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The Application of Proportionality Principle in the Implementation of Outsourcing Work Contract (Switch of Power) Cleaning Service PT. Atalian Global Service Pekanbaru

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Abstract. Unwittingly the application of proportionality principle in the implementation of outsourcing work contract has become part of contract legal system in Indonesia which in the practice level is frequently done. Nevertheless the workers, labor union, entrepreneurs, and entrepreneurs association in Indonesia less aware of it. Until the workers, the labor union, the entrepreneurs, and the entrepreneurs association only know that the legal principle in implementing the contract is only the main principles of the legal contract namely the contract freedom, consensualism, binding strength, and good intention. On the other hand, the main problem in this research is: How is the application of proportionality principle in the implementation of outsourcing work contract (switch of power) cleaning service of PT. Atalian Global Services Pekanbaru? The method used in this research was empirical/sociological legal research. The object of this research was PT Atalian Global Services Pekanbaru. The source of data and information was collected from the respondents by using primary and secondary data. This research was descriptive analytic which gave detail, clear, and systematic description about the research main problem. The research results show that the proportionality principle cannot be separated from the main principles of other contract laws.

Keywords: *Outsourcing Work, Cleaning Service, PT. Atalian Global Service Pekanbaru*

1. INTRODUCTION

The application of the principle of proportionality in the implementation of outsourcing contracts is part of the contract law system in Indonesia, which in practice has been very frequent. However, workers, trade unions, employers and employers' associations only recognize that the legal principles in carrying out this contract are only limited to the basic principles of contract law related to freedom of contract, consensualism, binding power, good intention and personality.

The position of the principle of contract law in all legal systems in which regulating the legal norm system plays an important role[1]. Legal principles are the foundation that supports the solidity of legal norms. The position of the principle of contract law acts as a legal norm which basically provides direction, objectives and a fundamental assessment of the existence of a legal norm. Even within a single chain of systems, the principles, norms and objectives of law serve as guidelines and measures for human behavior[2]. Basically, the principles of contract law are mutually related and in various ways can complement and complement each other. In other words, each principle does not stand alone but encompasses and complements the existence of a contract[3].

On the other hand, presumably in carrying out the principle of good faith, the principle of consensualism, the principle of contract binding capacity, the principle of pacta sunt servand, business actors may not harm other parties and do not take advantage of the negligence of other parties for their own benefit. Thus, the contract is not only determined by the words formulated by the parties, but a contract should be able to intervene in the basic principles of contract law.

Legal principles generally change according to the legal norms, while legal norms will change according to the development of society. Legal principles can be said to be influenced by the dimensions of space / place and time. To understand the existence of the principle of proportionality, of course, apart from the context of its relationship with the basic principles of contract law, namely freedom of contract, consensualism, binding strength and good faith. This principle of understanding is

considered very important to find out whether a proportionality principle has worked well in relation to other contract law principles.

The principle of proportionality is the principle underlying the exchange of rights and obligations of the parties according to their proportion or share. The proportionality of the distribution of rights and obligations is manifested in the entire contractual relationship process, namely in the pre-contractual phase, contract formation and contract execution. The principle of proportionality does not question the balance (equality) of results, but rather emphasizes the proportion of the distribution of rights and obligations among the parties[4].

The position of the proportionality principle in the relationship between the principles of contract law is the main principle that is independent and stands on a par with other basic principles of contract law. This is based on the characteristics and function of the principle of proportionality itself[5]. In terms of comparison, the existence and position of workers and employers in the most basic labor policies is to provide protection to the weak, in this case the workers. Protecting here means protecting workers against abuses by employers that may arise from the work relationship process. The principle of proportionality in this case aims to provide legal protection and realize social justice.

Agusmidah, an Indonesian legal expert, in his book entitled:*Dilematika Hukum Ketenagakerjaan: Tinjauan Politik Hukum;* (The Dilemmas of Labor Law: A Political Review of Law); added that the emergence of legal problems in Indonesian manpower is due to the inequality of bargaining positions in labor relations, namely between workers / laborers and entrepreneurs / employers. In addition, based on this explanation, it can be seen that the main objective of the labor law is to eliminate the imbalance of relations between the two parties as much as possible. This can be interpreted that the regulatory function of labor in Indonesia is inseparable from the objectives of law in general, namely the realization of three basic values of law, namely, justice, benefit and legal certainty[6].The existence of this inequality legally wants to be overcome through positive law.

