Disputes of Dispute Outsourcing Work Agreements Post Constitutional Court Decision Number 27 / PUU-IX / 2011

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Abstract : Problems with outsourcing employment agreements are indeed quite varied. Because its use in the business world in Indonesia is now increasingly prevalent and is a necessity that cannot be delayed by business people, while existing regulations are not yet sufficient. For workers this system is a source of social anxiety, does not provide assurance of work certainty and the absence of wage protection and welfare guarantees. Outsourcing is considered as a business strategy that has very significant advantages, especially in terms of decreasing production costs or operating costs of the company. For the government, this system is one solution to overcome the unemployment rate and as a lure for investors to invest in Indonesia. Outsourcing is a system that is dilemmatic. The many deviations in outsourcing practices from positive legal concepts and their original legal theories seem to be more in favor of the interests of employers and always harm workers / laborers, giving rise to the pros and cons of removing this outsourcing system. The existence of these new norms is expected to enforce the provisions that should be carried out, explain the multi-interpretative formulations so that there are no more deviations in outsourcing practices that take refuge behind Law No. 13 of 2003 concerning Labor, even though judicial review has been carried out. To perfect the positive law, currently there is enough reason for the government and the House of Representatives to amend the Labor Law. According to the author, the legal opinions contained in this review are described in the material on the Legal Opinion of Transfer of Employment Contracts or Providers of Workers' Services (Legal Opinion on Outsourcing Transfers) related to the existing Constitutional Court ruling and Labor Law. If necessary, it must be revised immediately into the Law so that the implementation of the decision is more optimal. For this reason, the authors expect a change to the Manpower Act, to achieve a legal revision of outsourcing that will tighten the implementation of outsourcing in the future.

Keywords: Work agreement; outsourcing dispute; transfer of chartering

1. INTRODUCTION

Talking about outsourcing practices has always been a hot topic in Indonesia, because until now the demand for the elimination of the outsourcing work system has been constantly shouted by workers in our country. Every Labor Day on May 1, known as May Day, this demand is always echoed. Even various continuous efforts have been made to review the articles in the Manpower Act which regulate outsourcing.

Outsourcing is a system that is dilemmatic. On the one hand the implementation is considered to be very detrimental to the workers and on the other hand this system is actually very beneficial for the entrepreneurs. For workers this system is a source of social anxiety, does not provide assurance of work certainty and the absence of wage protection and welfare guarantees. Workers feel they do not get justice and do not get protection from their rights as workers. So far, the outsourcing system has placed workers in unprotected positions and termination of employment without severance pay or compensation after the end of the contract period can be done. Labor is only considered a commodity. Therefore many opinions say that this outsourcing system is a form of modern slavery. [Wijayanti, 2012].

Whereas from the point of view of the entrepreneur the outsourcing work system is a work system that is used to achieve efficiency in order to increase company productivity. Outsourcing is considered as a business strategy that has very significant advantages, especially in terms of decreasing production costs or operating costs of the company. For the government, the outsourcing system is one solution to overcome the high unemployment rate and as a lure for investors to invest their capital in Indonesia. The amount of investment is often a measure of a country's economic performance as well as the level of employment in the formal sector. In addition, investment and labor absorption together have a public aspect which, if there is an imbalance, the impact will spread to the public domain and eventually become a social problem. [Hilman, 2009]. Then whether the Government and the State Apparatus authorized to determine the Act can show their responsibility in overseeing the solution provided so that the implementation does not deviate from the 1945 Constitution as the highest source of law in our country.

Outsourcing is referred to as one of the solutions for the government to overcome the problem of unemployment and attracting investors as stipulated in articles of the Manpower Act No. 13 of 2003. In its development to date there have been many protests from the workers because it turns out that the implementation is full of irregularities that are very far from the existence of legal protection and justice for workers. Whereas it is clear in the 1945 Constitution that legal protection of workers is a basic right that is inherent and protected by the constitution as stipulated in article 27 paragraph (2) of the 1945 Constitution which reads "every citizen has the right to work and livelihood that is appropriate for humanity" and article 33 paragraph (1) which states that "The economy is structured as a joint effort on the principle of kinship". So it can be said that this violation of basic rights protected by the constitution is a violation of human rights. Protection of workers is intended to guarantee the basic rights of workers and ensure equality and treatment without discrimination on any basis to realize the welfare of workers and their families while taking into account the development of business progress and the interests of employers.

