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Reformulation of Work Relationships on the Outsourcing System in Indonesian Order to Protecting the Rights of Workers

Umar Kasim*; Fauzie Yusuf Hasibuan;** Basuki Reksowibowo;*** Atma Suganda****

Abstract
The research entitled Reformulation of Work Relationship Norms in the Outsourcing System in Indonesia in the Framework of Protecting Workers' Rights was carried out based on normative legal research methods. Based on the analysis and study, it is found that in the Manpower Law, there are 2 (two) types of work agreements that are applied in the outsourcing system, namely a work agreement for an unspecified time (PKWTT) and a certain time work agreement (PKWT). In each outsourcing company, it is regulated with the option that the work relationship at the company receiving the contract, the option is PKWTT, but it can be agreed upon through PKWT if it meets the requirements of Article 59 (Law No.13 / 2003). Whereas the work relationship option for a company providing worker / labor services is basically PKWT if it meets the requirements referred to in Article 59 (Law No.13 / 2003), but if it does not meet the requirements of Article 59, the working relationship must be PKWTT as long as it is made in writing and signed handle the parties. However, it turns out that Article 59 of the Law No. 13 / 2003 not only regulates the terms of PKWT, but also regulates 2 (two) possible choices of types of work agreements for a job, namely: first, Article 59 paragraph (1) of Law of the Republic of Indonesia. No. 13 of 2003 concerning work relations through PKWT, and second, Article 59 paragraph (2) of Law of the Republic of Indonesia. No. 13 of 2003, regarding employment relations through PKWTT. In relation to the working relationship of the contracting recipient company, the Elucidation of Article 59 paragraph (2) states that part of the production process cannot be agreed upon through PKWT. Meanwhile, in the outsourced work contracting agreement, the option is a work relationship through PKWT or PKWTT. Thus there is a conflict of norms, between the norms of work relations in the outsourcing system required by the employer (user), and the norms that are applied to the outsourcing company. However, outsourcing companies continue to implement a working relationship through non-permanent contracts. As a result, there are at least 15 (fifteen) basic rights, including the constitutional rights of outsourced workers / laborers that are lost or cannot be realized. For this reason, presumably the laws and regulations regarding labor made during the Dutch East Indies government (in Indonesia) are more structured in accordance with the hierarchy of laws and regulations and are harmonious both vertically and horizontally and are coherently intertwined with one another. There is no sectoral ego and no interest from certain parties, so that it can last for decades or even more than one hundred years until now. Even though during the Dutch colonial period, the political law that was enforced was how to regulate the colony so that the monopoly on natural resources could be controlled. In this regard, it is suggested that in the formulation of laws and regulations it can be guided by the laws and regulations at that time which are completely clean from the secular ego without any interest from certain parties. The norms of working relations in the outsourcing system in Indonesian legislation are not harmonious and coherent. Between one another there is a discrepancy and conflict of norms. Therefore, it is necessary to reformulate (rearrange) so that each content of legislation is coherent (interlinked with one another) and reflects the principle of legal certainty, harmony and harmony, so that it can provide protection (protection) to all parties in an equitable manner.
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A. Background

Manpower development as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is carried out in the framework of the development of the whole Indonesian human being and the development of the Indonesian society as a whole, to increase the dignity and dignity of the workforce, as well as to create a prosperous society. , fair, prosperous and equitable, both materially and spiritually. Manpower development must be regulated in such a way that rights are fulfilled and provide basic protection for workers, including workers / laborers as workers in an employment relationship, and at the same time creating conditions conducive to the development of the business world.[1]

Manpower development has many dimensions and linkages. Not only for the interests of the workforce

* Student of Doctoral of Law Jayabaya University Jakarta
** Professor of Law, Jayabaya University Jakarta
*** Professor of Law, Jayabaya University Jakarta
**** Lecture of Law, Jayabaya University Jakarta
[1] Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower ("RI Law No.13 / 2003") as amended by the Omnibus Law Number 11 of 2020, Chapter IV of Labor ("RI Law No.11 / 2020") , General explanation, first and second paragraphs.

during, before and after the employment period, but also for the interests of employers, government and society. For this reason, a comprehensive and comprehensive regulation is needed, including among others the development of human resources, increasing the productivity and competitiveness of Indonesian workers, efforts to expand job opportunities, service employment and fostering industrial relations. This comprehensive and comprehensive arrangement is then outlined in several laws and regulations in the category (genus) of Manpower Law which are policies adopted to provide protection to all parties, including workers, especially workers / laborers in an employment relationship.[1]

In relation to the Manpower Law policy, according to Agusmidah, that the basic policy in labor law is to protect weak parties, in this case workers / laborers, from the arbitrariness of the employer / entrepreneur that may arise in a working relationship, with the aim of providing protection. law and realizing social justice. Furthermore, Agusmidah stated that the emergence of the Manpower Law was due to the inequality of the bargaining position contained in the employment relationship (between workers / laborers and entrepreneurs / employers). It is for this reason that it is stated that the main purpose of the Labor Law is to be able to eliminate the imbalance of the relationship between the two. Inequality occurs due to incompatible bargaining positions in labor relations, and requires the involvement of the State or the Government in the industrial relations system as a manifestation of the presence of the State / Government towards weak parties.[2]

One form of implementing the presence of the State / government is to provide legal protection, which is stated in the legislation as norms for working relations in order to achieve social justice. In other words, the protection of working relations norms is a manifestation of legal protection for workers / laborers and as part of a form of legal protection in industrial relations in general. Because the ultimate goal of industrial relations regulation is the creation of conditions in which work productivity and company productivity increase, which in turn creates an increase in welfare.[3]

In general, in the industrial relations system, the form of legal protection regulated in the labor laws and regulations is sufficient and fulfills the protection aspect. However, legal protection for workers in the outsourcing system or labor outsourcing in Indonesia as part of the industrial relations system is generally still a big problem, because outsourcing is still considered exploitation and slavery in modern times.

