studies)*, 3(1), 109-130.
- Husni, L. (2010). *Hukum Ketenagakerjaan Indonesia Edisi Revisi*. Jakarta: Raja Grafindo Persada.
- Izzati, N. R. (2018). Improving Outsourcing System in Indonesia: Fixing the Gap of Labour Regulation. *Jurnal Mimbar Hukum*, 29(3), 528-541.

- Kusnadi, M. H. I. (1998). *Hukum Tata Negara*. Jakarta: Sinar Bakti.
- Latupono, B. (2011). Perlindungan Hukum Dan Hak Asasi Manusia Terhadap Pekerja Kontrak (Outsourcing) Di Kota Ambon. *Sasi*, 17(3), 59-69.
- Mahasin, Z. Z., Naziah, F., & Arifin, R. (2020). Wage Problems in Indonesia in the Human Rights Perspective (Case of Inappropriate Wages for Pot Workers in Tangerang). *The Indonesian Journal of International Clinical Legal Education*, 2(1), 1-14.
- Mahila, S. (2017). Perlindungan Hukum Hak Pekerja Outsourcing Pasca Putusan Mahkamah Konstitusi. *Jurnal Lex Specialis*, (16), 48-55.
- Manulang, S. H. (2011). *Pokok-Pokok Hukum Ketenagakerjaan di Indonesia*. Jakarta: Rhineka Cipta
- Marzuki, P. M. (2009). *Penelitian Hukum*. Surabaya: Kencana Prenada Group.
- Naning, R. (1983). *Cita dan Citra Hak Asasi Manusia di Indonesia*. Jakarta: Lembaga Kriminologi Universitas Indonesia Program Penunjang Bantuan Hukum Indonesia.
- Ndun, I., Helan, Y. G. T., & Pekuwali, U. L. (2020). The Absolute Competence of the Industrial Relations Court in Resolving Employment Termination Disputes. *JILS (Journal of Indonesian Legal Studies)*, 5(1), 29-52.
- Rusli, H. (2003). *Hukum Ketenagakerjaan*. Jakarta: Ghalia Indonesia.
- Soeryabrata, T. H. (2019). Aspek Perlindungan Hukum Terhadap Pekerja Outsourcing. *Jurnal Spektrum Hukum*, 16(1), 184-203.
- Sonhaji, S. (2020). Tinjauan Terhadap Kesejahteraan Pekerja Outsourcing Pada Perusahaan Perbankan. *Administrative Law and Governance Journal*, 3(3), 394-408.
- Sujoko, A. (2018). Menggagas Sistem Pengupahan dan Kesejahteraan Pekerja Outsourcing di Pemerintah dalam Pengadaan Publik. *Administrative Law and Governance Journal*, 1(4), 436-446.
- Suyanto, H., & Nugroho, A. A. (2017). Perlindungan Hukum terhadap Hak-hak Pekerja Outsourcing Berdasarkan Asas Keadilan. *Jurnal Yuridis*, 3(2), 61-74.
- Syamsir, R. A. (2002). *Perkembangan HAM dan Keberadaan Peradilan HAM di Indonesia*. Jakarta: Ghalia Indonesia.
- Tejomurti, K., & Sukarmi, S. (2020). The Critical Study of the Omnibus Bill on Job Creation Based on John Rawls View on Justice. *Unnes Law Journal*, 6(2), 187-204.
- Wahyuni, D. (2011). Posisi Pekerja Outsourcing Dalam Undang-Undang Nomor 13 tahun 2003 Tentang Ketenagakerjaan. *Aspirasi: Jurnal Masalah-masalah Sosial*, 2(2), 137-149.

Yasa, I. P. A. T., Budiarta, I. N. P., & Ujianti, N. M. P. (2020). Upaya Pekerja Outsourcing Terhadap Pemutusan Hubungan Kerja Atas Pelanggaran Kontrak Kerja. *Jurnal Analogi Hukum*, 2(2), 192-196.