In work relations can be the occurrence of conflict or dispute, whether it is between workers and companies using outsourcing workers and workers with outsourcing labor supply companies, there are several tools that can be used to solve it, namely bipartite, then arbitration, conciliation, mediation (all three of which include settlement outside the court), then the Industrial Relations Court (PHI) at the first level and the Supreme Court at the appeal level (in court). The new norms that have been produced by the Constitutional Court, should be used as an opportunity to straighten out outsourcing practices in Indonesia so that they can benefit both workers and employers. With the existence of new norms produced by the Constitutional Court, it is expected that enforcement of the provisions that should be carried out, explains the multi-interpretative formulations so that there are no more deviations in outsourcing practices that are behind the Labor Law No. 13 of 2003.

To perfect the existing positive law, currently there is enough reason for the government and DPR RI to make changes to the Manpower Law. According to the authors, the legal opinions contained in this review as the authors describe in the Theory of Transfer of Job Charts or Employee Service Providers (Outsourcing Transfer Theory) are related to the existing Constitutional Court ruling and Labor Law. So it needs to be translated into law so that the implementation of the decision is more optimal. Therefore, changes in the labor law constitute an urgent need to tighten the rules of outsourcing so that the practice of outsourcing works better in the future.

In its implementation, this transfer also raises several problems, especially labor issues. Problems with outsourcing are indeed quite varied. This is because the use of outsourcing in the business world in Indonesia is increasingly prevalent and has become a necessity that cannot be delayed by business actors, while the existing regulations have not been too adequate to regulate the ongoing outsourcing. Starting from the explanation above, the problem of this research is: what is the mechanism for resolving disputes over outsourcing work agreement after the Constitutional Court's decision to tighten the rules of outsourcing so that the practice of outsourcing works better in the future?

2. METHODOLOGY

The method in this descriptive paper. While this type of research is legal juridical normative research, namely research on the rules of law (regulation legislation) is relevant. The study of positive law is done by evaluating the terms of conformity between one rule of law and other legal norms, or with legal principles recognized in existing legal practice. A positive law inventory is an activity that must be done first as a basic introduction. Before finding the legal norms that must be known in advance what positive law applies.

3. RESULTS AND DISCUSSION

Legal Basis of Outsourcing in Indonesia

Outsourcing is nothing new. Outsourcing as a legal institution has been known since the Dutch colonial era. A work agreement in Dutch called Arbeidsoverenkoms, has several meanings. In Article 1601 a Civil Code provides the following understanding: A work agreement is an agreement where the party (the worker), ties himself to under the orders of the other party, the employer for a certain time doing work by receiving wages. Law Number 13 of 2003, Article 1 number (14) provides an understanding, namely: Work agreement is an agreement between workers / employers and employers or employers that contains work conditions, rights and obligations of both parties. In addition to the normative understanding as mentioned above, Iman Soepomo argues that "a work agreement is an agreement where the first party, the laborer, binds himself to work by receiving wages on the other party, the employer who binds himself to employing workers by paying wages". [Imam Soepomo, 1983]. Then according to Subekti the work agreement is: "An agreement between a worker and an employer, which agreement is characterized by characteristics, the existence of a certain wage or salary agreed upon and the existence of a relationship on the border (Dutch is compared), which is a relationship based on which party one (employer) has the right to give orders that must be obeyed by another ". [Subekti, 1977].

So before the Manpower Act came into effect as a positive law, the labor law does not regulate outsourcing. The regulation regarding outsourcing and the specified Time Work Agreement (PKWT) was first regulated in the Minister of Manpower Regulation (Permenaker) Number 5 of 1995 in conjunction with Minister of Manpower Regulation Number 2 of 1993. Seeing the substance of Chapter IX of the Manpower Law specifically regarding PKWT adopt the contents of the two Permenaker. [Pangaribuan, 2012].

