

Legal Protection for Outsourced Workers Based on Regulation Number 24 Year 2011 in Kota Medan

Suria Ningsih*, Erna Herlinda, Agusmidah

Fakultas Hukum Universitas Sumatera Utara

*Corresponding author. Email: Suria.ningsih@usu.ac.id

ABSTRACT

Outsourced worker whose occupation is to work from one company to another. Outsourced workers in carrying out their work despite having legal norms as other formal workers yet their rights as employees are often overlooked or have not been fully given by the company. In article 15 paragraph 1, Regulation Number 24 Year 2011 about Social Insurance Administration Organization (BPJS) states that employer is obliged to gradually register its company or agency and its employees as participants of BPJS in accordance with the preference programme. This research was conducted to view the legal protection and regulations that protect outsourced workers in the implementation of social security in the city of Medan, aligned with the implementation of UU Number 24 Year 2011 on Social Insurance Administration Organization (BPJS). The type of this research is normative juridical, performed by collecting the secondary data in the form of primary, and the secondary and the tertiary legal materials are collected through library research. In order to complete the data, field research was conducted through the interviews with related informants. The data was analyzed qualitatively. The results of the study showed that the provision of social security is regulated in Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS). The Social Insurance Administration Organization (BPJS) consists of Social Insurance Administration Organization of Health (BPJS *Kesehatan*) and Social Insurance Administration Organization of Employment (BPJS *Ketenagakerjaan*). The implementation of social security for outsourced participants in the city of Medan has been not carried out smoothly due to the fact that there were many outsourcing companies did not register their workers as the Social Insurance Administration Organization (BPJS) participants. It happened because the outsourcing companies were not the limited liability companies, with no permit, thus it is not registered in the Social Insurance Administration Organization (BPJS).

Keywords: *legal protection, outsourced worker, labour and employment law*

1. INTRODUCTION

Legal protection for workers is the fulfillment of basic rights that are inherent and protected by the constitution, including outsourced workers.^[1] Violation of basic rights protected by the constitution is a violation of human rights. Legal protection for outsourced workers is intended to guarantee the same basic rights as non-outsourced workers and to guarantee equal treatment without discrimination on any basis to realize the welfare of outsourced workers.

The problem of employment in Indonesia related to legal protection especially for outsourcing workers is the large number of irregularities or the violations of working norms and occupational health and safety norms (K3) carried out by employers in running the outsourcing business.^[2] Deviations or violations may occur in the form of:

1. The company does not classify core business and supporting companies (non core business), which is the basis of outsourcing itself that in practice, what

is being outsourced is the character and the main occupation types of the company. The absence of classification of the character and the main occupation types of the company that are outsourced results in workers being employed for the main occupation types or those that are directly related to the production process, not with the supporting activities as required by law.

2. Companies that submitting work (principal) submit some of their work to companies accepting jobs (vendors) that have no legal entity.
3. Work protection for outsourced workers is at minimum level compared to other workers who directly work at the principal company.

Another case occurred is the outsourced workers who have no access to the social security program, and supposedly it should be their rights to be registered in the program as stated in Article 28 H paragraph 3 Regulation NRI Year 1945, "Everyone has a right for social security that allows his full development as a human being".

The social security program is a basic protection program for workers that aims to ensure the security and certainty of socio-economic risks and a guarantor of the income revenue streams for workers and their families due to affordable social risks from entrepreneurs and employments.^[3] In the Law on the National Social Security System there are 5 types of social security programs, namely health insurance, work accident insurance, pension plan, pension insurance and life insurance.

Workers' social security (Jamsostek) is a protection provided in the form of partial compensation from the lost or reduced income, and services as a result of events or conditions experienced by workers such as work accidents, illness, maternity, pension time and death.

Workers or laborers are the backbone of the company as it will not be performed without them. They have an essential role in driving the wheels of life or the company's life of business. In the contrary, social security is very necessary for the workers in order to increase the business productivity. Therefore, it is wrong for the company to not providing such protection and social security to its workers, including outsourced workers whose rights and obligations are as same as other workers.