The use of the term outsourcing to refer to an agency "partially submitting work implementation to another company" was adopted from common law system countries, although the practice of outsourcing has actually existed since ancient Roman times. For example, in the Black's Law Dictionary (Henry Campbell Black - 1891) states: “outsourcing agreement, (is) an agreement between a business and service provider in which the service provider promises to provide necessary service, especially. data processing and information management, using its own staff and equipment, and usually, at its own facilities ”. Thus, because the meaning is the same, the public is more familiar with the term "outsourcing" the agency referred to as "partially submitting work implementation to another company."

In the law concerning micro, small and medium enterprises, the institution that "submits part of the work implementation to another company" is referred to as "outsourcing" which is part of and one of the forms of a partnership pattern in a business relationship (partnership). Meanwhile, in the banking sector / sub-sector, referring to the Financial Services Authority Regulation (OJK), the institution "partially submitting work to

[1] Based on the Law of the Republic of Indonesia. No.13 / 2003, the official term for workers who work in an employment relationship based on a work agreement, is called "worker / laborer". This term began to be used officially since the enactment of Law Number 21 of 2000 concerning Work Unions / Labor Unions. In Article 1 point 6, it is defined that a worker / laborer is any person who works and receives wages or other forms of remuneration. Because the contra-achievement received is in the form of wages or salaries, so it is often referred to as "wage earners", or "paid people" in the sense of receiving wages [vide Article 1 point 3 and Article 50 in conjunction with Articles 1 points 14 and 15]. The phrases "worker" and "laborer" have the same meaning, that is, both workers in an employment relationship based on a work agreement. That is, with the work agreement, a work relationship will arise. A work relationship is a subordinate relationship, or a “superior” relationship with “subordinates”, because the conditions of work include an agreement that the worker / laborer is willing to be “ordered”, either directly or through delegation in the job-description or work instructions. Although the terms “worker” and “laborer” have the same meaning, their socio-economic status and clusters differ due to historical factors in America. “Worker” is connoted with the term skilled worker, or in America it is called a white collar. They (skilled workers) hold positions at middle-management level and above, which are often called “staff” or management committee. On the other hand, "labor" is connoted with the term unskill labor, or in America (northern part) it is called a blue collar. They (unskill labor) are unskilled workers who occupy positions at the lower level class (grassroots level) from the lower classes which are often called the non-management committee.

[2] Republika, October 1, 2012, p. 15, "Outsourcing Policy Protests"; The Jakarta Post, October 4th 2012, p.5, “Demand for Outsourcing Get Positive Response in West Java”; National Journal, 31 October 2012, p. 10 "Ordering Outsourcing Companies". So even though in the Manpower Law, there is no and there is no known term outsourcing. However, the general public more commonly refers to the term "outsourcing" as the meaning and mechanism of "handing over part of the work implementation to another company" as stated in Article 64 of Law Number 13 Year 2003. This meaning is (almost) the same as the meaning of an outsourcing or outsourcing agreement in a business partnership pattern. and in Black's Law Department (Henry Campbell - 1891). Thus, business actors, especially employers and workers / laborers, even politicians, government, judiciary and academic institutions as well as the general public, are very familiar with the term "outsourcing".

[3] Purwanto, the Outsourcing System Can Be Abolished If the Manpower Law is Revised, Maritime Tabloid, 24-30 September 2012, p. 12. See also Sinar Harapan, September 28, 2012, p. 11: Refuse “Outsourcing” for Supporting Workers, and Sinar Harapan, 4 October 2012, p. 11. "Kadin: The" Outsourcing "System Cannot Be Wiped Out", Suara Merdeka, October 4, 2012, p. 4, "Apindo Refuses to Abolish Outsourcing".

another company" is referred to as outsourcing or outsourcing of labor.

In connection with the technical implementation of "part of the work implementation to another company", there are several other opinions. According to Komang Priambada and Agus Eka Maharta, outsourcing or in Indonesian is translated as “outsourcing”, that in practice, the basic definition of outsourcing is the transfer of part or all of work and / or authority to other parties in order to support the strategy of outsourcing service users, both individuals and companies. , a division or a unit within the company. Besides that, according to Sehat Damanik who quoted Chandra Suwondo's opinion, that outsourcing is the delegation of operations and management of a business process to an outside party (an outsourcing service provider company). Based on these views and opinions, the meaning of job transfer or delegation of operations and management which is called outsourcing, is in principle the same as "handing over part of the work implementation to another company", as stated by Agusmidah dan Sehat Damanik as mentioned above.

Since the provisions concerning "part of the work implementation to another company" in the Manpower Law, there have been pros and cons issues, regarding the type of work agreement at an outsourcing company.

The philosophy of the existence of the provision of outsourcing (outsourcing) in the beginning was to open the widest possible business opportunity to all levels of society (especially small entrepreneurs or medium enterprises) and to divide jobs / activities, both as supporting activities in a series of production processes from upstream to downstream. or as a company supporting service activity as a whole. Through the delegation of authority in the outsourcing system (outsourcing), the management of some work / activities of the company (user) is no longer carried out alone, but is delegated to the outsourcing service company. In addition to opening up business opportunities, outsourcing is also able to expand employment, because the concept of outsourcing begins with labor market flexibility, so that the production process from upstream to downstream is not controlled by just one conglomeration system in one large company. , and is not controlled by one controlling hand in the holding company (control within the group).

This research is exploratory in nature, tracing legal materials and existing legal literature (positive law), including history or history prior to the existence (regulation) of provisions regarding outsourcing in the Manpower Law in Indonesia.

