



Implementation of Outsourcing (Transfer) Job Under Labor Law Number 13 Year 2003

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Abstract. Due to business sector rivalry, companies must focus on a series of processes or operations to create goods and services tied to their primary skills. Various market-competitive quality items and services will be produced with a focus on the company's key skills. In an increasingly competitive business climate, companies are seeking to minimize production costs. One solution is an outsourcing system, which allows the business to save money on financing the company's human resources (HR). The transfer or delegation of specific company operations to a service provider agency, with the service provider agency completing administrative and management procedures based on the parties' agreed-upon definitions and criteria, is known as outsourcing. The Manpower Law No. 13 of 2003 (articles 64, 65, and 66) and the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep.101/Men/VI/2004 concerning Procedures Agreement of Employer/Laborer Service Provider Company and Kepmenakertrans govern outsourcing in Indonesia. Job transfers to other parties within the company, according to the study's findings, must be carried out in accordance with applicable provisions under both Law No. 13 of 2003 and the Minister of Manpower and Transmigration's decision, and can achieve business goals such as process efficiency and business focus. The processes for implementing the transfer of work to other parties have been thoroughly regulated in Law No. 13 of 2003 and the Decree of the Minister of Transmigration, so that the firm can appropriately transfer work to other parties by referring to these two rules.

Keywords: outsourcing · manpower law · business world

1 Introduction

The topic of outsourcing is currently quite heated. There is a critical schism between workers', employers', and the government's understanding of Manpower Law No. 13 of 2003 on Outsourcing and its implementation methods.

Employment policy through Law No. 13 of 2003 is very strategic for the progress of national development, where improving people's welfare is the primary goal. Employment policy is an essential factor that is integrally a driving force for the dynamics of the national economy and progress of Indonesian society in line with the era of globalization where there is no Boundaries between countries in conducting trade as well as protection for all parties occurs to achieve productivity and public welfare.

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The government as a stakeholder is highly expected to integrate policies, implementation, and impacts on the ongoing processes to maintain synergy between workers and employers as productive partners who need and strengthen each other and always try to prevent exploitative and mutually detrimental relationships. This harmonious partnership is the dream of the parties toward social welfare for all Indonesian people.

A pomegranate over the weakness of Law No.13 of 2003 on the workforce, which has been controversial because the differences in interests between employers and workers are difficult to reach, where several provisions of Law No.13 of 2003 are considered to protect workers so that they are burdensome for employers, on the other hand, workers assume that many provisions do not provide protection and welfare for workers. Employees' negotiating position is weaker than the employer's bargaining position in the context of the employment relationship, and intense competition among workers exacerbates this due to an oversupply of labor (oversupply) relative to the demand for labor.

In realizing welfare for social justice, one of the things that underpin the implementation of the company's Outsourcing management is to focus on the core business and ensure the implementation of Outsourcing is by regulations and matches the needs of the organization, and trying to encourage the realization of best practice with clear guidelines by analyzing the forms of delivery of part of the implementation of work in the form of supporting activities effectively. Outsourcing is one facet of the contentious Law No. 13, where the Constitutional Court issued Decision No. 27/PUU-IX/2011 in an effort to maintain justice, stimulate more effective outsourcing, and give legal protection for all parties in order to create shared prosperity.

We discover several polemics in the implementation of outsourcing owing to conflicts of interest between employers and trade/labor unions. For entrepreneurs, Outsourcing is a business demand as a response to global economic developments that require speed in meeting production targets, efficient financing, and recruitment. By outsourcing activities, the company seeks to focus on handling work that is core (core business) by employing permanent workers (permanent workers) and employing workers as supporting activities (non-core business) which are handed over to other companies.

Trade unions differ in viewing the practice of Outsourcing, which is considered a form of the employment relationship that is very detrimental because it creates uncertainty in the status of the workforce (job insecurity) and does not provide protection to workers. Outsourcing is considered the company's effort to create the maximum profit and is the easiest option to avoid various obligations in the event of a labor dispute. Moreover, outsourcing practices have caused discrimination against workers, especially regarding wage discrimination and the right to associate and get a job (working age). Massively, the unions/ labor unions firmly reject this Outsourcing.