Outsourced workers must be treated equally in general. They also must be protected and be able to be in safety in carrying out their tasks. The implementation of work protection is very important to maintain and increase the productivity and stability of the company where the outsourced workers work. There is always an assumption that outsourced workers are being oppressed and harmed. Thus, it is interesting to find out how the regulation and protection of the rights of outsourced workers effectively work in accordance to the implementation of social security in the city of Medan.

2. REFERENCE REVIEW

Law was created as a means to regulate the rights and obligations of legal subjects. In addition, the law also functions as an instrument of protection for legal subjects.^[4] *Perlindungan hukum diartikan sebagai bentuk tindakan atau perbuatan hukum pemerintah yang diberikan kepada subjek hukum sesuai dengan hak dan kewajiban yang dilaksanakan berdasarkan hukum positif di Indonesia. Perlindungan hukum timbul karena adanya suatu hubungan hukum.* ^[5]Legal protection can also be interpreted as an effort that is carried out consciously by every individual and government institution that aims to seek security, control and fulfillment of living welfare in accordance with existing human rights.^[6]

Legal protection for workers is necessary, especially those who are in very weak positions.. Sociologically and philosophically legal protection from the authority of the employer will be carried out if the legislation in the field of labor requires the employer to act as in the legislation.^[7]

Social security can be interpreted as protection provided by the community for its members for certain risks or events with the aim as far as possible to avoid the occurrence of these events which can result in the loss or the decreasing of a large portion of income and to provide medical services and/or financial guarantees for the economic consequences of these events and guarantees for family and child benefits.^[8]

Article 1 paragraph (2) Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS) states "Social security is one form of social protection to guarantee that all people can fulfill the basic needs for a decent life". Social Insurance Administration Organization (BPJS) is a legal entity formed to carry out social security programs, which consist of:

1. Social Insurance Administration Organization of Health (BPJS Kesehatan), which functions to organize health insurance programs, and
2. Social Insurance Administration Organization of Employment (BPJS Ketenagakerjaan), which functions to organize work accident insurance programs, life insurance, pension plan and pension insurance.

Social security itself covers the areas of prevention and development, the field of recovery and healing as well as the field of guidance. If these three fields are further related, they will lead to what is called labor protection..

Outsourcing is the practice of passing part of the work over to other parties, where the company surrenders certain work to third parties which is carried out with the aim of dividing the risk and reducing the company's burden.^[9] According to Sehat Damanik, outsourcing is a delegation of daily operations and management from a business process to outside parties (outsourcing service providers). Through this delegation, management is no longer carried out by the company but it is delegated to outsourcing service companies.^[10] Outsourcing as a transfer or a delegation of several business processes to a service provider body, where the service provider performs administrative and management processes based on definitions and criteria agreed by the parties.^[11] Maurice Greaver gives a definition of Outsourcing as an action of diverting some of the company's activities and the right of decision making to another party (outside provider), where this action is related to a cooperation contract.

The term outsourcing cannot be directly found in the provisions of Regulation Number 13 Year 2003 on Employment. However, the Article 64 states that "the company may submit a part of the work implementation to other companies through an employment contract or the provision of services for workers/laborers in writing." When referring to the provisions of Articles 64, 65 and 66 Regulation Number 13 Year 2003, outsourcing is chartering of a supporting work done separately from the main activities of a company based on a written labor agreement with another company.

