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Law and Human Right Protection of Outsourcing Labour Law Number 13 of 2003

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ABSTRACT

In the Law No. 13 of 2003 concerning Manpower (Manpower Law), one of them regulating about outsourcing of labor. The transfer of labor is an option for the company to give a portion of its work implementation to other companies through a written contract of contracting workers or service providers. Furthermore, the provisions regarding outsourcing reap polemics for workers. Providing cheap wages, arbitrary termination of employment, and differences in social security for outsourced workers make workers far from prosperous. Issues regarding outsourcing regulated in the Manpower Act were finally subjected to a judicial review to the Constitutional Court (MK). The Constitutional Court in its decision No. 27 / PUU-IX / 2011 explains that the provisions regarding outsourcing are constitutional provisions, it's just that there needs to be a protection clause for outsourced workers by establishing an Indefinite Time Work Agreement (PKWTT) as the basis for conducting employment. With the issuance of the MK Decision, question arises whether this can guarantee the welfare for outsourcing workers. Through the normative juridical research method, founded that that the clause of the Indefinite Time Work Agreement (PKWTT) as a form of protection for outsourced workers does not have much impact on the welfare of the workers. Strengthening the rules regarding supervision and law enforcement by the government for companies that do not employ workers properly is a need that must be met immediately.

Keywords: *outsourcing, MK provisions, welfare*

1. INTRODUCTION

1.1. Preliminary

The 1945 Constitution of the Republic of Indonesia (1945 Constitution) Article 27 paragraph (2) has mandated that every citizen has the right to obtain decent work and livelihood. To implement the mandate, the Government with the Parliament established Law Number 13 of 2003 concerning Manpower as a juridical basis in carrying out activities related to labor. This law is a new law that replacing Law Number 25 of 1997 concerning Manpower. The law stipulates the status of industrial relations, labor relations between workers and companies, and the obligations of individual workers and employers. Some provisions changes contained in the law are expected to be a solution for the employment problems that existed in Indonesia during the new order (Soeharto's reign) that were considered far from being prosperous.

The Manpower Law regulates a new provisions that had not previously been regulated in the law, namely regarding the term *Alih Daya Tenaga Kerja* that termed outsourcing (this English term is used in the Manpower Law). The outsourcing term is a new term that was known in the business world in the 1990s. According to Maurice Greaver, as quoted by Muhammad Faiz, outsourcing is the act of transferring some of the company's activities and making decisions to other parties (outside providers), where related actions are outlined in a cooperation contract.[1] The outsourcing of labor regulated in Law No. 13 of 2003 distinguishes the types of outsourcing of labor into two categories, namely the submission of part of the work / contracting work (outsourcing of work) and the provider of labor services (outsourcing of labor or employment agency, outsourcing work / workers). The two categories are regulated in more detail in Articles 64 through 66. Article 64 explains that the company is given the option to submit part of the work to other companies through a written contract of employment or service provider. With this concept, entrepreneurs can save expenses in financing human resources (HR) who work in the company concerned. Then in terms of workers, broad job opportunities are opened for as many workers as possible.

The concept of outsourcing was originally intended to provide solutions to the problem of unemployment and a weak business climate, in fact, this solution leaves new problems in terms of fulfilling welfare for workers. The overemphasis on efficiency to merely increase investment to support economic development through cheap wage policies results in the loss of job security for Indonesian labor/workers because most labor/workers will no longer be permanent labor/workers, but instead as a laborer/contract worker who will last a lifetime. Labors/workers are placed as mere factors of production, so they easily employed when needed and terminated

when they are no longer needed. Thus the wage component as one of the costs can still be kept to a minimum[2].

The consequence of applying the concept of outsourcing is that the majority of outsourced workers receive wages below the minimum wage value and wage deductions by outsourcers. Then, there is no severance and pension insurance, no adequate health insurance, easy to be laid off without going through the labor justice process, and lost productive age because outsourcing workers are generally required to be under the age of 25 years is also a bad impact of outsourcing. In addition, there is discrimination in the wages of workers between outsourcing workers, contract workers, and permanent workers even though the workload and working hours are the same; not fulfilling welfare in the form of social security, benefits, and facilities for outsourced workers; and the threat of being removed at any time by outsourcing service providers makes outsourcing workers even further from the word prosperous.

