

Outsourcing Policy in Indonesia

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ABSTRACT: The Outsourcing policy is one of the steps taken by the government in recruiting workers in both the public and private sectors in Indonesia. This policy is one of the breakthroughs that the government has given to various existing companies and offices that are under government authority. The legal basis on which outsourcing in Indonesia is based is Law No.13 of 2003 concerning Manpower. In its implementation, outsourcing creates various problems, one of which is the low protection of workers and guarantees received by various companies in Indonesia that can harm workers. The research method used in this research is qualitative research. The results showed that outsourcing has two types. First, outsourcing of work related to contracting work to other parties. Second, human outsourcing, where this type of outsourcing is a practice that provides a certain level of efficiency in business operations, but seriously harms the interests of workers on the other hand.

Keywords- Government Policy, Outsourcing, Employees, Worker Security, Indonesia

I. INTRODUCTION

Labor is one of the most important factors of production. From the supply side, in general, almost every country shows a progress that continues to increase from year to year, so that policies are needed to encourage production growth with the aim of absorbing the workforce. One of the important labor policies is the legalization of the implementation of outsourcing policies in almost all countries. In fact, the practice of outsourcing has occurred more than two decades ago (Agustino, 2012: 45). At the micro level, outsourcing has become a common practice in human resource management, and has even become a company strategy. The outsourcing strategy is now being practiced by multinational companies, which make direct investments in a country (Dwiyanto, 2017: 55). Gorg and Hanley's study shows that outsourcing in international class companies has a positive effect on company profits (Astuti, 2005: 107).

In general, the development of the level of outsourcing in the era of globalization is increasing rapidly. That's why Bart and Jurecius call it the age of outsourcing. This condition has made the practice of outsourcing hit various sectors, for example the service sector. The practice of outsourcing in the service industry is especially increasing rapidly in industries that require information technology. However, the development of outsourcing in this sector which specifically occurs in America has become a political issue because outsourcing workers are generally immigrants or migrant workers (Farida & Setiawan, 2018).

Another service sector that has implemented a lot of outsourcing is the hotel business. In this type of business, outsourcing is used for cleaning services, laundry, security and information technology. Even in this type of business, the use of outsourcing touches the core production. Outsourcing is also carried out in the trade sector, for example the logistics sector. Another sector that applies outsourcing a lot is the banking sector, especially for the use of Information Technology (McIvor, 2005: 10). The increasing importance of outsourcing is inseparable from the rapid development of technology where technology is proven to have an effect on the efficiency of company operations. A study from Bartel (Mol, 2007: 60) shows that there is a relationship between technological change and outsourcing, where outsourcing is a profitable option when technological changes develop rapidly. The practice of the outsourcing system so far has benefited the company more through the efficiency of production costs. Efficiency occurs because workers are paid cheap wages and there are no

benefits that must be provided to workers. Hojnik's study in Slovenia, statistically proven that the reason for using outsourcing is to reduce costs. Likewise McCann's study (Pasolong, 2018: 70) in Ireland that outsourcing has increased company profits. Spencer's studies in China and India also show that international outsourcing is low cost. Due to the positive effect of using outsourcing there has been a shift away from the nature of outsourcing. Initially, it was to support the process of supporting company activities, but now many companies do it extensively in core production activities (Mustafa, 2017: 33).

Another advantage that is obtained by using outsourcing is the issue of labor relations where this practice does not create many demands from the workers. In the implementation of outsourcing with a contract work system and outsourcing, workers will think twice about being involved in a trade union, even though workers realize that by unionizing workers have the power and bargaining position because workers have worked to provide benefits for employers. Therefore, the problem of outsourcing in an employment perspective is often seen as a social perspective (Prasetyo, 2017). Similar to developments in the international world, the practice of outsourcing in Indonesia is not something new because during the Dutch colonial era, the contract work system was practiced in plantations as a form of foreign colonialism over Indonesia (Setiawan, 2017). During the Dutch colonial government era, the Labor Ordinance and Poenale Sanctie were used (Farida et al, 2020). A work system that does not care about the fate of the coolies. Workers are not considered as human beings but only a collection of legal persons to be mistreated and mistreated (Setiawan, 2016). In its development, especially today, in general, the development of outsourcing in Indonesia continues to increase. The results of the survey conducted by the Sharing Vision Team and the results of surveys from several publications abroad were almost the same, only 2 percent different (Robbins, 2015: 77). However, the problem of the outsourcing system tends to be a problem in itself, especially for those who do not agree with this practice. This study aims to provide information about outsourcing practices in Indonesia so that it can be used as input for changes to Law no. 13 of 2003 concerning Manpower, in particular adopting changes on outsourcing arrangements.