Outsourcing is different from ordinary work agreements. The ordinary work contracts generally give certain jobs to third parties temporarily. Since it is a short-term occupation, generally, the process is not followed by the transfer of human resources and the company equipments or assets. Whereas in the outsourcing, the cooperation is expected to be a long-term agreement, where the process of handover to another company is executed by considering the professionalism of the company. Therefore, the submission of work is often followed by the transfer of human resources and equipments or company assets. [12]

3. RESEARCH METHOD

The problem approach used in this study is normative juridical. The secondary data used is in the form of 3 legal materials, they are; primary legal material, which is a binding legal material originated from, Regulation Number 13 Year 2003 on Employment, Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS). The secondary legal material that is a legal material that provides an explanation of primary legal material in the form of books, literature, papers, legal dictionaries relate to the material. The material is enhanced with data search activities using the internet and tertiary legal materials that provide additional explanations.

The method of data collection is done through a library research. In order to complete the data, a field research is carried out by conducting interviews with relevant informants or research participants. Furthermore, the collected data will be processed through a number of stages of data selection, data classification and systematization of data. Meanwhile, data analysis is carried out qualitatively, and then concluded inductively.

4. Social Security Protection for Outsourced Workers in Kota Medan

- a. Prior to the implementation and the development of Social security protection for outsourced workers, all risks that arise during duty hours and could endanger the health or safety of workers are entirely the responsibilities of the workers themselves. There are 2 laws (*UU*) that form the basis of regulation on the implementation of social security in Indonesia, namely Regulation Number 40 Year 2004 on National Security System and Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS).

The health insurance policy is regulated in Regulation Number 40 Year 2004 on National Social Insurance System, which is implemented through *Peraturan Presiden* (Presidential Decree) Number 12 Year 2013 on Health Insurance. In Article 1 paragraph (2) it is stated that health insurance is given in the form of health protection

so that participants can receive health care and other protection benefits as a way to fulfilling basic needs of health care. These benefits received by every individual who has paid certain amount of monthly contributions or fees to the government.

According to *Peraturan Presiden* (Presidential Decree) Number 12 Year 2013, the health insurance participants are divided into 2 types, that are:

1. PBI (*Penerima Bantuan Iuran/Recipients*) health insurance
2. Non PBI (*Bukan Penerima Bantuan Iuran/ Non Recipients*) health insurance.

Workers or laborers are parts of non-recipients health insurance, thus all employers are required to register their workers and family members to become participants of Social Insurance Administration Organization of Health (BPJS Kesehatan). If an employer does not follow this policy, it will be subject to sanctions in accordance with Article 17 of Regulation Number 24 Year 2011 on Social Insurance Administration Organization of Health (BPJS). Otherwise, workers registered at BPJS, must pay 5% of the contribution, with details of 3% paid by the employer and 2% paid by the worker. Specifically for workers with health insurance are provided with more emphasis on curative and rehabilitative aspects. Workers experiencing a work accident are entitled to receive a work accident insurance. It is quite common that workplace accidents and diseases caused by the work environment are risks that must be faced by every worker.

To overcome this, the government issued *Peraturan Pemerintah* (Government Regulation) Number. 44 Year 2015 on the Work Accident Insurance Program Organization (*Penyelenggaraan Program Jaminan Kecelakaan Kerja*) and life insurance. Article 1 paragraph (1) states that work accident insurance is a benefit in the form of cash and/or health services provided when participants experiencing work accidents or suffering particular diseases caused by the work environment. Article 5 paragraph (2) and (3) states that participants of the Work Accident Insurance Program Organization (*Penyelenggaraan Program Jaminan Kecelakaan Kerja*) are those who receive wages and work for employers other than state administrators, and they are not recipients of wages. The amount of contributions to be paid is in accordance with the level of risk of the work environment (Article 16 paragraph 1).