Legislation gives freedom to the public to enter into any agreement as long as the agreement does not contradict existing laws and regulations, propriety and public order (vide Article 1320 of the Civil Code). As stated in Article 1338 of the Civil Code, all agreements made legally are valid as laws for those who make them.A policy in the aspect of manpower which is very fundamental is the birth of Law Number 13 of 2003 concerning Manpower. This law is a legal umbrella in other manpower fields. One of the phenomena that has become a debate regarding the issuance of Law Number 13 of 2003 concerning Manpower is the agreement on several matters, for example concerning freelance workers which are agreed to only be carried out for two years, while the working period for agency workers is the maximum of five years. In the package of Presidential Regulation Number 7 of 2005, it is stated that:

"The improvement of labor regulations and policies aims to create a flexible labor market". Regarding the presidential regulation, one of the several things it has improved is as follows: "Rules of the game relating to restrictions on contract workers".

The editorial staff of the sentence above raises concerns that the motive of providing protection for workers' rights to have a more equal bargaining position is in fact distorted because of this Presidential Regulation. The policy in the Presidential Decree which aims to make labor market flexibility suspected is the government's attempt to protect the interests of employers, namely removing excessive protection for workers as stipulated in the previous positive law. This pattern then triggers the widespread use of the Fixed Time Contract (PKWT) system or the contract system and outsourcing system that has been widely implemented lately.

The Fixed-Term Work Agreement is a form of the existence of a working relationship between workers and employers to establish a working relationship for a certain period of time or for certain temporary jobs as mentioned in Article 1 point 1 of the Ministerial Decree No. 100 / Men / VI / 2004. It can be concluded that the Fixed Term Work Agreement or work relationship system with the status of a contract is an agreement whose term has been determined and is linked to the length of the working relationship, so that there is a penalty[7] setting as a fundamental thing that can be accepted and implemented in labor practices.

The outsourcing system is a system by submitting part of the work within the company to the party of labor supply servicesr. The provision of labor services like this is starting to be found as a form of business industry in the field of labor supply services. The system of submitting part of the work to other companies is a product of liberalism adopted by the Indonesian nation when employers feel burdened by the high cost of labor and which obliges companies to provide security for severance pay, awards for tenure, and compensation for rights as regulated in labor law applicable.

The company tries to save expenses on labor financing posts. Cost of production efficiency) is generally the main motive that becomes the reason for employers to employ employees with an

outsourcing system. The Fixed Term Work Agreement should be implemented consistently, both in terms of macro juridical (supervision) and in the micro conditional (application). However, it is unwise to continue to renew and renew a fixed term employment agreement.According to the provisions, it is stated that the Fixed Time Work Agreement which has ended in the 212 scheme can indeed be extended or renewed. The term "212" in the PKWT concept is a practical term based on the Ministerial Decree 100 / KEP / VI / 2004 concerning the Provisions for the Implementation of a Certain Time Work Agreement. The scheme refers to the first 2 (two) years of the contract followed by 1 (one) year of contract extension, then followed by a 30 day pause period, and ending with 2 (two) years of contract renewal.

It should be noted that the two, one, and two year terms are the maximum period of time which is one of the obvious forms that workers' bargaining power is still very weak. The re-appointment of workers after the Fixed Time Work Agreement ends through a process of hiring employees, which is only a formality, which is another application of contract work and outsourcing practices.Things like this are examples that factually occur which in their implementation make it seem as if there is no dimension of legal certainty in the aspect of the working relationship that occurs. Employers certainly benefit from cost efficiency because they do not need to think about pension costs and workers' old age benefits. On the other hand, workers are faced with the position of not having the ability to refuse company offers because of their need for work to meet the needs of themselves and / or their families.

The existence of this inequality in bargaining position is certainly not in line with the government's policy to protect workers against potential abuse by employers. It is this inequality that creates conditions for resistance by workers to employers. The government seems to be tolerating this “prisoner's dilemma”, considering that in fact the government also cannot do much towards superiority among capital owners. This dilemma must be ended immediately so that a harmonious, dynamic, and just work relationship that carries the values contained in Pancasila can be created. This can be done through an oversight of industrial relations practices, consistently supervising the implementation of the contract system and without discrimination. The law must be the commander in regulating social activities in the community so that the dimension of law enforcement that is aspired to be realized can be realized.