II. History and Philosophy of Work Relationship Norms in Indonesia

The term labor law itself comes from the word "arbeidsrecht". One of the past labor law experts A.H. Molenaar expressed his opinion, that "arbeidsrecht" is part of the applicable law which basically regulates the relationship between workers and employers, between workers and workers, and between workers and the authorities. In addition, M.G. Levenbach defines "arbeidsrecht" as a law relating to work relations, where the work is carried out under the leadership and with the conditions of life which are directly related to the work relationship. Likewise, S. Mok argues, that "arbeidsrecht" is a law relating to work carried out under the leadership of others and with the conditions of life that are directly coupled with that job. The three opinions are all based on a work relationship or legal relationship between a worker with regard to work carried out under the leadership of another person, the employer.[1]

There is another opinion from N.E.H. van Esveld, who does not limit the field (: the scope of labor law) to work relations only, but his opinion is based on the fact that the growth (: development) of "arbeidsrecht" is to prevent or eliminate - its - bad consequences (impact) - both material and ideal - felt by all who do work. Therefore Van Esveld stated that "arbeidsrecht" includes work carried out by self-employed workers who do work on their own responsibility and risk. Van Esveld's opinion is based on Marx's theory and also points to the Catholic school where the focus of attention is the question of work (in the broadest sense), and not the position of the workers, although the main concern - still - is the work done by workers.

At the end, Prof. Iman Soepomo, S.H. concluded that the Labor Law is a set of regulations, both written and unwritten, relating to an incident where someone works for another person and receives wages. Furthermore, it is explained that the word “per-labor” is an event or reality where a person is usually called a worker -who works for another person-who is usually called the employer, by receiving wages. This opinion (Faith Soepomo) also puts aside the problem between free work (outside of work relations - vrije beroepen) and work done under the leadership (working for) others, also puts aside the problem between work (arbeid) and workers (arbeider).

However, related to the above formulation, Prof. Iman Soepomo, SH, emphasized that labor law does not cover civil servants (PNS), although - juridically, civil servants are laborers, namely - people - who work for other parties (the State) and receive a wage (salary), but - juridically politically against them (civil servants) are not subject to labor regulations, but there are separate regulations for them. Apart from civil servants, there is also a class of workers who work for the state (state official), both the Central Government and Regional

[1] Ibid. Iman Soepomo, S.H., Introduction to Labor Law, Publisher Djambat, Jakarta, 1992, p. 3. Related to S.Mook's opinion, in the original definition quoted by Iman Soepomo states "Arbeidsrecht in dat deel van het recht dat betrekking heeft op arbeid in dienst van anderen en de daarmede onmiddelijk samenhangende levensomstandigheden" (free translation, Labor Law is part of laws relating to work in the service of others and living conditions which are directly related).

Governments, to whom (they) are not treated by the civil servant regulations in question. The problem is: do they (workers who work for the state) should be seen as ordinary workers or as civil servants. According to Prof. Iman Soepomo, S.H., the most appropriate answer is that as long as they do not stipulate certain regulations (for example PP No. 31 of 1954), they must be seen as ordinary workers. The principle is that as long as juridical politics there are no deviant regulations (lex specialis), - then - technical juridical provisions (legi generali) remain valid, -and- must be adhered to firmly.

However, in the General Provisions ("Concerning Terms") in the Work Law, namely Law Number 1 Year 1951 concerning the Statement to Apply the Work Work Law No. 12 of 1948 For the whole of Indonesia, Article 1 paragraph (3) states, that "Equalized with a company, is all places of work of the Government and private sector. This means that what is meant by the company (as an employer, employer) in addition to private employers (private) is also "employer" of the government. In other words, this Work Law applies to both the private sector and the Government. Whereas previously Article 1603y of the Civil Code did not apply the provisions of Chapter Seventh A, specifically regarding provisions regarding labor for people who work for the State or Regional (Government) or parts of the region.

In connection with the opinions of the experts mentioned above, the essence of labor law, not only regulates the legal relationship between workers and employers which is called an employment relationship (as proposed by Molenaar, Levenbach and S.Mok) but also (van Esveld stated) including regulating the work carried out by self-employed or currently called independent labor (self employee, sole prepritorship, vrije beroepen). Although in essence not all aspects of the workforce can be covered. Therefore, in subsequent developments, several experts have gradually replaced the term Labor Law with Manpower Law and-some have even used the term Manpower Law which comes from the word "labor". However, officially the term "manpower" has only been in formal juridical form since the issuance of Law Number 14 of 1969 concerning the Provisions of the Working Group concerning Manpower, and then Law Number 25 of 1997 concerning Manpower which uses the term 'employment ", Although this last law has never been" effective ", it is effective until the enactment of the successor of Law Number 13 of 2003 concerning Manpower. Therefore, the provisions governing all matters concerning manpower, including workers / laborers in an employment relationship, are (currently) referred to by a broader term, namely "employment". Likewise, the agency in charge of and administering labor, is called the Ministry of Manpower.

In this regard, in this chapter, the writer will use the term "labor" or labor law in a broader context, and will often use the term labor law in certain contexts according to the context of its scope and period. The use of the term labor is due to the fact that in the beginning, the Manpower Law originated from the Labor Law which initially only regulated labor, so that experts often call it and use the term labor law (arbeidsrecht, labor law). Although recently some have converted and used the term "employment" or Manpower Law which covers labor matters. However, it still needs to be understood, that the two terms are meant in principle to differ in content, context and -especially-scope.

The fundamental difference, of course, is in the basic words, namely: the word "labor" in the Labor Law, and the word "labor" in the Manpower Law, although there are still many people who are unfamiliar with the terms referred to. From these terms, it can be seen that people sometimes know many terms of labor or employment, but do not understand the meaning, scope and context of their use.