Work accidents are accidents that occur in work relationships, including accidents that occur on the way from home to work or vice versa, and diseases caused by the work environment. If workers who are affected by work accidents are still unable to work, then the employer will have to pay the wages of the workers until the decision issued as the work accident is determined by the minister. Then the Organizing Body refunds the compensation given by employers to workers who are still unable to work. If the compensation paid by the

Organizing Body is greater than the compensation paid by the employer to the worker, the difference is directly given to the worker. But if the compensation given by the organizer is less than the wage to be paid to the worker, the difference is not given to the worker.¹³

In addition to the regulation of work accident insurance, *Peraturan Presiden* (Presidential Decree) Number 44 Year 2015 also regulates life insurance, which is a cash given to heirs after a workers, or in this case the insurance participants, die, not caused by workplace accidents. The participants in the death insurance program are the same as participants in the work accident insurance program. Employers must register their workers in the JKM program, as regulated in Article 35 (1). If the employer cannot be subjected to administrative sanctions. The amount of contributions paid by the employer is 0.30% of the monthly wage.

The implementation of Pension Insurance is regulated in *Peraturan Pemerintah* (Government Regulation) Number 45 Year 2015 on Pension Guarantee Program Organization (Penyelenggaraan Program Jaminan Pensiun). Based on Article 2 paragraph (1) the pension insurance participant is a worker who works for the state administration employment and non state administrator. The amount of the contribution to be paid is 3% of the monthly wage, where the contribution is borne jointly by the employer and the worker with the details of 2% of the wages borne by the employer and 1% borne by the wages of worker.

Pension plan are cash benefits that are paid at once when the participant enters retirement age. The implementation rules are in *peraturan Pemerintah* (Government Regulation) No. 46 of 2015 about Pension Insurance Program Organization. Participants in this program are wage recipients who work for non-state administrator employers and not the recipients of wages. For participants who receive wages the amount of contributions is 5.7% of monthly wages with a stipulation of 2% borne by the worker and 3.7% is borne by the employer.

b. Social Security Organization for Outsourced Workers in Kota Medan

Article 15 Paragraph (1) Undang-Undang No. 24 Tahun 2011 on Social Insurance Administration Organization (BPJS) states that employer must gradually register himself and his employees as participants to the BPJS in accordance with the social security program that is followed. This means that all companies are required to register their workers in the BPJS program, both Social Insurance Administration Organization of Health (BPJS *Kesehatan*) and Social Insurance Administration Organization of Employment (BPJS *Ketenagakerjaan*). If the company violates this provision, it will be subject to administrative sanctions. This participant registration is not only intended for workers who work directly with principal

companies but also for outsourced workers. Workers should be treated equally with other workers in general, that they must also be protected and be able to maintain safety in carrying out their work.

In reality, based on field research from some informants, many outsourcing companies have not yet registered their workers as BPJS participants. This happened not only to outsourcing companies that neither have registered nor have permits, but also to outsourcing companies that have registered and have permits. This situation happened due to several factors, as follows:

1. Companies intend to reduce production or operation costs and at the same time improve their profits.

Employers who have the principle of reducing production costs to a minimum level in order to obtain benefits as much as possible, will certainly make any effort to avoid paying any costs for fulfilling workers' rights, such as paying wages in accordance with provisions, paying social security contributions, providing work facilities in accordance with K3 and other standards. Not to mention those related to a number of business licenses which all require time and funds.

In the outsourcing work model, labor is a commodity that is castrated with human rights, leaving workers with no clarity in relationships, impacting on the unclear position of workers how they can claim their rights. Workers are required to fulfill the requirements in work rules with outsourcing patterns, heavy working hours, unbalanced wages, no opportunity to join workers' organizations because of the time spent in the employment contract. Violations of the agreement will directly result in the immediate dismissal of the management of the outsourcing company and be replaced by other outsourcing personnel as reserve soldiers.^[14]

2. The workers have lack of knowledge of workers on the rights as employees, and the high demand for work.

On one hand, the outsourced workers havelack of knowledge on their rights and how to claim their rights to the employers. On the other hand, there is a desperate need for jobs among people. In that case, as long as, a person can get a job, it is considered enough without having to think of other things such as social security and other benefits they can claim, which apparently become the responsibilities that an employer must take. Though, the lower the community looks for a job, the greater the risk of workplace accidents that will be experienced by the worker, and conversely the higher the community looks for a job, the less the risk of workplace accidents will be experienced.