The problem regarding outsourcing was finally conducted a material test to the Constitutional Court by Didik Suprijadi who represented the Alliance of Indonesian Electric Meter Reader Officials (AP2ML). In the Constitutional Court Decision No. 27 / PUU-IX / 2011 explained that the provisions regarding outsourcing are constitutional provisions because they are a reasonable business policy of a company in the context of business efficiency. However, the Constitutional Court gave a limitation that there needed to be a protection clause for outsourced workers written by establishing an Indefinite Time Work Agreement (PKWTT) as the basis for working relations. Then, if the employment relationship between the worker and the outsourcing company is based on a Specific Time Work Agreement (PKWT), the worker must still get the protection of his rights by applying the principle of transfer of undertaking protection of employees (TUPE).[3]

According to the Secretary General of the Yogyakarta Labor Alliance (ABY), the decision issued by the Constitutional Court did not bring much change to the fate of workers and outsourcing in Indonesia. Low wage practices, long working hours, no social security for families, and the absence of certainty of work will continue to occur. Decisions issued by the Constitutional Court only provide recommendations for improvements in outsourcing practices. Even in the case of follow-up to this decision, the form of policy issued by the Government is only in the form of a Circular Letter from the Ministry of Manpower and Transmigration, where the binding power of this regulation is still questionable.[4]

1.2. Analytical Framework

The practice of outsourcing is a necessity in the business world in an era of increasingly fierce business competition. Entrepreneurs are required to be able to respond quickly and flexibly to all changes that exist in order to adapt to market needs. Rapid technological advances, the opening of a wider international market, and the increasing number of human needs are factors that cause entrepreneurs to be demanded to adjust immediately. With these demands, a structural change in business management is needed by reducing the managerial range so that it can become more efficient, effective and productive. But on the other hand, workers as parties who have a low bargaining position because of the large number of job seekers whose welfare is not guaranteed with the existence of this outsourcing concept. Law Number 13 of 2013 concerning Manpower, Constitutional Court Decision No. 27 / PUU-IX / 2011, and the Circular of the Ministry of Manpower and Transmigration No.B.31 / PHJSK / I / 2012, the validity of the question of whether it has accommodated legal protection and human rights for outsourced workers.

1.3. Research Method

This research is a normative juridical research. Researchers in obtaining data using literature studies of primary legal materials, secondary legal materials, and tertiary legal materials. Researchers examined the problem based on primary legal material in the form of Law No. 13 of 2003 concerning Labor, Constitutional Court Decision No. 27 / PUU-IX / 2011, Circular of the Ministry of Manpower and Transmigration No.B.31 / PHJSK / I / 2012, and legal norms contained in various laws and regulations relating to manpower. Secondary and tertiary legal materials in the form of books, scientific journals, news and dictionaries. Researchers use descriptive research methods on qualitative data by trying to provide data about the situation or other symptoms to reinforce existing hypotheses. Then, researchers also conducted interviews with several related parties to obtain additional data.

2. MAIN DISCUSSION

2.1. Labor Regulation From Time to Time

The rule of law regarding labor and employment in Indonesia is one of the most complex legal rules when compared with other legal sectors. This rule has existed since colonial times by using the nuances of colonialism in it. The party that made the rules was not the Indonesian government, but the colonial government. All the provisions that are regulated are very closely related to the interests of the colonizers to be able to smooth their mission to control Indonesia, both in the economic sector and human resources.

During the Dutch colonial period, four labor and labor laws were enacted, including slavery laws which included slave registration regulations, taxes on slave ownership, and renaming slaves. Then came the slave law which was more or less the same as the law of slavery. It's just that this law gives slaves a higher position than before. A servant, according to this law, is a collateral because of a debt that cannot be repaid. As a result, as long as the debt is not paid off, a servant will continue to serve the

employer. Furthermore, the corps work law is a law governing the coercion of society to work in the interests of the authorities. Finally the law *poenale sanctie* is a law that gives more equal position between employer and employee. In this law the Dutch Government prohibits coercion, threat or extortion in labor relations. In addition, agreements between workers and employers must be made in writing within a certain time frame. When this rule is violated, there will be sanctions imposed on violators, both employers and workers.