II. RESEARCH METHODS

The research method is basically a scientific way of obtaining data for specific purposes and uses. Which is based on scientific characteristics, namely rational, empirical, and systematic (Sugiyono, 2013: 2). The method used in this research is qualitative research methods. The Qualitative Research Model is rooted in the natural setting as wholeness, relies on humans as a research tool, makes use of qualitative methods, conducts data analysis inductively, directs research objectives towards finding a theory from the ground up, is descriptive in nature, limits the study to focus, has a set of criteria to examine the validity of the data, the research design is provisional, and the results of the research are agreed upon by both parties: the researcher and the research subject (Moleong, 2013: 44). In this research, the research design used is a case study research design. Where in the case study research design is carried out to obtain a deep understanding of the situation and the meaning of the subject under study.

This research is more concerned with process rather than results, more aimed at finding something than the need for confirmation. In this study, researchers looked more deeply at the cases in the field based on actual facts. Sources of data in this study came from 2 sources, namely primary data and secondary data. Primary data sources are data obtained directly from the object of research which are collected and processed by themselves. The data needed is data related to outsourcing policy in Indonesia which involves several large companies in Indonesia. Meanwhile, secondary data sources are data sources that are done by reading, studying, quoting, and reviewing literature, archives, articles, documents, and other supporting materials related to the issues to be examined.

III. RESEARCH RESULTS AND DISCUSSION

Outsourcing in Indonesia

The application of outsourcing in Indonesia has caused debate. According to Suparman (Yusriadi et al., 2017) there are several problems related to contract work and outsourcing. First, ideologically, the emergence of articles on contract work and outsourcing that is detrimental to workers is the dominant product of neo-liberalism which is contrary to the economic character of the Indonesian nation embraced in Article 33 of the 1945 Constitution of the Republic of Indonesia, namely the principles of kinship and togetherness. Article of contract work and outsourcing that is linked to investment competitiveness, which means giving free power opportunities for investors to deprive the principles of the people's economy. Second, in terms of guarantees for workers, the consequences of contract work and outsourcing mean reducing labor rights, especially regarding various benefits, social security and proper job security. Third, inconsistency in the application of work relations because when viewed from the definition of the employment relationship in Law no. 13 of 2003 concerning Manpower, particularly Article 1 Paragraph (15) which states, "an employment relationship is a legal relationship that arises between a worker and an employer based on a work agreement which has the

characteristics of a wage, an order and a job." But in Article 66 Paragraph (2) Letter a, it is stated that between companies providing worker services is required to have an employment relationship. In fact, between companies providing worker services and workers, the legal relationship does not fulfill the elements of orders, work and wages. Fourth, workers are too easy to be fired and recruited because workers are placed solely as a production factor (like merchandise) in contract work schemes or outsourcing. Fifth, the legal guarantee of the sale of modern humans or as modern day slavery. Outsourcing legalization as regulated in Articles 64-66, is a practice of buying and selling people who take advantage of the economic downturn, so that workers must become victims of investment politics. Sixth, the conflict paradigm even though it should apply the partnership paradigm which must be used as a theoretical basis for drafting laws, but the conflict paradigm.