As stated in the current Manpower Act, apart from the term labor, there is the term worker, which is used as a term that is used together, while worker or laborer are two words that have the same meaning, but are different in categories. The Manpower Law states that a worker / laborer is any person who works (in an employment relationship based on a work agreement) and receives wages or other forms of remuneration. Workers or laborers are often termed "wage people" or "paid people", each of which means: "worker", is a person who performs work-activity (achievement) at the middle level and above, and is paid a wage / salary (as a counter-achievement). There is something more precise, as stated in Law Number 25 of 1997 concerning Manpower, that workers are workers who work in an employment relationship with an entrepreneur and receive wages. On the other hand, "workers" are workers who work at the "grass-root" level.

Although the two terms worker or laborer have the same meaning, namely labor in an employment relationship, there are different classes. That is, workers are "paid people" in the middle grade of management and above. This group is also often referred to as skilled workers, or in America it is called "white collar jobs". Meanwhile, workers are "paid workers" but at a lower level - grass-root - which is often referred to as unskilled labor, or in America it is called "blue collar jobs".

The use of the term worker / laborer simultaneously was originally used in Law Number 21 of 2000 concerning a Worker / Labor Union. The emergence of the terms "workers" and "workers" which have the same meaning but are different clusters, because (historically) they grouped themselves into two groups, namely "working class" and "working class". The two groups (groups of workers and groups of workers) do not want to be called otherwise. This means that groups of workers (skilled workers) do not want to be called workers (unskilled-workers), on the other hand, groups of workers do not want to be called workers. In other words, in

the context of the Trade Union / Labor Union Law, if the intended law only mentions the Workers Union Law, then the impression is that this law will only regulate the provisions of labor organizations and only protect workers at the middle to middle level. above alone, in the sense of excluding the lower class workers. On the other hand, if the law also only mentions the Labor Union Law, it will also give the impression that the law's coverage only includes provisions on labor organizations and worker protection at lower levels. In a sense, it does not include middle and upper class workers. Finally (at that time) it was agreed to use the two terms together "worker / laborer" as the official name of the law, although - in effect - workers or laborers as citizens have equal status in the law, the right to get a job and a decent living, express opinions, gather in one organization, and establish and become a member of a trade / labor union.

The term manpower refers to Article 1 point 3 of the Manpower Law, that labor, is a general term for all people who are able to do work to produce a product (goods or services) either for themselves or for other people (society). Thus, anyone who is able (and competent) to do work, either working alone, or working in various types of legal relations, does work with other parties, in any field or in any sector, in any job and wherever they work, he (they) is an employee. work. Factory workers are low-level workers. Likewise, managers in a company at the middle / upper level are also employees, even members of the Board of Directors, quality control officers, supervisors, marketing managers are all workers. Likewise farmers in the fields, fishermen in the sea, officials of the state: Judges, members of the MPR R.I., DPD R.I. and DPR R.I., government apparatus, even the president and his ministers, all of them - they too - are workers.

In the Basic Manpower Act, it is stated that labor is any person who is capable of doing work, both inside and outside the work relationship in order to produce services or goods to meet the needs of society. In addition, in Law Number 25 of 1997 concerning Manpower, it is stated that a workforce is any person, male or female who is currently in and / or will do work, either inside or outside of a work relationship in order to produce goods or services to meet community needs. So the definition of labor is really very broad, covering all and anyone who is able to work or do the job.

In relation to this definition, according to Iman Soepomo, the meaning of labor here is very broad, covering all state officials such as the President, Chairperson and members of the MPR, DPA, DPR, Ministers, all state employees, both civilians and military and police, all entrepreneurs, laborers, self-employed, unemployed and so on.

The source of law (in general) is where we can find or explore law. Sources of law can be divided into Legislative Law (wettenrecht), Customary Law (gewoonterecht), Jurisprudence Law (jurisprudentie-recht), Treaty Law (tractatenrecht), and Scientific Law (watenschapsrecht).

In this regard, Algra divides the sources of law into material sources of law and sources of formal law, namely:

The source of material law is the place from which the legal material is taken. This material source of law is a factor that helps form the law. For example, social relations, relations of political power, socio-economic situation, traditions (eg, religious views, precepts), results of scientific research (eg, criminological issues, traffic), international developments, geographical conditions. These are all objects of the study of legal sociology.

While the source of formal law is the place or source from which a regulation obtains legal force. This relates to the form or way that causes (a) legal regulation to take effect formally. What is generally recognized as a source of formal law are laws, treaties between countries, jurisprudence and customs.

The source of labor law has an important position because it is a reference for the parties if they face a dispute. Therefore, the source of labor law has a very strategic value in working relations. When viewed from the type, there are two kinds of sources of law in labor law, namely the autonomous rule and the heteronomous law.

Autonomous rules, in the context of labor law, are provisions made by the parties involved in an employment relationship based on free will which are limited by statutory regulations in the form of minimum standards (as long as they regulate labor rights) or maximum standards (if it regulates obligations to workers). The autonomous norm is basically an agreement subject to the legal terms of the agreement, which consists of a work agreement, company regulations, a collective labor agreement or collective bargaining agreement and customary law. Thus, once it is promised in a work agreement and / or in a collective labor agreement, or is regulated in company regulations, it immediately becomes a source of autonomous labor law.

The heteronomous rule is a provision that is regulated by a third party outside the parties involved in a work relationship. The third party that predominantly makes the provisions referred to is the Government / State. Therefore, the form of rule (heteronom) is all statutory regulations in the labor sector. What is regulated in statutory regulations, usually are provisions that have a protective character as a form of the presence of the State / Government in the midst of its weak people.