When entering independence period, the rule of law regarding labor and employment grew so fertile. Several laws and regulations emerged during the old order (Soekarno's reign), such as Law Number 33 of 1947 concerning Work Accidents, Law Number 12 of 1948 concerning Work, Law Number 23 of 1948 concerning Labor Inspection, Law Number 21 of Year 1954 concerning Labor Agreements between Trade Unions and Employers, Law Number 22 of 1957 concerning Settlement of Industrial Relations Disputes, Law Number 18 of 1956 concerning Approval of ILO Conventions Number 98 concerning the Basics of the Right to Organize and Collective Bargaining, and the Minister of Manpower and Transmigration Number 90 of 1955 concerning Trade Union Registration. Then in the new order era came Law No. 25 of 1997 concerning Manpower which regulates the concept of Pancasila Industrial Relations with the existence of bipartite tripartite institutions, and collective work agreements whose membership is taken from the relevant parties.[5]

Law No. 25/1997 on Manpower, although it has regulated several new institutions whose aim is to obtain common ground from relevant parties is in fact difficult to understand and apply. Some people still have a negative stigma about labor law. This stigma arises from the experience of previous regulations which are very far from a sense of justice. Workers are still worried that protection will not be guaranteed. Workers in general become the party that is defeated or harmed if there is a dispute between the employer and the worker. Then they also worry about the ease of termination of employment (FLE) and sanctions are too light for employers who violate the regulations set out in the Manpower Act.

Based on concerns over Law Number 25 of 1997, the government finally postponed the application of the law until the emergence of a new, more perfect law. Finally, six years later a new law on labor came into being, namely Law No. 13 of 2003. This new law has a very broad scope that covers the foundations, principles and objectives of employment development; equal opportunity and treatment or prohibition of discrimination in employment; workforce planning as the basis for preparing employment policies, strategies and development programs; job training aimed at improving and developing the skills and expertise of the workforce in order to increase productivity; service for placement of workers in the context of optimizing workforce utilization; the use of foreign workers; institutional development; labor inspection and others.

2.2. Regulation Regarding Outsourcing

Provisions regarding outsourcing are not only contained in Law No. 13 of 2003 concerning Manpower, but have also been specifically regulated in the Civil Code. In the Civil Code Article 1601 b, it is explained about outsourcing using the designation of employment (Aanneming van Werk). The article explains that the contract of work is an agreement whereby one party, the contractor is bound to carry out a certain work for another party, which is the party who buys by receiving a fixed price. According to some legal experts, with the outsourcing of the type of employment contracting already regulated in the Civil Code, there is no need to stipulate that outsourcing of employment is regulated in the new labor law. The type of outsourcing that needs to be regulated in the labor law is sufficient, which is only the type of employment service provider. However, this opinion was finally opposed by some other parties, especially activists of the union / SB because it was considered to equate the position of workers such as commodities traded.

The formation of Law No. 13 of 2003 concerning Manpower marked the birth of a new labor system after the fall of the new order. The enactment of this law aims to accommodate the various needs of the development of the labor system that requires business people to work effectively and efficiently. Provisions that mark the demands have been accommodated namely the regulation of outsourcing of labor either through the submission of part of the work / employment (outsourcing of work) or labor service providers (outsourcing of labor or employment agency / outsourcing worker). This type of outsourcing of workers' service providers is a new form that has not been previously regulated in labor laws. The term for workers' service providers is better known as insourcing, which is to bring in workers / laborers from labor service providers into the company to do certain jobs. The worker / labor provider company only provides labor services and takes care of its human resources and administration only, while facilities, such as places, supervisors, and all production equipment are located in the user company[6].

Prior to the enactment of labor law number 13 of 2003, the labor law did not regulate the outsourcing system in particular the types of workers' service providers. Arrangements regarding outsourcing and specific time-work systems (PKWT) were previously regulated in the Decree of the Minister of Trade and the Decree of the Minister of Manpower. In 1989 to 1993, the Government issued a policy regarding the outsourcing work system or what was known as the sub-contact work system. Ministerial Decrees related to outsourcing include Ministerial Decree No. 264 / KP / 1989 concerning Work of Sub-Contract Management Companies in Bonded Zone, Minister of Trade Decree No. 135 / KP / VII / 1993 concerning Import and Export of Goods to and from Bonded Zone, RI Minister of Manpower Decree No. SE / 08 / MEN / 1990 concerning Corporate Responsibilities of Contract Employees for the Protection and Welfare of Workers of Workers, and the Minister of Manpower's

Regulation No. Per-02 / Men / 1993 concerning Specific Time Work Agreements. All of these Ministerial Regulations are policies that govern the outsourcing system, whose allocation is limited to the industry sector to accommodate the interests of the export market. After the enactment of Law Number 13 of 2003 concerning Manpower, the Government through Decree of the Minister of Manpower and Transmigration Number 220 / MEN / X / 2004 concerning Terms of Submission of Partial Work Implementation to Other Companies and Decree of the Minister of Manpower and Transmigration Number 101 / MEN / VI / 2004 concerning Licensing Procedures Worker Service Provider Companies further regulate outsourcing arrangements. Then in the Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 also stipulates more detailed conditions for the partial surrender of work to other companies.