The focus of this study is to further discuss the application of the principle of proportionality in the pre-contractual phase, contract formation and implementation of the cleaning service outsourcing work contract at PT. Atalian Global Service Pekanbaru where the workforce employed is located in 19 areas in Pekanbaru. Apart from the increasingly reduced supremacy of the principle of freedom of contract, the balance of the parties in contracting is a basic concept that cannot be negotiated. Therefore, the contracting parties must have an understanding and respect for their respective rights so that the development of the principle of freedom of contract which tends to lead to an imbalance of the parties can be better understood. Thus, various coercive provisions must be reduced and the exchange of rights and obligations should be carried out *proportionally*[8].

2. RESEARCH METHOD

This research is research based on a study of the work of law in society or better known as empirical legal research. How the law works in society can be assessed from the level of legal effectiveness[9]. Primary data collection was carried out through in-depth interviews with branch managers, operational managers, trainers and cleaning service outsourcing workers at PT. Atalian Global Service Pekanbaru in 19 areas spread across Pekanbaru City. Meanwhile, secondary data was obtained through library research documents. The field data obtained from informants, both written and oral as well as real behavior that was researched and studied as a whole, then analyzed using a descriptive analysis approach.

3. RESULTS AND DISCUSSION

In general, it can be said that the existence of a principle in a contract acts as an abstract legal thought / principle and functions very important for the formation of concrete laws, as well as for the regulation and formation of agreements. Likewise, to find out whether the current law is in accordance with the ideals of law / ethical values / the will of the community, the principle of manifesting the will of the community also acts as the basis for the interpretation of the applicable law.

Principles also have a function as suggested by Smith[10] as follows:

- The function of legal principles is to maintain the coherence of the scattered legal rules;
- Legal principles serve as the basis for solving problems that arise and problems that will arise in the future;
- Legal principles serve as the basis for the formation of new legal teachings that can be used as the basis for solving new problems.

Based on the explanation of the function of these principles, the legal principle is intended to provide appropriate / lawful direction in terms of using or

applying legal rules. With this legal principle, it can be seen which rules can be used as a reference or use, and vice versa, which references and rules are not suiTABLE / appropriate to be used. This reflection is contained in the proportional value, balance value, propriety value, good faith, and protection [11].

The principle of proportionality needs to be stated in addition to the principle of balance. The principle of balance referred to here is the principle that plays a role in maintaining a balanced position for the contracting parties. This can be used to overcome if there is an imbalance in position which then causes interference with the contents of the contract due to the intervention of the government agency authorities. The principle of proportionality is also interpreted as the principle that underlies or underlies the exchange of rights and obligations of the parties according to their proportion or share in the entire contractual process [12].

At the beginning of joining, the contract workers who worked at PT. Atalian Global Service is required to attend several job training classes. The job training provided by the company includes training that aims to develop soft skills and hard skills development training, especially regarding work procedures and all standard operating procedures in stages by contract workers [13]. Job training can be carried out by employers internally or through government job training institutions or private institutions that have obtained permission from the government [14]. The job training is regulated in a manpower law, namely:

Article 9

Job training is provided and directed to instil, enhance, and develop job competence in order to improve ability, productivity and welfare.

Article 10

1) Job training shall be carried out by taking into account the need of the job market and the need of the business community, either within or outside [the scope] of employment relations.
2) Job training shall be provided on the basis of training programs that refer to job competence standards.
3) Job training may be administered step by step.
4) Provisions concerning procedures for establishing job competence standards as referred to under subsection (2) shall be regulated with a Ministerial Decision.

Article 11

People available for a job have the right to acquire and/or improve and/or develop job competence that is suiTABLE to their talents, interest and capability through job training.

Referring to these articles, it can be understood that every person who joins a company and will become a contract worker and / or employee, they must get job training provided by the company that oversees them. This is intended so that counter workers and / or employees get the knowledge and skills to carry out their work properly and correctly.

PT. Atalian Global Service Pekanbaru in this study is the employer, while the employees are the recipients of the work given by this PT. To start a working relationship, based on the statutory regulations in article 1 number 15 of Law Number 13 of 2003 concerning Manpower, it is stated that: "The employment relationship occurs because of a work agreement between the worker / laborer and the entrepreneur."

This, the working relationship that exists between employers and workers must first be stated in a work agreement.Whereas based on the results of a survey conducted in the field, to be precise at the Human Resource Manager section of PT. Atalian Global Service, it was found that in carrying out work contracts, their party had implemented a written working relationship above the Fixed-Term Employment Contract (PKWT) where this was carried out in all business units, such as Cleaning Services, Security Services, Office Admin Staff, Park Maintenance Services [15].