Following the Constitutional Court's approval of a portion of the judicial review of Law No. 13 of 2003 on Employment, presented by Didik Suprijadi, an employee of the Alliance of Indonesian Electric Meter Readers (AP2ML). The Constitutional Court ruled in its judgement that work with a fixed object could no longer be done through a contract mechanism or through outsourcing.

Outsourced workers/laborers do not receive THR and severance pay but receive the same rights and welfare as other workers. However, some companies do not provide

rights such as health insurance and salaries below the regional minimum wage. In addition, many job positions that should not be given to Outsourcing but are still carried out by the employer are outsourced to outsourcing providers. It became the attention of Labor Unions after the Constitutional Court decided in Mayday 2012 that all labor organizations agree that this system is abolished because it was considered very detrimental to workers. The outsourcing system did not provide clarity on the future for workers. There was no severance pay or rewards if an outsourced worker was terminated. This makes the issue of job insecurity often conveyed by the Union of Workers/Labourers.

2 Method

The research method used in the literature study collects data through books, laws, regulations, documents, official letters, etc. In the field study, it is to find field data related to the material discussed and match the data obtained and existing materials in the literature study with the data obtained in the field study.

3 Result and Discussion

3.1 Definition of Outsourcing

According to the Concise Oxford Dictionary, outsourcing is defined as a contract (work) out in general, whereas the contract itself is defined as follows: [6]

“Contract to enter into or make a contract. From the latin contractus, the past participle of contrahere, to draw together, bring about or enter into an agreement.”
(Webster’s English Dictionary)

Maurice F Greaver II defines outsourcing specifically in his book Strategic Outsourcing, A Structured Approach to Outsourcing: Decisions and Initiatives, as follows: [7]

“Strategic use of outside parties to perform activities, traditionally handled by internal staff and resources.”

Outsourcing, as defined by Maurice Greaver, is the transfer of parts of a company’s operations and decision-making powers to other parties (outside providers), with a collaboration contract binding this activity.

According to the definition, Outsourcing (Alih Daya) in Indonesian is the delegation of everyday operations and administration of a business process to an outside party (outsourcing service company). [8] Muzni Tambusai, the Ministry of Manpower and Transmigration’s Director General of Industrial Relations Development, concurred. They defined Outsourcing as purchasing one or more parts of a company’s activities that had previously been managed by another company, later referred to as the recipient, Profession [9] From the definitions stated above, there are similarities in viewing Outsourcing, namely that there is a handover of part of the company’s activities to other parties.

3.2 Outsourcing (Outsourcing) System

Outsourcing is defined in Indonesian labor law as contracting employment and offering labor services. The Manpower Act No. 13 of 2003 (articles 64, 65, and 66) and the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep.101/Men/VI/2004 of 2004 relating to Procedures for the Agreement of a Worker/Labourer Service Provider Company and Kepmenakertrans No. 19/Men/2012 relating to Conditions for Submission as Implementation of Work to Other Companies govern outsourcing legislation in Indonesia. The government continues to consider that the Outsourcing regulation is insufficient. Outsourcing distributes labor obligation from the originating firm to other enterprises.

Companies other than the parent firm can take the shape of suppliers, cooperatives, or other entities governed by a specific agreement. Ordinary labor standards only cover workers in supporting procedures when it comes to outsourcing (non-core business units). Outsourcing cannot be seen just in terms of the short term; by utilizing Outsourcing, the firm will spend more money as a management charge to the outsourcing provider. Outsourcing must be evaluated in the long term, beginning with employee career development, labor efficiency, organization, benefits, and so on. Companies can concentrate on their primary strengths in business, while internal supporting concerns are delegated to more skilled parties. In practice, this move causes a number of issues, including job issues.