From a political economy perspective, according to Chole (Wibawa, 2016: 60), outsourcing is a development of the labor mechanism in the modern era. According to him, the work system is an embodiment of the nature of capitalism, namely expansive and exploitative, which has dominated developing countries, and this means the capitalists' abuse and neglect of basic labor rights. Therefore, according to him, the passing of Law no. 13 of 2003 concerning Manpower, which allows outsourcing work mechanisms to be a formal legal basis for the suppression and exploitation of labor rights. Furthermore, according to him, the system is similar to human trafficking which is legalized by the state. However, for entrepreneurs themselves, this is often cited as one of the obstacles and causes of an inefficient trading system. More specifically, the severance pay and outsourcing clauses. It is almost impossible for contract workers to be accommodated in industries that make goods whose competitiveness is largely determined by quality due to very tight competition, such as shoes, apparel and electronics (Santoso, 2008: 50).

Therefore, according to Nugraha (Sedarmayanti, 2011: 90), outsourcing regulated in Law No. 13 of 2003 on Employment clarifies the spirit of labor market flexibility. Flexibility, which is a systematic effort to maintain working relationships and free employers to provide protection for workers and pay their obligations. According to the FSPMI-FES study (Thoha, 2011: 69) the implication of a flexible market is that for workers it means that the opportunity to work is short and limited, there is no compensation at the end of the work relationship, welfare decreases, wages never increase, cannot associate. For labor unions this means losing members, decreasing interest in labor unions, weakening bargaining position, powerlessness in overcoming outsourcing, direct or indirect violations of association rights. For entrepreneurs, this means that labor matters are more practical, labor costs are much reduced by 20%, high costs in the short term but low in the long term, paying management fees and severance pay in the context of transferring the work relationship remains a contract but does not need to provide compensation and pensions when the relationship work ends, as well as to reduce the risk of loss due to business fluctuations. Meanwhile, for the government, this means that there has been a mass violation of regulations and laws regarding outsourcing and freedom of association, a decrease in the dignity, competence and professionalism of officials at the Manpower Office or the Ministry of Manpower, expanding employment opportunities in the formal sector is difficult to achieve, efforts to reduce poverty are threatened. Finally, for the labor market it means experiencing obstacles in terms of the supply of labor because prospective workers have to pay to get a job; the expansion of employment opportunities in the formal sector is getting narrower due to preferences for certain age groups; The phenomenon of informality is widespread because job opportunities in the formal sector are getting shorter and more limited.

Even though in Indonesia there is already a regulatory basis for the implementation of outsourcing, so far there has been no clear technical arrangement regarding contract or outsourcing workers, especially regarding what types of work are included in core business and are supporting (non-core business). Law No. 13 of 2003 concerning Manpower only regulates the types of work that are main and supporting in nature without clearly specifying which are the types of main and supporting work. This raises many problems in practice. As a result, outsourcing employers often force to outsource almost all types of work to companies that use labor. The outsourcing system in the context of an employment relationship must also be clarified. This is important because so far there is a kind of uncertainty with whom workers have a working relationship. This affirmation can be realized through co-employment relations, in which both the provider and user companies have a working relationship with the workers themselves. For this reason, the Ministry of Manpower and Transmigration needs to issue a regulation of the minister of manpower which regulates several things. First, what types of work can be contracted or outsourced, the formulation of which is the result of an agreement between trade unions and employers' organizations. Second, that the wages of contract or outsourcing workers must be higher than permanent workers to guarantee workers if the contract is not extended. Third, the protection rights of contract workers or agency workers are at least the same as non-outsourced workers.

Problems from Outsourcing Practices in Indonesia

So far, the practice of outsourcing has caused many problems. Some of these violation practices, for example the case of outsourcing at Pertamina's Central Hospital, are clear examples of violations of the applicable labor regulations. Sutarman as the Court Judge in Jakarta assessed that there was a violation of the

implementation of outsourcing, namely the absence of a written agreement between the hospital as a user and the RSPP employee cooperative as the agent. Another example of outsourcing irregularities occurs at the gate of the Jakarta Outer Ring Road (JORR) toll road. This practice can be seen from the majority of ticket officers at toll booths having the status of outsourcing employees. Even though the general public can certainly judge that the job of guarding toll road gates is the core business of toll road administering companies. This means that it is not feasible if the worker is a contract or outsourcing employee.