3. Weak labor inspection by the Government

Supervision is one important element in the implementation of government's policy (?). Labor inspection needs to be done in order to find out whether the rights of outsourced workers have been fully fulfilled or not. The main purpose of labor inspection is to ensure the implementation of labor regulations that are operationally carried out by supervisory staff in the labor agency. The classic problems about the lack of supervision are the minimum number and ability of HR supervisors, and the lack of budget. Even if the supervision function run effectively, it will avoid working practices that lead to exploitation.

Additionally, there are still many outsourcing companies that have not registered and have a permit so that their workers cannot be registered as BPJS participants. As a condition to become BPJS, labor participants must be on behalf of the company (PT) and the company must have been registered at BPJS. Even though, based on the provisions of Article 66 paragraph (3) Regulation Number 13 Year 2003 on Employment, that a worker gives service to a provider company is a form of business that is a legal entity and has a permit from an agency that is responsible for labor issues.

5. CONCLUSION

The social security organization is supervised under Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS). BPJS consists of BPJS of Health, which organizes health insurance programs, and BPJS of Employment, which organizes work insurance, death, pension insurance and pension plan programs. Article 15 paragraph (1) of Regulation Number 24 Year 2011 on Social Insurance Administration Organization (BPJS) states that employers must gradually register themselves and their workers as participants of BPJS in accordance with the social security program that is followed. The social security organization for outsourced workers in the Kota Medan has not been performed well due to some issues including some outsourcing companies have not yet registered their workers to BPJS, there are still outsourcing companies are not officially registered at the government and have permits to operate (?), there is a desire of employers to reduce production and operation costs and make more profits, lack of knowledge of workers, high demand for jobs within the society, and lack of supervision from the government upon the implementation .

- ¹[] Lihat Pasal 27 ayat (2) UUD NRI Tahun 1945
- ²[] Uti Ilmu Royen, Tesis: “ Perlindungan Hukum Terhadap Pekerja/Buruh Outsourcing (Studi Kasus di Kabupaten Ketapang)” (Semarang : UNDIP, 2009),hal.4
- ³[] Agusmidah, *Dinamika Hukum Ketenagakerjaan Indonesia*, (Medan : USU Press, 2010), Hal 115
- ⁴[] Ridwan,H.R, “ Hukum Administrasi Negara”,(Yogyakarta: UII Pres, 2002), hal.210
- ⁵[] Soeroso, “Pengantar Ilmu Hukum,(Jakarta : Sinar Grafika, 2006), hal. 49
- ⁶[] Ibid
- ⁷[] Zainal Asikin, “Dasar-dasar Hukum Perburuhan” (Jakarta: Rajawali Pers, 2010) , hal. 6
- ⁸[] Hadjon dkk, “Pengantar Administrasi Negara “ (Yogyakarta: Gajah Mada University, 2002), hal.103
- ⁹[] Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan
- ¹⁰[] Sehat Damanik, “Outsourcing dan Perjanjian Kerja Menurut UU No.13 Tahun 2003 Tentang Ketenagakerjaan” (Jakarta: DSS Publishing, 2007)
- ¹¹[] Ni Made Dyah Nanda Widyaswari, “ Pelaksanaan Jaminan Keselamatan dan Kesehatan Pekerja Outsourcing Pada Badan Pendidikan dan Pelatihan (Diklat) Provinsi Bali” (Denpasar: Universitas Udayana, 2016),Hal.31
- ¹²[] Sehat Damanik, op cit. hal. 38
- ¹³[] Abdul Rahman Budiono, “ Hukum Perburuhan di Indonesia “, (Jakarta : Raja Grafindo Persada, 1995), hal. 242
- ¹⁴[] Abdul Kholek, ”Outsourcing Sebuah Pengingkaran Kapitalisme Terhadap Hak-Hak Buruh” 2007, hal.7