In its development, the Labor Law Number 13 of 2003 was born. Thus the legal basis for outsourcing arrangements was Article 64, Article 65 to Article 66 in conjunction with article 1 number 15 in conjunction with Article 59 of Law Number 13 of 2003.

The term outsourcing is referred to as partial submission execution of work to other companies. Provisions of Article 64 to Article 66 of Law Number 13 of 2003 are further elaborated in the Minister of Manpower Regulation Number KEP.100 / MEN / VI / 2004, concerning PKWT jo Minister of Manpower and Transmigration Number KEP.101 / MEN / VI / 2004 concerning Procedures for Licensing Worker Service Providers / Workers jo the Minister of Manpower and Transmigration Number KEP.220 / MEN / X / 2004 concerning Terms and Conditions for Submitting a Part of the Work to Other Companies. [Wijayanti, 2012].

From this description it can be concluded that this outsourcing has two kinds of legal basis, namely State Administration Law as regulated in the Manpower Law and the Organic Regulations as its implementation, including Kepmenakertrans No. KEP-101 / MEN / VI / 2004 and Kepmenakertrans No. KEP-220 / MEN / X / 2004 and the legal basis of the second outsourcing is Civil Law, especially the contract law in the KUH Perdata / BW.

In its journey, this provision has been submitted for a judicial review and has been decided by the Constitutional Court with Decision Number 27 / PUU-IX / 2011 which mandates the guarantee of continuity of work and the terms of protection for workers / laborers who work in contracting companies as well as provider companies workers' services. Based on the Decision of the Constitutional Court, the Government refined the Decree of the Minister of Manpower and Transmigration Number KEP.101 / MEN / VI / 2004 concerning Procedures for Licensing of Workers / Labor Service Providers and Decrees of the Minister of Manpower and Transmigration Number KEP.220 / MEN / X / 2004 concerning the Requirements for Submission of Partial Implementation of Work to Other Companies became the Minister of Manpower and Transmigration Regulation Number 19 of 2012 concerning Terms of Partially Submitting the Work Implementation to Other Companies. In order to optimize the implementation of partial submission of work to other companies as stipulated in the Minister of Manpower and Transmigration Regulation Number 19 of 2012, the Guidelines for Implementation of the Minister of Manpower and Transmigration Regulation Number 19 of 2012 concerning the Terms of Partial Delivery of Work to Companies Other [Circular of the Minister of Manpower and Transmigration of the Republic of Indonesia Number SE.04 / Men / VIII / 2013].

This legal basis indeed reinforces that the outsourcing work system in Indonesia has existed in the history of labor in Indonesia and is currently stipulated in the Laws and Regulations. However, the problem is that the implementation of outsourcing within a few years after the issuance of Law Number 13 of 2003 concerning Labor has still experienced various weaknesses mainly due to the lack of regulations issued by the Government as well as injustices in the implementation of working relations between employers and workers. However, currently the practice of outsourcing cannot be avoided by workers especially for entrepreneurs who feel the benefits of getting legality without regard to matters that are prohibited, namely Article 64, Article 55 up to Article 66 of Law Number 13 Year 2003 concerning Employment.

Deviation from the Implementation of an Outsourcing Work Agreement
Outsourcing is known to have a strong legal basis in Indonesia. The outsourcing work system has also been stipulated in the current labor laws and regulations. Then is it true that the outsourcing system that has existed since hundreds of years ago in Indonesia is a wrong system? Is it true that the articles governing outsourcing have neglected rights and justice for workers so that they must be removed from existing laws and regulations?