3.3 Purpose of Implementing Outsourcing System

Outsourcing is one of the management strategies used to promote competitiveness in the business sector since the organization must focus on its core work while supporting work is delegated to third parties (vendors/outsourced). So, in other words, the submission of non-core work is one of the steps that can reduce the length and complexity of the span of business management control.

The connection between the employer and the outsourcing business is one of collaboration. A partnership is defined as an arrangement between an employer and an independent vendor. The relationship is equal and balanced, not a superior and subordinate relationship and not a relationship between employer and employee. The success of the outsourcing operation is if the vendor can provide input to the employer as a consultant who is an expert in his field. In this partnership relationship, the vendor is obliged to fulfill the work that has been agreed upon and will comply with all instructions from the employer company as long as it does not conflict with the cooperation agreement. In addition, vendors are also required to meet the specified administrative requirements, such as completing documents related to business licenses.

The division of roles in a partnership relationship can be seen between two parties. If viewed from an outsourcing company, the vendor is an administrative expert. This means that the vendor provides the best outsourcing service through an effective, timely, and accurate system in every process. Vendors are also consultants, providing professional opinions and alternative solutions to various problems related to recruitment and selection. The user is a competency expert if the division of partnership roles is viewed from the employer's company. They have the authority in the interview process as the source

which best knows the work to be done, such as technical characteristics and competencies. The user is also a culture builder, the party who is obliged to explain everything expected by each employee, both written and unwritten. For example, users or users must explain in detail what ‘characters’ employees must have to fit into the company culture. The assignment of roles can also be done with vendors and employers through an expert procedure system. This is the responsibility of both parties, as outlined in the service level agreement (SLA).

3.4 Legal Basis of Outsourcing System in Indonesia

3.4.1 Law Number 13 of 2003 Concerning Manpower

Law No. 13 of 2003 on Manpower allows enterprises to outsource a portion of the implementation of work inside the organization to other companies through:

- 1) job chartering,
- 2) Employment service provider company (PPJP)

Both types of activity are intended to be carried out under particular circumstances under the Manpower Act. These criteria, among others, must be executed by a written agreement. Meanwhile, the receiving firm must be a legal entity that is also registered with the employment agency. Through task chartering, the corporation may delegate some of the work’s execution to another legal entity. The following terms apply to the contract work agreement:

- 1) Completed independently of the main action
- 2) Carried out on direct or indirect instruction from the employer
- 3) Is a supporting activity for the firm as a whole
- 4) Does not directly interfere with the manufacturing process.

A firm that receives a piece of work and resubmits a portion of it to another company; as a result, the latter company may not be a legal organization. Deviations that the firm may not be a legal entity can also be carried out if there is no work contractor company that is a legal entity or does not fulfill the criteria to carry out work in an area.

Law No. 13 of 2003 on Manpower, particularly Chapter IX on Employment Relations, which contains articles directly connected to outsourcing. The following is a summary of the law’s provisions:

Article 50

The employment connection exists as a result of the employment contract between the entrepreneur and the worker/labourer.

Article 51

- (1) The employment agreement is made in writing or orally.
- (2) The work agreement required in writing is implemented in accordance with the applicable laws and regulations.

Article 52

- (1) An employment agreement is created on the basis of: a. mutual consent on both sides; b. legal capability; c. the presence of the promised job; and d. the agreed-upon work does not violate public order, decency, or relevant laws and regulations.
- (2) Any labor agreement made by the parties that is incompatible with the requirements referred to in paragraph (1) letters a and b is void.
- (3) Any labor arrangement created by the parties that is in conflict with the conditions mentioned in paragraph (1) letters c and d is legally null and void.

Article 53

The entrepreneur is responsible for all matters and/or expenditures associated with the implementation of the creation of a work agreement.