Legislation here (in the context of the heteronomous principle) -in essence- provides various protections to workers. First, social protection, in order to enjoy and develop one's life as a human being, or in other words, labor is not only seen as a mere factor of production, but must be respected for its dignity as a human being; Second, economic protection, so that workers can enjoy a decent income which is sufficient to meet their daily

needs (and with their family members), especially in relation to wage protection and social security; Third, technical protection, namely so that workers or workers avoid the risks of work accidents in the workplace.

Related to the heteronomous principle, as one of the sources of labor law, in this case, what is meant, is anything in which we can find provisions or rules regarding labor issues. In this regard, the source of labor law in question is a source of law in a formal sense, because the source of labor law in a material sense is (should be) Pancasila.

In this regard, according to Iman Soepomo, the sources of labor law in the formal sense of the word consist of 1) laws; 2) other regulations; 3) habits; 4) verdict; and 5) agreements, and 6) treaties. Meanwhile, sources of labor law - in a formal sense - according to Abdul Rachmad Boediono, are: a) legislation; b) habit; c) decisions; and d) treaties; and e) agreement. The two opinions are in principle the same, only Iman Soepomo added "Other Regulations" as a source of labor law in a formal sense whose position (hierarchy) is lower than law and generally constitutes the implementation of laws.

The law is the most important and foremost source of law. In addition, there are government regulations in lieu of laws. Based on the consideration of preventing a legal vacuum, the Indonesian State still recognizes the enactment of regulations from the previous Dutch East Indies era. Based on Article II of the Transitional Rules of the 1945 Constitution, all regulations that were in effect before Indonesian independence are still in effect before the issuance of new regulations.

In terms of form, there were several kinds of regulations issued by the Dutch East Indies Colonial Government, for example (a) Wet, (b) Algemeene Maatregel van Bestuur, (c) Ordonantie, (d) Regeringsverordening, (e) Regeringsbesluit, (f) Hoofd van de Afdeling van Arbeid. Among the regulations, which have an equal position with the law (in the formal sense) according to the positive law of Indonesia, are a) Wet; b) Algemeene Maatregel van Bestuur; and c) Ordinance.

III. Work Relations Norms in the Legislation

That the work agreement is one form or type and the manifestation of the agreement in general. According to Subekti, an agreement is an event where a person promises to another, or where two people promise each other to do something. In its form, the agreement is in the form of a series of words that contain promises, or abilities that are spoken or written. From this incident (-saling-promised) a relationship between the two people arises which is called the engagement. So from the agreement issued an agreement between the two people who made it.

In the General Provisions of Law Number 13 of 2003 concerning Manpower, it is stated that a work relationship is a relationship between an entrepreneur and a worker / laborer based on a work agreement which has elements of work, wages and orders. The definition (in the General Provisions) is reaffirmed, that the work relationship occurs because of a work agreement between the entrepreneur and the church / laborer.

A work agreement is an agreement between a worker / laborer and an entrepreneur or employer that contains the conditions of work, rights and obligations of the parties. The work agreement in question, can be made (meaning agreed) in writing or orally. Likewise, a work agreement can be called for a specified time and for an indefinite period of time. Furthermore, a work agreement for a certain time (called PKWT on a daily basis), can be agreed on the basis of a period of time (commonly called PKWT on the basis of a period of time), or can be promised on the basis of the completion of a certain job (commonly called PKWT on the basis of completion of a certain job).

PKWT which is based on a period of time or PKWT which is based on the completion of a certain job, each of the conditions is determined in the work agreement in accordance with the agreement of the parties. However, further provisions regarding the two types of PKWT, will be regulated generally (heteronom) in a Government Regulation. In addition, in this type of PKWT, there is a special PKWT, namely a daily / freelance work agreement (often called PKH / L or casual daily worker -BHL, and a special PKWT for ship crews that has existed since the existence of the Indonesian Commercial Code (KUHD - Wetboek van Koophandel), namely the Sea Work Agreement (Zee Arbeids Overeenkomst).

That the worker / laborer can carry out overtime work either on the working day beyond the normal working time according to the WKWI pattern options specified / agreed upon, or overtime on the weekly rest day. Likewise, overtime work can be carried out on specified official holidays. However, according to ILO Convention No. 106/1957, Article 6 paragraph 1, every worker / laborer is entitled to a weekly rest of at least 1 (one) day for every 7 (seven) days period. Thus, for companies that apply the WKWI 5: 2 pattern with 2 (two) weekly rest days, it means that it is still possible to carry out overtime on a weekly rest day on one of the specified weekly rest days. On the other hand, a company that applies the WKWI 6: 1 pattern which only stipulates 1 (one) weekly rest day in 7 (seven) days, means that it is not possible to carry out overtime on the specified weekly rest day. The problem is, is it permissible to carry out overtime work for workers / laborers in a company that sets the WKWI 6: 1 pattern? Based on Article 8 of the ILO Convention No. 106/1957, that there are temporary exemptions to be able to work overtime on a weekly rest day which deviates from the provisions

of Article 6 point 1 of ILO Convention No. 106/1957, namely: the occurrence of an accident or threatening situation, as well as an emergency (force majeure), or the existence of work of an urgent nature; likewise in the case of work which is extraordinarily urgent due to special circumstances; and avoiding loss of perishable items.

Based on these provisions, there are two categories of overtime work, namely doing overtime work on weekdays (regular), and / or doing overtime work on weekly rest days or on official holidays.

Reformulation of Work Relationship Norms in the Outsourcing System in Indonesia

In fact, in the outsourcing system in Indonesia, there are 2 (types) of “work” activities that can be outsourced by the employing company (user) to an outsourcing company through an outsourcing agreement, namely the agreed “supporting activities”. through a work contracting agreement, and "supporting service activities" that are agreed upon through an agreement for the provision of worker / labor services. although the Job Creation Law no longer mentions the type of outsourcing, it will be further regulated in a Government Regulation which is likely to still mention the types of work activities in question.