The regulation on outsourcing in Law Number 13 Year 2003 and its derivative regulations has a broader scope. If previously outsourcing was only intended for export companies in bonded zones, in this Law covers most types of companies both small, medium and large scale. This law eliminates some of the limitations previously stipulated in several Ministerial decrees as mentioned above. There are no longer any restrictions on the types of companies that can employ outsourcing. All types of companies can outsource labor. All company locations can also use outsourcing services, without having to be in a bonded zone as previously stated. And the market objectives of the companies that employ outsourcing do not have to be export-oriented. Domestic companies whose production results are not for sale overseas can also outsource their work. The labor law only provides conditions for the types of activities that can be outsourced. Production activities must be carried out separately from the main activities and may not be for main activities or activities directly related to the outsourced production process. In the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012, it is explained rigid limits on what types of businesses are included supporting activities that can be submitted to other companies, such as cleaning service businesses; food provider business for workers / laborers; security effort business; business support services in mining and petroleum; and transportation service providers for workers / laborers.

The Constitutional Court as a testing body for the validity of the rules in the law has tested Law No. 13 of 2003 concerning Labor, in particular Articles 64 to 66 concerning outsourcing. MK Decision No. 27 / PUU-IX / 2011 confirms that the outsourcing work system is a legal work system. It's just that there are some restrictions in it. After the Constitutional Court's decision, a number of parties still questioned the clarity of the *petitum* made by the Panel of Judges. To get clarity, the Ministry of Manpower and Transmigration issues Circular No.B.31 / PHJSK / I / 2012 to follow up the Constitutional Court's Decision. The Circular explains that the Specific Time Work Agreement (PKWT) as stipulated in Article 59 of the Manpower Act remains in force. If in the work agreement between the employer receiving the job contract or the service provider of the worker / laborer and the worker / laborer does not contain the requirement for the transfer of protection of rights for workers / laborers whose work object remains (the same), to the company receiving the other employment other workers / labor service providers, then the employment relationship between the employer or the employer / labor provider and the worker / laborer must be based on an Indefinite Time Work Agreement (PKWTT). However, if the employment agreement between the three organs contains conditions for the transfer of protection of workers / labor rights, then the employment relationship can be based on a Specific Time Work Agreement (PKWT).

2.3. Legal and Human Right Protection of Outsourcing Workers in Law No. 13 of 2013

Recognition and guarantee of human rights to workers is a consequence of the application of the concept of the rule of law in Indonesia and is also a mandate of the 1945 Constitution of the Republic of Indonesia. As a state of law, the government must provide recognition and guarantee of human rights. In Article 27 paragraph (2) it is explained that each citizen has the right to work and a decent living for humanity. Then in Article 28D paragraph (2) also explained that everyone has the right to work and get fair and proper compensation and treatment in an employment relationship. Law Number 13 of 2003 concerning Manpower is a law that has the purpose of establishing other than to facilitate investment into Indonesia through an effective and efficient labor system, as well as to accommodate the protection of workers through several provisions contained therein. Article 4 explains that employment development aims to empower and utilize manpower optimally and humanely; realize equal employment opportunities and labor supply in accordance with national and regional development needs; provide protection to workers in realizing welfare; and improve the welfare of the workforce and their families. Then this law also explains the guarantee of equal treatment for all workers to get the same opportunities without discrimination from employers as stipulated in Articles 5 and 6.

As a law that is expected to provide improvements and guarantees for human rights, Law No. 13/2003 on Labor specifically regulates legal protection and human rights in Chapter X on Protection, Wages and Welfare. Specific provisions regarding outsourcing are regulated in Articles 64 through 66. In those three articles, the definition of outsourcing of labor, the terms of outsourcing of labor, and the prohibition on outsourcing of labor.

