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The Role of the Government of Outsourcing Power in Achieving Justice in Industrial Relations

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ABSTRACT

The outsourcing system has been formulated inaccurately in the provisions of articles 64-66 UU 13/2003 (the constitution of Indonesia). The formulation error leads to employees decreasing or losing their rights during industrial relations. This research aims to explore the role of the government of outsourcing power in achieving justice in industrial relations. This law study employs the statute approach. The result is that the government has performed three main functions, including managing, controlling, and enforcing the rules related to outsourcing. The implementation of the government's role in this sector has not been maximized. The main error in UU 13/2003 has not been followed up with a revision of the article, even to enforce the regulation, the government has regulated a regulation from the minister of human resources for outsourcing. The possible solution is the government's role in outsourcing needs to be improved, and it is still unclear between the function of the government of enforcing workers' fundamental rights and the concept of inappropriate employment relations.

KEYWORDS: Outsourcing, Justice, Industrial Relations, Right.

INTRODUCTION

The Republic of Indonesia is a developing country wherein its development it is followed by any problems and obstacles in the workforce sector, particularly in the national development today. This labour factor is a significant mean in the communal life based on the constitution which regulates labour forces as described in the opening of UUD 1945 (the 1945 Constitution) article 27 paragraph 2 "every citizen has the right for employment and a decent living for humanity". The dynamics of Indonesia's national development foster any challenges and demands for handling unresolved issues, one of which is legal protection for precarious or outsourced labour (Wijayanti, 2017).

In Indonesia, the global economic development with rapid development in technology not only will bring positive impacts but also result in negative consequences. One of the negatives is stiff competition because of a gap between the increasing number of job applicants and the limited job vacancy, also lack skilful and experienced workers (Wijayanti, Hidayat, Unggul, & Hariri, 2017).

To carry out the national development, we rely on workers who have a crucial role and position as actors and development goals in order to upgrade the quality of human resources that determine the success or failure of an enterprise and to meet the take-off stage, where this quality

will not be achieved without providing life guarantee for employees as well as their families. It is because in terms of labour forces also set about labours both permanent and outsourcing workers.

The outsourcing employment issue, especially in Indonesia, has many distorted things about the injustice between the employers and their staff, for example, the labours treated poorly, and the system implementation does not work entirely. In other words, outsourcing labours are workers who seem not to work since after the period of the contract, then the next action will depend on the company decision. Therefore, in other words, an outsourcing company is an agency which carry out one or several parts of the company's activities that were previously managed by themselves but then the company is managed by the recipient of workers or operated on its production (Wijayanti, Hidayat, Hariri, Sudarto, & Sholahuddin, 2017).

For that reason, it is required a legal certainty and protection for workforces who have done jobs for realising outsourcing labours' rights, which is conducted and implemented into an employment agreement. Because of this agreement, it is expected that employers no longer treat the employees arbitrarily, break work relations unilaterally without considering the needs of workers and the provision of applicable laws (Wijayanti, 2014). In a job agreement, all

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rights and obligations are reciprocal between employers and workers. It means both of them in doing work relations have been bounded on what they agreed in this agreement or the laws.

According to the Law, number 13 of 2003 explains that the development of workforces as an integral part of national development based on *Pancasila* and *Undang-Undang Dasar Negara Republik Indonesia 1945*, carried out for the development of Indonesian resources ultimately and community entirely to increase the dignity, workforce and self-esteem of the work labours and to create a just, prosperous and equitable prosperity both material and spiritual. However, the implementation of control in fulfilling the conditions of outsourcing is challenging; therefore, many violations often occur.

The most frequent offenses are low job protection and job requirement. The protection and requirement provided by employers commonly are under the standards (Susanti, 2017). Although the realisation of work relations made in a written form between outsourcing company and workers, however, the involved companies gain profits by withholding some rights received by workers at the company where they work. This case is regulated in Law Number 13 of 2003.

RESEARCH METHOD

A. Methodology

This research employs a normative juridical method, which means the study based on law norm in order to investigate the problem about the role of the government of outsourcing power in achieving industrial relations (Pedju, 2016).

B. Study Approach

In its approach, the study uses the statute approach or constitution approach, which is done by studying the problem through a range of legislative requirements.

C. Legal Material Sources

There are some material sources used in to conduct this research:

- Primary legal materials are legal sources employed as basic instructions and explanations to overcome the problem in this study using legislative requirements.
- Secondary legal materials are legal sources, including some literature, dictates of the law and other materials related to this issue.

D. Collection of legal sources

In this study, primary legal materials as legislative requirements obtained by using techniques for tracking and collecting legislative requirements which are relevant to the regulations about the investigation issue, therefore, sound sources can be obtained as the primary sources for this research.

E. Analysis of legal sources

The legal sources then arranged and analyzed using the quality of logical thinking, where constitutional symptoms, including legal principles and community symptoms, are studied. The next step is carried out based on theoretical analysis concerning the applicable laws before in the last stage. It is a conclusion which can be used to answer the available and relevant problems.