Rosmana as an employee of the Ministry of Manpower said that the implementation of legal protection for outsourcing workers of PT. Indah Karya Nuansa Indonesia (PT. INKANINDO) at PT. PERTAMINA (Persero) UP-VI Balongan, shows that in running the business of outsourcing the provision of routine inspection workforce NDT refinery equipment PT. PERTAMINA (Persero) UP-VI Balongan, PT. INKANINDO is not entirely in accordance with the applicable manpower regulations. Several things have not been fulfilled, namely the violations committed, including the working hours imposed if the total is 45 hours in one week whereas in Article 77 paragraph (2) the maximum working hours per week is 40 hours. Another violation is that overtime meal pay is not provided because it is less than 4 real hours on weekdays. This violates Article 77 Paragraph (2) which stipulates that the total real working hours in a week cannot be more than 40 hours, as well as the provisions of Overtime Working Time in Law Number 13 Year 2003 concerning Manpower Article 78 Paragraph (1) Letter b, namely can only be done a maximum of 3 hours in 1 day and 14 hours in 1 week. Likewise with the provision which states that specifically for shift workers, they do not receive overtime meal allowance and overtime transport pay when working on official holidays, not in accordance with the provisions of Overtime Working in Law No. 13 of 2003 concerning Manpower Article 78 Paragraph (2) which states that entrepreneurs who employ workers or laborers over the working hours as referred to in paragraph (1) are required to pay overtime wages. Thus this study concludes that the legal protection for routine inspection workers of refinery equipment (outsourcing workers) is still not optimal and is still very weak.

The FSPMI-FES study (Viky et al., 2020) used a combination of survey methodology to 600 metal sector workers in 3 provinces in 7 districts or cities, namely the Riau Islands Province in Batam City, West Java Province in Bekasi Regency and Karawang Regency, and the Province East Java in Surabaya City, Sidoarjo Regency, Mojokerto Regency and Pasuruan Regency, shows that the impact of contract work practices and outsourcing is fragmentative, discriminatory, degradative and exploitative on workers. The practice of permanent and contract employment has created fragmentation or grouping of workers based on their status at the factory level (Wibawa, 2016: 80). In this practice, in one factory there are 3 groups of workers, namely permanent workers, contract workers and outsourcing workers. This grouping is generally characterized by differences in the uniform colors worn by the three groups of workers and among the outsourced workers who come from different labor supply companies. Grouping based on the color of uniforms has the effect of stratification and social distance among permanent, contract and outsourcing workers which has implications for solidarity and mutual awareness as workers. The practice of contract employment and outsourcing brings at least 3 forms of discrimination against workers, namely:

- a. discrimination on age and marital status, namely the follow-up policy applied by user companies to employ outsourced workers, which is to impose age limits and marital status for outsourced workers which have a discriminatory effect. Companies tend to employ young workers and for the recruitment of new outsourcing workers, it requires workers aged 18-24 years and single for reasons of productivity. Choosing a worker with a single status has the effect of making it more difficult for workers with families to find work and earn income;
- b. wage discrimination, namely contract workers and outsourcing workers who do the same type of work in the same working hours as regular workers get different wages. The total wages of contract workers are 17% lower than the wages of permanent workers and the total wages of outsourcing workers are 26% lower than the wages of regular workers;
- c. unionized discrimination, namely contract workers and outsourcing are prohibited directly or indirectly from joining a particular union or with any union, and the possibility of not being extended the contract if joining a labor union.