Article 65 explains that the form of employment contract must be in written form. Work submitted to other companies must meet the requirements, including being carried out separately from the main activity; done by direct and indirect orders from the employer; is a

supporting activity of the company as a whole; and does not directly inhibit the production process. Companies that employ outsourcing workers must have legal entity status in the form of direct employment agreements to workers who do work. The employment relationship between the company and workers can be done based on a specific time work agreement (PKWT) or a non-certain time work agreement (PKWTT). If the provisions as mentioned above are not fulfilled, according to Article 65 paragraph (8) by law the status of the employment relationship between the employee and the recipient of the chartering company will change to the employment relationship with the employer.

Article 66 explains what types of work are allowed to be outsourced. There are restrictions on not allowing outsourced workers to carry out basic activities or activities directly related to the production process. The type of work that is allowed is only work that is supporting or activities that are not directly related to the production process. As with the previous provisions, if the conditions set out are not met, then by law the status of the employment relationship between the worker and the worker service provider company switches to an employment relationship between the worker and the employer.[7]

1) Protection

According to Soepomo, workers protection divided into three categories, namely:

i. Economic protection, namely the protection of labor in the form of adequate income, including when workers are unable to work against their will.
ii. Social protection, namely protection of workers in the form of work health insurance, and freedom of association and protection of the right to organize.
iii. Technical protection, namely protection of workers in the form of work security and safety.

Labor protection in the Manpower Act covers the protection of child workers / laborers and the protection of women workers / laborers. This provision is regulated in Articles 68 through 84. Employers are prohibited from employing children under the age of 18. These provisions can be excluded if the child is aged between 13 to 15 years with a mild workload without disrupting the development of physical, mental, and social health. The requirements for taxing a child at that age are written permission from both parents, an employment agreement between parents and employers, a maximum of three hours of work done during the daytime and does not interfere with school time. Must pay attention to occupational safety and health as well as clear work relationships. And the child worker must get a wage in accordance with applicable regulations. The status of the child as a worker has another limitation in the form of separation of the workplace of children and workplaces of adults. Children also should not be employed in bad places, such as slavery workplaces, liquor trade, narcotics, trafficking in children, etc.

Protection of female workers is regulated in Article 76. It is explained that female workers under the age of eighteen cannot be employed between 23:00 and 07:00. Employers are prohibited from employing pregnant women workers who, according to the doctor's statement, are dangerous to the health and safety of their uterus or themselves, if they work between 23:00 and 07:00 in the morning. If the company employs women above 23:00 to 07:00, the company must provide food and drink, maintain decency and security, and the company must provide a shuttle service for workers. Companies should not employ women for more than seven hours a day and four hours a week for six working days a week or eight hours a day and forty hours a week for five working days a week. If workers need more time, there must be approval from the workforce and can only be done at most 3 (three) hours a day and fourteen hours a week, and therefore the employer must pay overtime wages for the excess hours worked. The company must also provide female workers with time off which includes breaks between hours of work, weekly breaks, annual leave, and long breaks. In addition to these rest periods, the company must also give some special rights according to the nature of womanhood in the form of menstrual leave, maternity leave, maternity leave, and nursing leave.

2) Wages

The Manpower Law regulates the wage system in Article 88. Every worker / laborer has the right to earn an income that fulfills a decent living for humanity. The wage scope stipulated therein includes minimum wages, overtime wages, wages absent from work due to absence, wages absent from work due to other activities outside of work, wages for exercising resting rights, forms and methods of payment of wages, fines and wage deductions, proportional wage structure and scale, wages for employer payments, and wages for income tax calculations. Employers must continue to pay these wages even if workers cannot do their jobs if workers are sick, menstruating, married, undergoing obligations to the state, carrying out worship, carrying out trade union duties, or carrying out the Education duties of the company.