RESULT AND DISCUSSION

A. The role of government in managing the outsourcing system

The government have undertaken three primary functions which include regulating, controlling and enforcing the outsourcing laws (Usman, 2015). One of the steps is to control and enforce the rules of the workforce to actualize the implementation of labours' as well as entrepreneurs' rights and obligations; the governments must carry out supervision and enforcement of legislative requirements about work labours. The implementation of the regulation in achieving industrial relations is the responsibility of workers or labours, entrepreneurs, and government. This rule is in line with what has been suggested in article 64, 65 and 66 Law number 13 of 2003 about the workforce. The execution of government role for outsourcing labours has not been maximized. The fundamental mistake in Law 13/2003 has not been followed up by the revision of the article 64-66 Law 13/2003, even to impose the rule, the executive has released a regulation from the minister of the workforce for outsourcing.

The executive roles in organizing the outsourcing system include:

- **Facilitating productive business for workers**

In order to improve the prosperity of workers or labours, labour cooperatives and productive businesses are created in the companies. The executives, employers, and workers or labour union afford to grow and develop the worker cooperatives and generate productive businesses required. The development of cooperatives is done according to the applicable legislation. The efforts to grow and develop workers cooperation is managed by government law.

- **Mediating workers who have done a strike**

Before and during a strike, the institution that is responsible for workforce sector must resolve the problem causing the strike by confronting and negotiating it with related parties (Ningsih, Musadieg, Utami, Administrasi, & Brawijaya, 2015). The negotiation means a process done to result in an agreement; thus, it is necessary to make a mutual agreement between every party and staff from the responsible institution in the workforce sector as a witness. If the negotiation does not reach the agreement, the staff from the related institution for

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workforce field should hand over the problem to the dispute resolution authority of industrial relations (Budijanto, 2017). If this negotiation still cannot achieve the agreement, then based on negotiations between employers and trade unions/labour unions or those responsible for strikes, strikes can be continued or suspended temporarily or stopped altogether.

- **Anticipating the occurrence of employment termination**

Every element of employers, workers or labours, labour unions and government parties with all efforts should struggle in order to prevent the termination of employment. After all, efforts that have been done, but the job termination is unavoidable then this termination must be negotiated by employers and worker or labour unions or workers itself when they are not involved as members of the unions. If the negotiation does not reach the agreement, the entrepreneurs can only sever the work relations with workers or labours after obtaining stipulation of industrial relations dispute resolution institutions. A request for termination of employment is submitted in writing to the industrial relations dispute resolution institution by providing the underlying reason. The industrial relations dispute resolution institution can accept the request if it has been negotiated with workers or worker unions. The industrial relations dispute resolution institution can only provide the stipulation for the request if the purpose of severing work relations have been discussed, but the negotiation does not result in an agreement.

- **Supervising and enforcing labour regulations**

The supervision of the workforce is carried out by a labour inspector who has competence and independence to guarantee the implementation of legislative requirement about workforce by Minister or a designated official. The supervision is done by a specific work unit in the agency whose scope of duties and responsibilities is in the field of workforce in the central, provincial, and district or city government which is regulated by a Presidential Decree.

- **Socializing the rules about workforce**

This role is a critical factor in some arisen problems. Lack of budgets for socialization is one of the cliché reasons for this problem. Ideally, the socialization of labour rules is carried out in more comprehensive ways to reach all components. Workers and entrepreneurs should understand the labour rules to minimize any offences. The function and role of government in socializing the rules are very expected as a balanced-preventive alternative (Susanti, 2017).

B. Legal protection for outsourcing workers

Legal protection means protection using legal sources or protection given by law, aimed for protecting particular interests, which is by making the interests that

need to be protected into a legal right. In terms of labour law, the outsourcing arrangements are to provide legal certainty in implementing outsourcing at the same time to give protection for workers or labours. The implementation of work relations in outsourcing has been regulated clearly in the article 65 paragraphs (6) and (7) and Article 66 paragraphs (2) and (4) of Law No. 13 of 2003 concerning workforce.

One of workforce development purposes is offering protection towards workers or labours in achieving welfare, as regulated in article 4, point c Labor Laws. The scope of protection for workers or labours given and arranged in Labors Laws are:

- a. Protection of workers' fundamental rights
- b. Protection of job health and safety
- c. Protection of workers' social insurance
- d. Protection of wage

Workers' position can be divided into two aspects, namely juridical and social-economic aspects. In terms of social-economic, employees require legal protection from the nation as the possibility of arbitrary actions from the entrepreneurs. The protection form given by the government is by creating the binding rules not only workers or labours but also employers, holding a coaching program, as well as implementing the process of industrial relations (Y, 2017). The industrial relations are a process of fostering communication, consultation, and negotiating as well as supported by the ability and strong commitment from any elements in the company.

Optimizing the government's role should be a priority since it is the key and central problem of work labour that has occurred in various regions. Hopefully, everything can run well and be as expected for creating an excellent investment climate and welfare distribution for both workers

CONCLUSION

There are several conclusions obtained in this study, including:

1. The role of government towards outsourcing workers is not optimal.
2. Unclear government' functions to impose workers' fundamental rights and inappropriate work relation concept.

Recommendation

1. Government has a role in optimally solving outsourcing workers.
2. The government can take more efforts to enforce the rules, particularly outsourcing workers.

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