Agustina as an employee at PT. Bukit Asam Coal Mine (PTBA) Tbk. said that the implementation of outsourcing practices is very detrimental to outsourcing workers or laborers, even though the implementation of outsourcing has been regulated in Law No.13 of 2003 on Manpower. This is due to the unclear formulation of the work relationship between the employer, service provider and outsourcing workers or laborers, plus the discovery of a written agreement between PTBA and KOPKAR PTBA, as well as the absence of a written work agreement between KOPKAR PTBA and workers or laborers. which was outsourced to PTBA. In addition, the use of outsourcing workers also has an influence on the affection of the outsourcing worker. This can be seen from the absence (low) of motivation. In general the implementation of outsourcing has many problems. The first problem is that there is a negative impact on workers, namely the absence of certainty of job security for workers where with the outsourcing system to get cheap labor wages the employer closes the company for various reasons; decreasing welfare level and unable to answer daily needs, as evidenced by the March 2018

National Socio-Economic Survey by BPS where per capita income in urban areas is Rp. 158,799 per month, which means that in industrial areas the level of income has decreased and this has an impact on meeting the needs of life); the weakening of the strength of the labor union due to the reduction of members who have been laid off and the workers who are contracted do not dare to form an association due to the threat of layoffs so that the bargaining power of workers or workers becomes weak; and weak bargaining power due to individual work agreements and mostly only in oral form. This is very different, for example with the outsourcing system in Australia and America where the system is so fair for workers. In Australia, agency workers typically earn up to 20% higher wages than permanent workers. So they have no loss working with such a system because if it is calculated in total the same working hours per year, the gross income is almost the same. The difference is they do not get sick payment, holiday payment, long service payment. The same thing is also stipulated in the United States that employees with such a system, if they are retired, will still get social security, which means that their future is guaranteed (Widodo, 2012: 50).

In line with the reform era, the protection policy for workers or laborers is no longer appropriate in its implementation, so it is necessary to reform the labor laws, which include stipulating the protection policy for workers or laborers in the implementation of outsourcing. There are many things that can be done by the management and trade or labor unions, including: developing competition standards which include expertise, knowledge and attitudes; increasing socio-economic needs, management and employees can make a concrete contribution to the stability of the company's economic and social growth; can meet the minimum social needs of workers; as well as providing a sense of security to workers, in line with the function of a trade union or laborer, namely providing protection and improving the welfare of its members.

The second problem is the determination of the outsourcing partner. As it is known that one of the keys to the success of outsourcing is the agreement to make long-term relationships not only short-term projects, on the grounds that the outsourcing company must understand the business processes of the company. However, this is not easy to do in Indonesia. For example in government-owned institutions, for ministries or non-ministerial institutions and State-Owned Enterprises, the selection of service providers must be done through a tender. As a result, the winning bidder is difficult to predict. Likewise, service extensions may have to be tendered again. Good relations between outsourcing service users and outsourcing service providers are difficult to occur.

The third problem, although there are already regulations, there are still gaps in legal issues related to the implementation of outsourcing in Indonesia as follows: first, there is no indication of how the company classifies the main work and supporting work of the company which is the basis of outsourcing implementation; second, there is no clarity about the legal relationship between outsourcing employees and companies that use outsourcing services; third, there is no dispute resolution mechanism if there is an outsourcing employee who violates the work rules at the location of the employing company.

IV. CONCLUSION

Based on the research results, it can be concluded that outsourcing has two types. First, outsourcing of work related to contracting work to another party, or defined as the transfer or delegation of several business processes to a service provider agency, where the service provider agency carries out administrative and management processes based on definitions and criteria agreed by the parties. Second, human outsourcing, where this type of outsourcing is a practice that provides a certain level of efficiency in business operations, but seriously harms the interests of workers on the other hand. This second type of practice is opposed by the labor movement in Indonesia, especially after the passing of Law no. 13 of 2003 concerning Manpower.

The practice of outsourcing in Indonesia, on the one hand, is widespread and has become a necessity that business actors cannot delay, but on the other hand, the existing regulations are not sufficiently adequate to regulate the ongoing outsourcing. So far, outsourcing is still being placed as the domain of labor policy in Indonesia as part of the labor market flexibility policy which emphasizes the freedom to recruit and fire workers according to the business situation to avoid losses. Judging from the implementation there are still many problems, especially outsourcing practices in businesses that can be categorized as core businesses. Another problem encountered is the issue of protection for agency workers, such as violations of workers' rights. In addition, an important issue is the occurrence of discriminatory treatment experienced by agency workers.

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