TABLE 1. The Respondents' Answers About The Form of Work Agreement

No.	The Respondents' Answer	Total	Percentage
1	Written	138	100%
2	Unwritten	-	-
	Total	138	100%

Source of Data: The Result of Field Research in August 2018

In engaging in written contractual relationships with their employees, PT. Atalian Global Service states that the written agreement contains the terms of employment, as well as the rights and obligations of the parties who agree to enter into a clear and detailed contract. From the contract, the performance of the contract can be clearly understood about what are the obligations to be carried out and what rights are obtained for the performance that has been carried out.

Based on information from Human Resource PT. Atalian Golbal Service, information was obtained

about the existence of a probation period where in every recruitment of employees / contract workers for all positions, it is mandatory for job recipients to pass the probation period. The period of this trial period varies, starting from 2 (two) months and a maximum of 3 (three) months. The determination of this time period is based on the urgency of the request from the client or the service user of the company.

If during the probation period the contract worker behaves inappropriately according to his supervisor, the contract worker will return to his initial position. However, even if the contract worker behaves badly, the client of PT. Atalian has no complaints and does not question it with other considerations and their own reasons, then the contract worker who is running the probationary period will still be accepted in the position that is being requested by the company's client.

This is in fact contrary to the statement of the Riau Province Manpower Office [16]. To be more precise regarding the probation period for contract workers, according to existing laws and regulations, only permanent workers are allowed to apply a probation period of 3 (three) months or what is commonly known as the probotion period. However, this probationary period of work should not be applied considering its implementation is contrary to Article 58 Paragraph (1) and Paragraph (2) of Law Number 13 Year 2013 concerning Manpower, namely:

Article 58

1) A work agreement for a specified period of time cannot stipulate a probation period.
2) If a work agreement as referred to under subsection (1) stipulates a probation period, however, the probation period shall then be declared null and void by law.

There are still many irregularities found in the provisions regarding the prohibition of work probation for employees / contract workers based on a fixed-term employment agreement, which makes it ineffective. Even though in fact the work agreement for a certain time does not explain the existence of a work trial period that will be carried out, but this is regulated in the standard agreement that has been made by PT. Atalian Global Service.

This standard contract, standart agreement is an agreement made by one of the parties, namely PT. Atalian Global Service. Standard Contract, Standard Agreement is an agreement made by one party regarding something, in which the contents of the agreement have been determined [17]. The use of standard clauses is based on efficiency in all aspects of the agreement.

One of the points in the standard clause made by the company is to regulate the work trial period, as well as the period of the trial period. This is of course very contrary to existing laws and regulations, especially Law Number 13 of 2003 concerning Manpower, in article 58 paragraph (1) and paragraph (2).

The existence of this conflict has resulted in legal uncertainty in the implementation of the outsourcing work contract. This is because in the standard clause made by the company, contract workers must carry out a probationary period while in the Manpower Act it is very clear that the work agreement for a certain period of time may not require a probation period.

The company stated that the need for this probation period was because it would be used as a benchmark in the appointment of contract employees to become permanent employees of the company. From the probation period, it can be seen that the quality of contract workers in pursuing their work. If during the probationary period there are many problems and complaints from clients, then the termination of employment with the worker can be processed immediately [18].

When the client has a complaint regarding the performance of contract workers, then clear and definite standards must be applied regarding what the company can measure to terminate the employment relationship in the event of a complaint regarding contract workers who do not have quality in doing their work. This can lead to client dissatisfaction with these contract workers.

This is of course considering that at the time of termination of employment between the company and the contract worker, there are still workers' rights that must be considered, especially if the employment is terminated unilaterally. Company responsibility is an obligation for the company to employees because the termination of the employment relationship may result in losses for the contract worker [19].

In the event of termination of employment, the company must pay attention to the rights of the worker / employee who has been terminated, such as severance pay and / or reward money. This is regulated in law, namely:

Article 156

1) Should termination of employment take place, the entrepreneur is obliged to pay the dismissed worker severance pay and or a sum of money as a reward for service rendered during his or her term of employment [reward-for-years-of-

service pay] and compensation pay for rights or entitlements that the dismissed worker/ labourer has not utilized.