Article 54

- (1) A documented employment agreement must include at the very least:
 - a. Name, address, and nature of the business;
 - b. The worker's or name, gender, age, and address;
 - c. Position or kind of work;
 - d. Workplace atmosphere;
 - e. The salary and method of payment;
 - f. Working circumstances that define the rights and responsibilities of businesses and workers/laborers;
 - g. The start and end dates of the labor agreement;
 - h. The employment agreement's location and date; and
 - i. The signatures on the employment agreement of the parties
- (2) The work agreement aspects referred to in paragraph (1) letters e and f must not be in conflict with business policy, collective bargaining agreements, or applicable laws and regulations.
- (3) The work agreement referred to in paragraph (1) is made up of at least two (two) copies, each with the equal legal force, and each worker/laborer and entrepreneur receives one (one) work agreement.

Article 55

The labor agreement cannot be withdrawn or altered unless both parties agree. Under addition, in Articles 56–59 of Law No. 13 of 2003 governs the Employment Agreement for a Limited Time, and its clauses are as follows.

Article 56

- (1) An employment contract is created for a specified or indefinite period of time.
- (2) The work arrangement referred to in paragraph (1) for a certain time period is based on the fulfillment of a specific job.

Article 57

- (1) A legal labor agreement is formed for a set amount of time, which must be written in Indonesian and Latin letters.
- (2) A work agreement for a certain duration made unwritten in contravention of the restrictions referred to in paragraph (1) is determined to be an indeterminate length work agreement.
- (3) If a work agreement is written in both Indonesian and a foreign language and there is a disagreement over interpretation, the Indonesian work agreement takes precedence.

Article 58

- (1) A labor agreement for a specific amount of time cannot include a probationary period.
- (2) If a probationary term is necessary in the labor agreement referred to in paragraph (1), the probationary period is legally null and void.

Article 59

- (1) A labor agreement for a specific time is only formed for particular works that, according to their nature and kind, will be finished within a specific period, namely:
 - a. Jobs that are either finished or transitory in nature;
 - b. Work that is expected to be finished in a reasonable amount of time, no later than 3 (three) years;
 - c. Seasonal employment
 - d. Work on new items, new activities, or more products that are still being tested or explored.
- (2) Temporary work cannot be retained for permanent employment.
 - a. A labor contract for a set length of time may be extended or renewed.
 - b. A labor agreement for a specific period of time may be kept for a maximum of two (two) years and may only be renewed once (once) for a maximum duration of one (one) year.

The following provisions are included in Articles 60–63 of the Indefinite Time Work Agreement (PKWTT):

- (1) An indefinite employment agreement may include a three-month probationary period.
- (2) During the probationary period referred to in paragraph 2, the entrepreneur is prohibited from paying wages less than the applicable minimum wage (1).

Article 61

- (1) The employment contract is terminated if:
 - a. The worker is killed;
 - b. the work agreement's term expires;
 - c. There is a permanent legal force court decision and/or decision or stipulation of an industrial relations dispute settlement institution; or there are certain circumstances or events stated in the work agreement, company regulations, or collective work agreement that may cause the employment relationship to end.
- (2) The labor agreement does not end due to the death of the entrepreneur or the transfer of rights to the business by sale, inheritance, or donation.
- (3) In the event of a company transfer, the worker's/rights laborer's become the responsibility of the new entrepreneur, unless otherwise indicated in the transfer agreement, which does not reduce the worker's/rights. Laborer's laborer's
- (4) If the entrepreneur, a person, dies, the entrepreneur's heirs may, after negotiating with the worker/labor, terminate the employment arrangement.
- (5) If a worker/labourer dies, the worker/heirs/labourers are entitled to the rights indicated in the work agreement, company regulations, or collective work agreement.

Article 62

If one of the parties quits the employment connection before the end of the time period stipulated in the work agreement, or if the termination is not owing to the requirements referred to in Article 61 paragraph (1), the terminating party is required to pay salaries to the other party. Worker/labor till the end of the employment contract.