The practice of outsourcing is related to three parties, namely employers (principals), managers or providers of labor (vendors) and workers themselves. The position of the three parties will be clearer by discussing the articles that regulate it, namely Article 64, Article 65 to Article 66 of Law Number 13 of 2003. Mentioned in Article 64, that "the company can surrender a portion of the work to other companies through a contract agreement workers or workers' services provided in writing ". There is no official explanation regarding the formulation of Article 64. However, there are two forms of agreement to be able to carry out the partial surrender of the implementation of the work, namely the agreement on contracting workers and the agreement to provide workers / laborers services. From the provisions of Article 64 it can be interpreted that there are two types of outsourcing, namely "outsourcing the work that is based on the contract of work contracting and outsourcing of workers who are based on the existence of workers' service provision agreements. From this article it can be seen that there are deviations, namely the formulation contradicts the legal concept of work relations. Where there are 3 (three) elements that must be fulfilled in the employment relationship, namely the existence of work, the existence of orders and wages (article 1 number 15 of Act No. 13 of 2003). Because the order is given by the provider of employment to the worker, the one who enjoys the work is the employer, but the Law formulates a legal relationship that arises only between the service provider company and the worker. The instructor should be responsible for the employee, including all rights based on the Act. So the working relationship in outsourcing should be formulated between the employer and the worker, not between the company providing the services of workers and workers.

This is where the status of workers becomes blurred juridically, and the weakness of this Law in formulating legal relations in the outsourcing work system is used as a gap for employers to implement outsourcing systems that are full of irregularities regardless of the fate of the workers.

In terms of chartering workers as formulated in Article 65 of Act No. 13 of 2003 that the conditions for charting work based on this article are written, legally incorporated, based on an unspecified time work agreement (PKWTT) or a specified time employment agreement (PKWT), and other requirements, namely: carried out separately from the main activity, carried out by direct or indirect orders from the employer, is an overall supporting activity of the company and does not directly inhibit the production process. For a Specific Time Work Agreement (PKWT), the basis for the arrangement is Article 59 of Act No. 13 of 2003. PKWT can only be made for certain jobs which according to the type and nature of the work will be completed in a certain time, namely: work that is once completed or temporary in its nature, the estimated work is completed in a time that is not too long and for a maximum of 3 (three) years, seasonal work, or work related to new products, new activities, or additional products that are still in probation or exploration. [Law Number 13 of 2003]

The use of outsourcing labor in supporting activities or activities that are not directly related to the production process as mentioned in the explanation of Article 66 of Act Number 13 of 2003 that what is meant by supporting activities or activities that

are not directly related to the production process are related activities in outside the core business of a company. The activity is an activity that supports and facilitates the implementation of the main activities and is an additional activity which if not carried out by the employer company, the process of implementing the work will continue as it should. Supporting service activities as discussed include:

1. "Cleaning service business;
2. Efforts to provide food for workers / laborers (catering);
3. Business security forces (security / security unit);
4. Business support services in mining and oiling; and
5. Efforts to provide transportation for workers / laborers. "[Minister of Manpower and Transmigration Regulation Number 19 Year 2012]

From these provisions, it appears that the regulation regarding the conditions for employing contract workers is very limited (limititif). Even permanent jobs, also use contract workers. The form of work done is to involve the outsourcing company to employ several parts of the company's work. Based on the Operational collaboration, outsourcing companies recruit contract workers. In the midst of limited employment opportunities, these outsourcing workers have little choice but to accept the work conditions offered. [Libertus Jehani, 2008].

Having the formulation in the article, in its implementation many entrepreneurs do not carry out or do deviations from what has been stipulated in the article which outlines the rules for chartering work. Entrepreneurs, even today, buy a lot of core work or core business, some even give up all their work to other companies with an outsourcing system. The formulation of job vacancies is a source of conflict which always raises different interpretations which are based on interests between workers and employers.

In the case of legal objects of outsourcing, the submission of part of the work. Here part of this work or work can be called a legal object. Whereas workers cannot be called legal objects. workers are people who should be legal subjects. So according to this Article the object of law is work not people. However, in its implementation, the legal object in the agreement between the employer company (principal) and the labor provider company (vendor) is the person. People here have been traded and this has violated human rights. Back the loopholes and weaknesses of the Law are part of the deviation in the outsourcing work system and are best utilized by entrepreneurs to unilaterally benefit the company.