Employers in providing wages to workers are required to pay attention to the minimum wage that has been set by the government. This minimum wage consists of the minimum wage based on the province or district / city and the minimum wage based on the sector in the province or district / city. If the employer is unable to pay the stipulated minimum wage, the employer can apply for the implementation of the minimum wage for which the procedures are regulated in Minister of Manpower and Transmigration Decree No. KEP.231 / MEN / 2003. Then, if the employer makes a work agreement with workers whose number is below the minimum wage determined by the legislation, then the agreement is null and void and the employer is obliged to pay the worker's wage according to the applicable laws. In addition to having to pay attention to the minimum wage that has been set by the government, it must also pay attention to the related classes, positions, years of service, education, and competencies set out in Decree of the Minister of Manpower and Transmigration

Number KEP.49 / MEN / 2004 concerning Provisions on Wage Structure and Scale. Employers in providing wages must also look at the existing components. If the component consists of basic wages and fixed allowances, the employer is required to meet at least 75% of the total principal and fixed benefits.
Violations committed by employers against applicable laws and regulations or work agreements that have been agreed to make employers subject to sanctions in the form of fines. This sanction can be given either intentionally or negligently by an entrepreneur. If the company is declared bankrupt, wages and workers' rights are debts that must be paid first.

3) Welfare
Regulations regarding the welfare of workers are regulated in Articles 99 through 101. There it is explained that employers are obliged to meet the welfare of workers by taking into account the needs of workers and the ability of the company. To improve workers 'welfare, workers' cooperatives and productive businesses are established in the company. The formation and management of workers' cooperatives is regulated in statutory regulations in the form of government regulations.

2.4. Outsourcing Practice in Indonesia

2.4.1. Outsourcing of Main Business Activities

Law Number 13 Year 2003 regarding Manpower has given restrictions to companies that want to employ workers with outsourcing status. In the labor law Article 65 states that outsourcing can only be applied to work carried out separately from the main activities and is a supporting activity of the company as a whole. Then outsourcing workers also may not be used by employers to carry out the main activities or activities directly related to the production process. Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 concerning Terms of Submission of Partial Work Implementation to Other Companies explains in detail what types of work can be outsourced. Article 17 paragraph (3) states that the types of supporting activities that can be outsourced include cleaning services; food provider business for workers / laborers; security effort business; business support services in mining and petroleum; and transportation service providers for workers / laborers.

2.4.2. Extension of Extensive Contract Work

As with the provisions above, in the Labor Law Post 59 it has regulated that there are restrictions on contract periods for labor. It is regulated that the awarding of contracts to contract workers is a maximum of three years. After three years, the company must determine whether to work permanently or not. Then in the Decree of the Minister of Manpower and Transmigration No. 100 / MEN / IV / 2004 concerning the Implementation of Certain Time Work Agreements, a more detailed description of the PKWT agreement mechanism is explained. It states that work that is completed once or is temporary can only be completed for a maximum of three years. Then for PKWT this type of work related to new products, can only be employed for two years and can only be extended for one extension. These provisions are in fact not really applied. There is a research that shows that of the 600 workers in the metal sector in three provinces and seven cities, 31% stated that they had been contacted once. Then as many as 28.6% stated that they had done the work contract twice. Furthermore, as many as 10.7% and 29.1% of workers contracted 3 to 15 times[4].
According to the Secretary of the Workers' Union of South Sulawesi Province, prolonged contract work is a reality that is often encountered in the field. To outsmart the provisions of Minister of Manpower and Transmigration Decree No.100 / MEN / IV / 2004 regarding the Implementation of Certain Time Work Agreements that only allow one-time contract extensions, many companies first lay off workers for thirty days. This is to meet the provisions of Article 3 paragraph (6). Even so, in reality contract workers did not really break up working relationships for thirty days. They continue to work, only their existing work contracts are renewed for the agreed work period.[8]

2.4.3. Differences of Wages of Outsourcing Workers, Contract Workers, and Fixed Workers

The 1945 Constitution of the Republic of Indonesia Article 28D paragraph (2) explains that every person has the right to work and to receive fair and appropriate compensation and treatment in an employment relationship. According to Article 1 number 30 of Law Number 13 Year 2003 concerning Manpower, Wages are workers' rights received and expressed in the form of money in return from employers or employers for workers / laborers who are determined and paid according to a work agreement, agreement, or laws and regulations, including benefits for workers / laborers and their families for work and / or services that have been or will be performed. To determine the amount of wages, there are provisions governing it in a Circular Letter of the Minister of Manpower of the Republic of Indonesia No. SE-07 / MEN / 1990 of 1990 concerning Grouping of Wage Components and Non-Wage Income. The stipulation describes the components of wages which include basic wages, fixed allowances, and non-permanent benefits. Based on article 14 paragraph (3) Permenaker No. 1 of 1999, Reviewing the amount of workers' wages with a work period of more than 1 (one) year, carried out on a written agreement between the worker / union and the employer. The written agreement is adopted and carried out through a bipartite negotiation process between workers / unions and employers in the company concerned. From the bipartite negotiations then gave birth to an agreement, after which the agreement was

written down in written Company Regulation (PP), or Collective Labor Agreement (PKB).[1]