First, these supporting activities are parts / parts of activities of a series of production processes that support (provide support) to the main activity (main business) in producing a product produced by the company (user). For example, activities in packaging, labeling, information centers, data processing, and others. This form is commonly known as "job outsourcing".

Second, the supporting service activities referred to are general company activities that are not part of the production process (non-core business). Exemplified in the explanation of Article 66 paragraph (1) of Law No.13 / 2003, including, but not limited to: cleaning (cleaning service), catering service, security (security guards), oil and gas support (auxiliary business activities in the mining and oil sectors), and transport for workers. However, in the ministerial technical regulation, the supporting service activities are limited to only 5 (five) types of activities as mentioned. Other examples outside the five types, such as: routine maintenance (maintenance); management driver, helper, office administration work; data processing, reporting (data report), calculation and payment of salaries or employee costs (payroll), and others. Benyuk is commonly called "outsourcing workers". By prof. Uwiyono assessed that this form of outsourcing is seen as human trafficking.

With regard to disputes that have been decided by the Constitutional Court, that the Constitutional Court has amended and (even) added to the clauses in the statements of Article 65 paragraph (7) and Article 66 paragraph (2) letter b as mentioned above, but does not affect the provisions of the norms of relations. work and do not change the behavior of the legal subject against these provisions. In this connection, according to I.C. van der Vlies, that by issuing a regulation, legal certainty for the community will be guaranteed, because there is increasingly limited space for parties to act according to their wishes and insights. However, legal certainty will of course be violated if the regulations that are the basis of existing expectations (expectations) are changed. This means that his expectations regarding future events are shattered.

Apart from the reasons mentioned above, the outsourcing company received justification from the Constitutional Court in its legal opinion which stated that with the provisions in Article 64 to Article 66 of the Republic of Indonesia Law. Number 13 of 2003, workers / laborers have received protection from the provisions in Article 65 paragraph (8) and Article 66 paragraph (4), that if the worker / laborer is from an outsourcing company (in this case, specifically workers / labor service providers) Those who are employed by the company that provides the job (user) are used to carry out their main work, and if the work relationship of the workers / laborers is not firm, especially if the company is not and is not a legal entity, then the status of the worker / laborer is transferred by law from the outsourcing company. (outsourcing company) to the company providing the job (user). Likewise, based on Article 65 paragraph (4) and Article 66 paragraph (2) letter c, a balance has been regulated, that job protection and work conditions for workers / labor (non-organic) in outsourcing companies are at least the same as job protection. and conditions of work for workers / labor (organic) in companies that provide employment, in the sense of prioritizing the principle of non-discrimination in the same workplace. In other words, the Constitutional Court concluded that with the provision of non-discrimination, outsourced workers / laborers have been protected in a working relationship through PKWT. Although in the analysis, the reasons for the Constitutional Court still do not guarantee equal treatment (non-discrimination) between PKWTT and PKWT.

In relation to employment through PKWT, almost all constitutional rights of workers / labor, both during work relations and after termination of employment are neglected and do not meet the requirements to be taken or accepted. These rights consist of several cluster groups, including:

The first cluster, protection of the right to organize and representation in industrial relations institutions or other labor organizations and institutions, cannot be implemented properly, because there is no union or affiliation in a trade union. Likewise, the derivative rights associated with the existence of a trade union, such as: the right to participate in giving advice and opinions in company regulations (PP) or to be involved in negotiating a collective labor agreement (PKB) which contains working conditions, rights and obligations and orderly conduct of work, all of which make it impossible for outsourced workers / laborers to be involved. Apart from that, the right to express opinions up to the right to strike in relation to the delivery of such opinions is also

impossible for workers / laborers at an outsourcing company, also because there is no right to associate and organize as well as the right to express opinions.

The second cluster is the right to receive K3 protection and social security from the BPJS in the event of a work accident (KK), or when occupational disease (PAK) occurs during / after the end of the employment relationship. Likewise because of the gradual participation, it is possible to deviate from partially registered companies (PDS), both PDS-wages, PDS-participation and PDS-programs with relatively light sanctions, so that employers are more likely and often ignore the provisions of the Jamsostek (BPJS) reduce production cost than having to comply with the BPJS payment obligations. As an illustration, the threat of sanctions related to violations in administering social security for workers, namely: work accident and death security programs regulated in Article 59 and Article 60 of PP R.I. Number 44 of 2015 and violation of the pension guarantee program regulated in Article 34 and Article 35 of PP R.I. Number 45 of 2015, as well as violations of the old age security program regulated in Article 33 and Article 34 of PP R.I. Number 46 of 2015, all only administrative sanctions, in the form of: reprimands, fines, and / or not getting certain public services in matters of licensing are very light compared to the sanctions at the time of Social Security.

The third cluster, deviation from the norms of work relations through PKWT, results in normative rights to work in accordance with normal working time and rest time (WKWI) norms, or sectoral WKWI norms, including WKL, cannot be fulfilled perfectly and get wages and / or wages work overtime according to the provisions. In relation to the WKWI, only the right to rest or leave for a short term can be fulfilled and realized. For example, breaks between working hours (IAJK), weekly rest (weekly-rest), or breaks for certain reasons, including menstrual breaks which (all of them) have a relatively short period of time. However, the right to rest or leave with a relatively long period of time, such as: annual leave, long rest, leave due to prolonged illness, maternity and maternity leave or birth leave, based on the terms and conditions it is no longer possible to be implemented procedurally.