Another part of this Law is Article 66 stated about the conditions that must be met by providers of workers / labor services for supporting service activities or activities that are not directly related to the production process. Although in one of the verses already mentioned in terms of the provisions referred to in paragraph (1), paragraph (2) letters a, letter b, and letters d and paragraph (3) are not fulfilled, then by law the status of employment relations between workers / laborers and labor service provider companies turn to work relations between workers and employers. In fact it is very clear that the provision has determined that the company can only buy jobs that are merely supporting activities and if they violate these requirements, the existing employment relationship must be transferred. But the implementation that happened in reality is not the case.

Many employer companies do not fulfill the provisions of the articles governing outsourcing. Article 64 up to Article 66 of Act No. 13 of 2003 with all its weaknesses, always looks for loopholes by employer companies or service provider companies to benefit their own companies regardless of the fate of workers who are regarded as objects that need not be considered rights their rights.

Outsourcing is a problem for companies, especially for workers. Therefore there are pros and cons to the use of outsourcing, here are some of the descriptions in table 1.

Table - 1. Pro - Cons Of Using Outsourcing In The Company

PRO *OUTSOURCING*	**CONS OUTSOURCING**
- Business owners can focus on the core business. - *Cost reduction.* - Investment costs turn into shopping costs . - No more messing with or by turnover of labor . - Part of the modernization of the business / company world.	- Uncertainty of employment status and threat of layoffs for workers. - Differences in Compensation and Benefit treatment between internal employees and outsourced employees. - Career Path in outsourcing is often unplanned and directed. - Service user companies are very likely to cut off cooperation with outsourcing providers and lead to unclear employment status. - Human / worker exploitation.

Outsourcing cannot be seen in the short term, using outsourcing companies will certainly spend more as an outsourcing management fee. Outsourcing must be seen in the long term, starting from employee career development, efficiency in the field of labor, organization, benefits and others. The company can focus on its main competencies in the business so that it can compete in the market, where the internal matters of the company that are supporting are transferred to other more professional parties.

Outsourcing is a work system that develops along with the increasing needs of employers for flexible working relationships in the labor market (LMF). The LMF system is intended to simplify and provide flexibility to entrepreneurs to accumulate the highest profits. With this system, entrepreneurs are free to develop their capital without having to be burdened with high production costs and social responsibility for the workforce, as campaigned by Bappenas [Bappenas, 2005], laborers are like merchandise in the market which must be flexible with respect to time, type of work and wages, easy to recruit and easy to lay off workers / workers. Even though it is not permitted by Law Number 13 of 2003 concerning Labor, in the actual practice the outsourcing agreement always uses a Specific Time Work Agreement (PKWT), even the company providing labor (vendor) often changes while the worker / laborer is permanently working and the object is still exists (same).

These deviations will continue to occur if the government does not act decisively to review the articles governing outsourcing that exist in the Manpower Act No. 13 of 2003. The government should immediately revise the weaknesses in the existing articles and close the gaps used by certain parties for their own benefit. The government should also act decisively to provide legal sanctions to employers or parties who are found to have committed irregularities in the implementation of this outsourcing system.

Dispute Settlement of Outsourcing Disputes Inside and outside the Path of the Industrial Relations Court (PHI)

Furthermore, in the work relationship, conflicts and disputes can occur, either between workers and the user companies (principle) of outsourced workers and workers with outsourcing labor vendors. As stated by Ronny Hanitijo Soemitro:

Conflict is a situation or situation in which two or more parties fight for their respective goals which cannot be united and where each party tries to convince the other party about the truth of their respective objectives. As social beings who interact with other humans, it is natural that in such interactions there are differences of understanding that result in conflicts between one another, is something common, what is important is how to minimize or find a solution to the conflict, so that conflicts are happens does not cause negative excesses. Likewise in the field of labor / employment, even though the parties involved have been bound by a work agreement but the conflict remains unavoidable. [Ronny Hanitijo Soemitro, 1984]

If the rights of outsourced workers are not provided by the employer there are several tools that can be used to solve them, namely bipartite, then arbitration, conciliation, mediation (all three of which include a settlement outside the court), then the Industrial Relations Court (PHI) at the first level Province and Supreme Court at the appeal level.