Several laws and regulations governing the wage system have provided guarantees that every worker must not get discriminatory treatment. Regardless the workers are workers with permanent status, contracts, or outsourcing they should be paid a wage that is in accordance with the workload and working time. Based on a study conducted by AKATIGA and the Federation of Indonesian Metal Workers' Union (FSPMI), the results show that there has been a wage discrimination between workers with permanent, contract, and outsourcing status. Although contract and outsourcing workers do the same type of work in the same place with the same working hours, the wages received by these two groups of workers are always lower than the wages received by permanent workers.

The data shows that there has been a difference in average wages between permanent workers, contract workers and outsourced workers. In West Java Province, for example, the wages of outsourced workers are far below the local MSE. There are outsourcing workers who are given wages of Rp. 250,000 per month. Even though the UMK has reached Rp 1,668,372, -. The average total wage of contract workers is 16.71% lower than the average total wage of permanent workers, while the average wage of outsourced workers is 26% lower compared to the average total wage of permanent workers. This wage differential covers several components. For present premiums, for example, 74.0% of permanent workers receive attendance premiums, 67.6% of contract workers receive attendance premiums and only 46.1% outsourced workers receive attendance premiums. For food allowance, 48.9% of permanent workers get food allowance, 37.4% of contract workers receive food allowance and only 25.5% of outsourced workers get food allowance.

2.4.4. Discriminative Treatment to Workers From Labour Union

The 1945 Constitution of the Republic of Indonesia Article 28 has guaranteed the freedom of association, assembly, speaking thoughts orally and in writing for all Indonesian citizens including workers. The ILO Convention Number 87 of 1948 which was later ratified by the Government of Indonesia through Presidential Decree Number 83 of 1998 also recognized the freedom of association and protection of the right to organize for all workers. In Article 5 of Law Number 21 Year 2000 concerning Trade Unions / Trade Unions, the rights of workers to establish trade unions are explained. In principle, the formation of trade unions or laborers is the right of workers who have a free, open, independent, democratic, and responsible nature. With a trade union, workers have a higher bargaining position than when they were ordinary workers.

The freedom of workers to join or form trade unions is often hindered by companies that employ them, especially when their status is outsourcing workers. Status as impermanent workers makes it difficult for them to form a union. According to the Secretary of the South Sulawesi Trade Union, treating discrimination against workers who want to establish trade unions in a company has occurred. One company located in South Sulawesi named KIMA has treated workers intimately and discriminatively. Workers who have seen movements want to form trade unions eventually they are treated differently than other workers. Even though they are not prohibited or hindered verbally or in writing to form a union, but treat companies as if forbidding what they would stand for. Workers who have a plan to form a union are usually transferred to the workers' services provider in a short time. The employer asks the outsourcing company to move the worker who will form the union. The purpose of the company is to move these workers so that in their company a union is not formed.

Intimidating and discriminatory treatment by companies to workers makes workers difficult. In some cases, workers are transferred to areas far from their homes. In addition, workers who have long distance travel are not given benefits from the company. This makes workers indirectly forestry if they want to form a union within a company.

3. CONCLUSIONS

Problems regarding labor, especially outsourcing, indicate that the problems that occur are not contained in the provisions of the legislation governing protection, wages, and welfare, but the problem lies in the implementation of the implementation of the legislation. Although the labor law regulates the protection of law and human rights in Chapter X and the Constitutional Court has provided additional provisions regarding outsourcing, in reality the problem of welfare continues to occur. In a number of existing provisions, it has been stated that if a businessman is naughty or does not comply with the laws and regulations, then the entrepreneur may be given a sanction in the form of a fine. If the employer outsmarts the fulfillment of workers' rights by making collective work agreements (PKB) that are not in accordance with statutory regulations such as carrying out work contracts for more than three years or several times, then automatically if it is known that the apparatuses with the authority of the worker status change to permanent workers. From the various results obtained, the government should be more serious in dealing with labor issues in the field. It is also necessary for the government to give strong authority to the Ministry of Manpower or the Department of Manpower in the regions to be able to overcome the existing problems. During this time the government can only solve it through communication channels that are less powerful.

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