Article 63

- (1) If an indefinite-term employment arrangement is formed orally, the entrepreneur is required to issue a letter of appointment to the worker/laborer involved.
- (2) The appointment letter referred to in paragraph (1) must include the following information:
 - a. worker/name laborer's and address;
 - b. date when work began;
 - c. nature of job; and
 - d. amount of pay

Furthermore, the stipulations of Articles 64–66 of Law No. 13 of 2003 Concerning Manpower are as follows:

Article 64

Through a formal agreement for the service provider of employees/laborers, the firm may delegate a portion of the implementation of workers to other companies. The Manpower Act's outsourcing provisions are meant to entice investors to invest in Indonesia.

Outsourcing is frequently utilized as a competitive tactic for businesses to focus on their primary business. In practice, however, outsourcing is driven by the company's desire to keep costs as low as possible while reaping double profits, despite the fact that it frequently violates business ethics, namely that workers are stakeholders in the company with the right to benefit from their work in the company. The item that must be regarded in its execution is that the job protection and working conditions for workers who work at the firm receiving the job are at least the same as those provided by the company giving the job or by the applicable laws and regulations.

Employers/associations are required by law to create a flow of activities for the production process to implement the work and establish the primary and supporting tasks to be reported to the local workforce agency. As a result, it is required to create a list of the key and ongoing jobs in the organization. This may not be simple to accomplish the first time, but if it can be appropriately handled in the future, it will benefit the organization when delegating work to third parties.

The job list is contained in business rules (PP) or collective work agreements for strong legal legality (PKB). The workforce agency was also made aware of this type of action within the organization by ratifying corporate policies or registering collective labor agreements. As a result, it might be an important piece of evidence in a disagreement.

The Manpower Law has supplied examples of supporting service activities or activities that are not directly tied to the manufacturing process to help us make a list, such as:

1. Cleaning service business (cleaning service),
2. The business of providing food for workers (catering),
3. The business of security personnel (security),
4. Supporting services business in mining and petroleum,
5. The business of providing workers' transportation (transportation).

With this example, a further inventory can be carried out according to the nature of the circumstances of each company. The second thing that must be observed is that the company must take care not to agree to hand over the work to a company that is not a legal entity. According to the law, limited liability companies and cooperatives are legal entities in the economic field. Therefore, to further secure the company's position, the work can be handed over to a workers' cooperative that is already a legal entity.

By taking this step, the company will get double worker protection. First, by handing over some of the work to the workers' cooperative, they certainly support the steps taken by the entrepreneur so that the company is safe in carrying it out. Second, they enjoy the company's policies by obtaining welfare through workers' cooperatives, so they must participate in securing the said activities.

The third thing that must be considered when submitting part of the work to other companies is that the agreement must be made in writing. In particular, in agreeing with a Worker Service Provider Company, it is determined that at least the agreement contains.

- a) The nature of the work that will be performed by the service provider's employees,

- b) Affirmation that was working, the working relationship that occurs is between the service provider company and the workers employed by the service provider company, so that wage and welfare protection, working conditions, and any disputes that arise are the responsibility of the workers' service provider company, and
- c) Confirmation that the employer service provider company is willing to accept workers from the prior worker service provider company for the types of work that were previously performed.

The agreement in question is registered with the workforce agency in the area where the agreement is valid.

4 Conclusion

Work must be transferred to other parties within the firm in accordance with the terms of both Law No. 13 of 2003 and the Minister of Manpower and Transmigration decision. It can accomplish company objectives such as process efficiency and business focus. Law No. 13 of 2003 and the KepMentrans have detailed the processes for conducting job transfers to other parties, so that the firm can appropriately transfer work to other parties by referring to these two rules. If, in practice, the company transfers work to the other party and do not comply with these regulations, the worker from the receiving company profession becomes an employee of the employer's company PT Showa Denko Materials Indonesian has made a diversion work to other parties by Law No. 13 of 2003 as well as the decision of the Minister of Manpower and transmigration and has made the implementation instructions usable by other similar companies.

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