Disputes that can be resolved by conciliation are interest disputes, layoff disputes, and disputes between unions in only one company. While disputes that can be resolved by mediation are rights disputes, interest disputes, layoff disputes, disputes between trade unions / labor unions in one company. Furthermore, industrial relations dispute resolution through the courts as stipulated in the labor law there are only two court institutions that can resolve industrial relations disputes, namely the Industrial Relations Court at the first level and the Supreme Court (MA). PHI is an ad hock in the general court that will adjudicate disputes that have not reached an agreement.

The Industrial Relations Court (PHI) has the duty and authority to examine and decide:

a. At the first level regarding rights disputes;
b. At the first level regarding layoff disputes;
c. At the first and last level regarding interest disputes;
d. At the first and last level regarding disputes between trade unions in one company. [Law Number 2 Year 2004, Article 56].

Industrial Relations Dispute Resolution Mechanism

In general, the procedural law that applies to the Industrial Relations Court is the Civil Procedure Law which applies to courts in the General Justice environment, except those specifically regulated in Law Number 2 of 2004 concerning PPHI. This is explicitly stated in Article 57 of Law Number 2 Year 2004, thus this provision regulates the provisions and procedures of proceedings which are special provisions (lex specialis) and general procedural law provisions that apply so that general civil procedural law only applies if not regulated in the specific law.

One thing that becomes a special character in the procedural law of the Industrial Relations Court is the explicit determination of the period of settlement of cases in a relatively short period of time. For the case of Industrial Relations Disputes at the first level, Law Number 2 Year 2004 has limited the period of awarding a decision no later than 50 (fifty) working days from the first session (Article 103). The limitation of the deadline is also stated in other articles in Law No. 2 of 2004 including: Article 88 paragraph (1) which states: "The Chairperson of the Court at the latest 7 (seven) working days after receiving the claim must have determined The Panel of Judges consisting of I (one) Judge as Chairperson of the Assembly and 2 (two) Ad-Hoc Rights Persons as Assembly Members who examine and decide disputes ", Article 89 paragraph (1) Within 7 (seven) days at the latest work since the determination of the Panel of Judges, the Chair of the Judge must have conducted the first hearing.

Dispute Settlement of Outsourcing Disputes After Decision of the Constitutional Court

A. Outsourcing and Certain Time Work Agreements

Lately outsourcing has become one of the most popular phrases or vocabulary in conversation. Actually, the practice of outsourcing has taken place before the government enacted Law Number 13 of 2003 concerning Manpower (Labor Law). The practice of outsourcing is very easy for us to find, especially in the oil and gas mining sector.

The fact that many deviations occur in the outsourcing work system makes workers not stop to continue to fight for the elimination of outsourcing from the labor law. Starting from conducting demonstrations from various trade unions and labor alliances to submitting a review to the Constitutional Court about the articles governing outsourcing. Workers hope that these

articles will be abolished or reviewed so that they are able to adopt the interests of workers, namely obtaining justice, guaranteeing employment when vendors are replaced, wage protection, welfare guarantees and the rights that workers must obtain.

Before the Manpower Act came into force as a positive law, Law No. 13 of 2003 concerning Labor did not regulate the outsourcing system. The regulation on outsourcing and the Specific Time Work Agreement (PKWT) was first regulated in the Minister of Manpower Regulation (Permenaker) Number 5 of 1995 and the Minister of Manpower Regulation Number 2 of 1993. Seeing the substance of Chapter IX of the Manpower Law specifically regarding PKWT, legislators adopt the contents of the two Permenaker mentioned above.

In its development shortly after the labor law was implemented, it still did not provide assurance of work, as many as 37 unions / labor unions submitted opposition to the legalization of this outsourcing and PKWT system. The method is to submit a judicial review to the Constitutional Court (MK) as registered with the application Number 12 / PUU-I / 2003.