The fourth cluster, that through employment relations based on PKWT, the rights with respect to wages (salary) are more neglected. Normal work wage standards that do not respect work competence and / or years of service (experience), ignore the provisions of overtime wages, minimum wages, decent living standards - KHL, structure and scale of wages, religious holiday allowances - THR, even non-income wages and work facilities and other non-wage income (take home pay) are not possible to obtain. At least it is very difficult to implement with predetermined requirements.

The fifth cluster deals with rights after termination of employment, in this case, it is also very difficult for outsourced workers / laborers to obtain their right to “severance pay” or substitution rights for severance pay, either in the form of pension benefits or pension savings funds. The rights that may be received after termination of employment are JHT and / or JP-BPJS. However, the amount and size of the acceptable value is largely determined by the accumulated years of service (the value) is relatively very small compared to the value of severance pay that should have been received when all the accumulated years of service at various outsourcing companies were taken into account.

The sixth cluster, rights arising from the company's internal rules (as autonomous law), also cannot be obtained for outsourced workers / laborers, because they work not for producer companies (users), but work for supporting companies and non-companies. -core business, namely an outsourcing company that only carries out certain parts in the production process, and part of the company's supporting service activities in general.

Thus, it is the Manpower Law that legalizes the application of PKWT which becomes an obstacle for workers / laborers to obtain their rights. This is also the reason for discrimination and a very sharp gap between workers / laborers through PKWT and workers / laborers through PKWTT. With employment relations through PKWT, the Manpower Law places workers / laborers as mere production factors, easily employed when needed and then laid off when they are no longer needed.

V. Closing Notes

That the history and philosophy of work relations norms that prevailed in the pre-Dutch colonial period was Customary Labor Law (Arbeids Adatrechts) as part of Customary Law (het Adatrecht) which was applied in various customary law communities (in the form of an unwritten law). At that time, there were already people who had slaves (master servants). That is, someone has already given a job, or leads a job (employer), and someone asks for a job and does work (called a slave or servant) as appropriate as a legal subject. The work relationship at that time was still personal between people doing work under the leadership of another person or body (as employer), and people or bodies, most of whom were slaves or servants who were “workers” at that time. Thus there is a difference with the state and condition of modern work relations today.

After the arrival of the European nations, especially during the reign of the Dutch East Indies, the Labor Law shifted to a written law in the form of: Wet; Algemeene Maatregel van Bestuur; Ordonantie; Regeringsverordening; Regeringsbesluit; and Hoofd van de Afdeling, among others Burgerlijk Wetboek, which among other things regulates the norms of work relations in the Third Book of Chapter Seven, entitled "Servant

Rental" (Huur van Dienstboden) covering Article 1601 (oud), Article 1602 (oud) and Article 1603 (oud). Since 1879, these three articles have been officially applied to indigenous groups (Nederland Indie). Then, in 1927 a new labor regulation was issued with 81 (eighty one) new articles adding 3 (three) old articles which are part of Book Three with a new chapter, Chapter Seventh-A on "Agreements to Do Work" (Overeenkomsten tot het Verrichten van Arbeid) starting from Article 1601 (new) to Article 1603z. In addition, the Wetboek van Koophandel (WvK) was also promulgated which regulates various regulations regarding sea work agreements, PKL (Zeearbeids Overeenkomst) for ship crews as lex specialis who still refer (coherently) to Chapter Seven-A BW as legi generali. Next Algemeene Maatregel van Bestuur, who is referred to as Aanvullende Plantersregeling (Stbl. 1938 No.98), namely the Labor Regulations in Plantation Companies, has also regulated the norms of work relations and work agreements as well as special terms of work on plantations. Koeli Ordonantie (Stbl. 1880 - Nr.133) regulates the norms of work relations regarding the rights and obligations of employers and workers who are imported from outside the region in plantation and industrial companies (currently called "AKAD" between work between regions). Previously, in the Algemeene Politie Strafreglement, APS (1872), there was a poenale sanctie regulation that threatened workers (imported from outside the region, AKAD) with the threat of fine or forced labor if they terminated the unilateral employment relationship. Indienstneming van Werklieden (ZG. Vrije Arbeidsregeling) or Regulation of the Employment of Laborers, Ordonnantie Stbl. 1911 Nr. 540 which regulates wages and labor loans as well as the type of work agreement that is held for a specified time (a kind of "PKWT"). The same is regulated in Arbeidsregeling Nijverheids Bedrijven (Labor Regulations in Industrial Companies) Ordonnantie Stbl. 1941 Nr. 467 juncto Arbeidsverordeing - Nijverheidsbedrijven (Regulation of the Implementation of Labor in Industrial Companies) Regeringsverordering which regulates wages and workers' loans as well as work hours and weekly rest.

In the Panglong Reglement (Regulation on Panglong) Ordonnantie Stbl. 1923 Nr. 220 juncto the Decree of the Governor of East Sumatra Panglong-keur Soematra-Ost-Kust (Regulation on Panglong in East Sumatra) and Decree of Riau Resident Riauw Panglong Regeling (Regulation on Panglong in Riau) which regulates the persecution of people (workers) who work in Panglong , working conditions, occupational safety and health norms in Panglong, as well as work environment and workplace requirements in Panglong. Thus, since the Dutch colonial era, there have been enough provisions of laws and regulations that regulate the norms of work relations and working conditions as well as the protection of occupational safety and health of workers, which have adopted the current Labor Law in Indonesia, including PKWT and PKWTT. in the Manpower Act. Even though at that time, there was no provision regarding outsourcing (outsourcing), but after the revision of the additions to the Third Book of BW as part of Chapter Seventh-A, it was regulated regarding chartering work in Articles 1604 to Article 1616 in conjunction with Articles 1601 and Article 1601b Burgerlijk Wetboek which is a reference for outsourcing provisions in Indonesia to date. However, the legal politics of the colonial government (the Netherlands) at that time was purely for the sake of colonialism, so it was still tinged with exploitation.