2) The calculation of severance pay as referred to under subsection (1) shall at least be as follows:
a. 1 (one)-month wages for years of employment less than 1 (one) year; 1 month's wages
b. 2 (two)-month wages for years of employment up to 1 (one) year or more but less than 2 (two) years;
c. 3 (three)-month wages for years of employment up to 2 (two) years or more but less than 3 (three) years
d. 4 (four)-month wages for years of employment up to 3 (three) years or more but less than 4 (four) years;
e. 5 (five)-month wages for years of employment up to 4 (four) years or more but less than 5 (five) years
f. 6 (six)-month wages for years of employment up to 5 (five) years or more but less than 6 (six) years;
g. 7 (seven)-month wages for years of employment up to 6 (six) years or more but less than 7 (seven) years;
h. 8 (eight)-month wages for years of employment up to 7 (seven) years or more but less than 8 (eight) years;
i. 9 (nine)-month wages for years of employment up to 8 (eight) years or more.

3) The calculation of the sum of money paid as reward for service rendered during the worker/ labourer's term of employment shall be determined as follows:
a. 2 (two)-month wages for years of employment up to 3 (three) years or more but less than 6 (six) years;
b. 3 (three)-month wages for years of employment up to 6 (six) years or more but less than 9 (nine) years;
c. 4 (four)-month wages for years of employment up to 9 (nine) years or more but less than 12 (twelve) years;
d. 5 (five)-month wages for years of employment up to 12 (twelve) years or more but less than 15 (fifteen) years;
e. 6 (six)-month wages for years of employment up to 15 (fifteen) years or more but less than 18 (eighteen) years;
f. 7 (seven)-month wages for years of employment up to 18 (eighteen) years but less than 21 (twenty one) years;
g. 8 (eight)-month wages for years of employment up to 21 (twenty one) years but less than 24 (twenty four) years;
h. 10 (ten)-month wages for years of employment up to 24 (twenty four) years or more.

4) The compensation pay that the dismissed worker/ labourer ought to have as referred to under subsection (1) shall include:
a. Entitlements to paid annual leaves that have not expired and the worker/ labourer have not taken (used);
b. Costs or expenses for transporting the worker/ labourer and his or her family back to the point of hire where he or she was recruited and accepted to work for the enterprise [which have not been reimbursed];
c. Compensation for housing allowance, medical and health care allowance is determined at 15% (fifteen hundredth) of the severance pay and or reward for years of service pay for those who are eligible to receive such compensation;
d. Other compensations that are stipulated under individual work agreements, enterprise rules and regulations or collective work agreements.

5) Changes concerning the calculation of the severance pay, the sum of money paid as reward for service during term of employment and the compensation pay that the worker/ labourer ought to have as referred to under subsection (2), subsection (3), and subsection (4) shall be determined and specified with a Government Regulation.

Those who receive severance pay, period of service pay and compensation for entitlements that should be received are employees / workers who work for a company with a minimum working period of less than 1 (one) year. Problems that may arise are when the contract worker is terminated where the worker is currently undergoing a probationary period at a place that has been determined by the company in accordance with the client's request.

Whether contract workers who are on probation will receive severance pay and other rights if their employment is terminated is still not clear. If this is not regulated in company regulations, then contract workers who are terminated from work will get a lot of losses as a result of the termination of employment. This causes the rights that should be received cannot be exercised, considering that the contract worker whose employment relationship is terminated is not included in the category of parties entitled to receive severance pay.

Thus it can be said that the process of the probationary period injures Law Number 13 of 2003 concerning Manpower as a whole. It has been explicitly explained that contract workers should not be required to have a probationary period of work, because if a contract worker is terminated during a

probationary work relationship, the resulting impact will be very large and losses can of course also be experienced by contract workers. This kind of thing is of course very contrary to the Principle of Proportionality in the contract, because the rights and obligations of the parties are not properly channeled so that it can cause bad effects in the future.

The existence of the Civil Code and Law Number 13 of 2003 concerning Manpower is very satisfying when viewed from the arrangements regarding agreements / contracts and employment,. However, at the time of its implementation, the application of the principles in contracting, especially the principle of proportionality, did not work as it should be, because there were still rules that were contrary to the rules that were higher than company rules.

4. CONCLUSION

Regarding the implementation of the Proportionality Principle in a work contract, it must be seen from several points of view from other principles in the contract, so that the existence of the Proportionality Principle can be known its existence. It was found that the implementation of the principle of proportionality in the outsourcing contract was not going well. This is because there are some things that should not be included in the contract but do exist. One of them is the holding of a probationary period for contract workers, where it is very clearly regulated in the law that contract workers should not be subject to trial work. In addition, legal uncertainty may still occur, namely when during the probation period, the contract worker is terminated. In such an event, what must be ascertained is whether the company has granted the rights that should be received by contract workers or not, considering that basically contract workers should not be required to have a probationary period of work.

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