After independence, based on Article I of the Transitional Rules of the NRI Constitution, it is stated that all existing laws and regulations are still valid as long as new ones have not been made. Then, gradually new laws and regulations were formed that regulate the norms of work relations and working conditions for the protection of workers. Starting with the issuance of the Work Law Number 12 of 1948 in conjunction with the Law of the Republic of Indonesia. Number 1 of 1951 concerning the Statement of the Enactment of Work Law Number 12 of 1948 for All Indonesia. Although the Work Law does not specifically regulate the norms of work relations, almost all of its contents regulate the protection of people or laborers in carrying out work.

That the norms of work relations in the outsourcing system in the current statutory regulations (ius constititum) are that in the outsourcing system in Indonesia, the classification of workers in a "company providing employment" (user) is grouped into "activities in the process of processing. production"; and “general company activities” that are not part of the production process. First, the activities in the production process are further differentiated into “main activities” (main business) and “supporting activities”. These supporting activities can be outsourced through a "work contracting agreement" to the company receiving the contract. Second, company activities in general that are not part of the production process are also differentiated into “outsourced activities” and “non-outsourced activities”. Such outsourced activities are known as "supporting service activities" (non-core business), the delivery of which is carried out through a "worker / labor service provision agreement" to a company providing worker / labor services. The law restricts the referred "support service activities" to only covering five types of work, so that people (laymen) often interpret that there are only five types of activities that can be outsourced and which constitute outsourcing, namely cleaning service, catering, security, and supporting service businesses. mining and petroleum, and workers transportation business. Types and business permits in the outsourcing sector will later be re-regulated in a Government Regulation.

In the Manpower Law, there are 2 (two) types of work agreements that are applied in the outsourcing system, namely a work agreement for an unspecified time (PKWTT) and a work agreement for a certain time (PKWT). In each outsourcing company, it is regulated with the option that the work relationship at the company

receiving the contract, the option is PKWTT, but it can be agreed upon through PKWT if it meets the requirements of Article 59 (Law No.13 / 2003). Whereas the work relationship option for a company providing worker / labor services is basically PKWT if it meets the requirements referred to in Article 59 (Law No.13 / 2003), but if it does not meet the requirements of Article 59, the working relationship must be PKWTT as long as it is made in writing and signed handle the parties. However, it turns out that Article 59 of the R.I. No.13 / 2003 not only regulates the terms of PKWT, but also regulates 2 (two) possible choices of types of work agreements for a job, namely: first, Article 59 paragraph (1) of Law of the Republic of Indonesia. No. 13 of 2003 concerning work relations through PKWT, and second, Article 59 paragraph (2) of Law of the Republic of Indonesia. No. 13 of 2003, regarding employment relations through PKWTT. Associated with the concept of ideal work relationship norms in work relations in the outsourcing system which is regulated in the labor laws and regulations in Indonesia is different from the norms of work relations in general. In an outsourcing system, the norms of working relations are only carried out through PKWT with reference only to the provisions of Article 59 paragraph (1) of Law no. 13/2003, namely for certain jobs which according to the type and nature or activity of the work will be completed within a certain time. Therefore, based on these provisions, all workers / laborers in an outsourcing company have a working relationship through PKWT, even though the agreed work is a permanent job.

The basic rights or constitutional rights of workers / laborers that are lost, or at least cannot be realized because they are constrained by requirements to obtain them which cannot possibly fulfill the requirements, must be protected by reconstructing the norms of work relations related to rights of association, rights -the right to be involved in the preparation / negotiation of working conditions, the rights to become a member or to be represented in industrial relations institutions and labor organizations, and the rights attached to individual workers or laborers, such as the right to leave and rest , as well as wage rights.

For this reason, presumably the laws and regulations regarding labor made during the Dutch East Indies government (in Indonesia) are more structured in accordance with the hierarchy of laws and regulations and are harmonious both vertically and horizontally and are coherently intertwined with one another. There is no sectoral ego and no interest from certain parties, so that it can last for decades or even more than one hundred years until now. Even though during the Dutch colonial period, the political law that was enforced was how to regulate the colony so that the monopoly on natural resources could be controlled.

In this regard, the authors suggest that in the preparation of statutory regulations, it can be guided by the laws and regulations at that time which were completely clean from the secular ego without any interest from certain parties. At that time, the law (KUH Perdata / BW) stipulated the existence of work development that was still being discussed in the procurement of goods or services in general in Indonesia, including institutions for submitting part of the implementation of work to other companies which in essence were part of contract work. However, with the provision regarding outsourcing (outsourcing) in the Manpower Law, people are confused between one another. Therefore, it needs to be returned to the job contracting scheme in the Civil Code in accordance with the principles of freedom of contract and ideal good corporate governance, such as real job tenders accompanied by a budget plan and equipped with unit costs as a reflection of the cost of production.

The norms of working relations in the outsourcing system in Indonesian legislation are not harmonious and coherent. Between one another there is a discrepancy and conflict of norms. Therefore, it is necessary to reformulate (rearrange) so that each content of legislation is coherent (interlinked with one another) and reflects the principle of legal certainty, harmony and harmony, so that it can provide protection (protection) to all parties in an equitable manner.

In the formation of statutory norms, it should be carried out guided by the provisions and principles for the formation of good laws and regulations, especially: principles of clarity of formulation, conformity between types, hierarchy and content, efficiency, can be implemented and clarity of objectives. . Likewise, the content of statutory regulations must be able to provide legal certainty, balance, harmony and so that it truly provides fair protection to all parties.

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