There are several articles that have been tested, including Article 59, Article 64, Article 65 and Article 66 of the Manpower Law which regulate outsourcing. At that time, the Constitutional Court rejected the application for the three provisions. One of the considerations in the decision No. 12 / PUU-I / 2003 said that "the outsourcing system is not a modern slavery in the production process".

Workers' efforts against the outsourcing system and contract work (PKWT) seemed to never stop. The proof is that the demand to abolish the outsourcing system and contract workers (PKWT) re-entered the Constitutional Court building. In the application register Number 27 / PUU-IX / 2011 noted Didik Supriadi representing the Alliance of Indonesian Electric Meter Meter Readers (AP2MLI) submitted a judicial review of Article 59, Article 64, Article 65 and Article 66 of the Manpower Act No. 13 of 2003.

The constitution escort granted Didik Supriadi's request in part and rejected the application for Article 59 and Article 64 of the Manpower Act. The Constitutional Court explicitly stated that the two provisions did not conflict with the 1945 Constitution.

Trade unions welcomed the decision of the Constitutional Court with various arguments that were not in line. Some are happy and some are sneering. Groups that are happy assume that the Constitutional Court has declared outsourcing and PKWT as illegal practices. Another assumption concluded, the Court had abolished the outsourcing system and PKWT. The pouting said, the Constitutional Court's decision legalized and constituted the outsourcing system and PKWT [Pangaribuan, 2012]

The response of the workers / laborers to the Court's decision is certainly different from the government. That's a consequence of political psychology. However, the substance of the law granted by the Constitutional Court was the work of the government's struggle in the Republic of Indonesia's Parliament. The Court's consideration said that Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of the Manpower Law "unconstitutional conditional" (conditionally unconstitutional) proved that the contents of the Manpower Act were increasingly contradictory to the 1945 Constitution. as such, it is sufficient as an argument accusing the Indonesian House of Representatives and the government of ignoring the constitution when drafting law material.

The decision of the Constitutional Court No. 27 / PUU-IX / 2011 also gives more shocking effects when compared to other Constitutional Court decisions in the field of Labor. Some say, the legal basis for outsourcing is not valid after the decision of the Constitutional Court. In fact, PKWT which was signed before the Constitutional Court's decision by some was considered to have contradicted the decision of the Constitutional Court.

To answer this, the Director General of Industrial Relations Development and Workers' Social Security Ministry of Manpower and Transmigration issued Circular Letter (SE) No. B.31 / PHIJSK / I / 2012 dated January 20, 2012. Which regulates more precisely the mechanism that has been running so far, so that the rights of outsourced workers are truly guaranteed. The final point of the SE outlines the attitude of the Ministry of Manpower related to the effectiveness of the timing of the ruling of the Constitutional Court. Namely, the PKWT that had existed before the Constitutional Court ruling remained valid until the end of the agreed time.

To harmonize the understanding of the existence and opportunities of outsourcing practices and PKWT, we need to carefully examine the decision and consideration of the decision of the Constitutional Court in question. In legal considerations, the Constitutional Court affirms that outsourcing is a reasonable business policy of a company in the context of business efficiency. But workers who carry out work in outsourcing companies must not lose their rights protected by the constitution. In order for workers not to be exploited, the Constitutional Court offered two outsourcing implementation models.

The first model, by requiring that work agreements between workers and companies implementing outsourcing (vendors) not be in the form of a certain time work agreement (PKWT), but in the form of a written time-based work agreement (PKWTT). Therefore, the working relationship between workers and outsourcing companies is considered constitutional as long as it is carried out based on the written PKWTT. This model is not new because Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of the Manpower Act have arranged it optionally, that is, it can be PKWT or PKWTT. The second model, continued the Constitutional Court, applies the principle of transfer of protection for workers (TUPE) that works for companies that carry out outsourcing (vendor) work, workers must continue to obtain their rights.

The main part of the Constitutional Court ruling stated that "the term work agreement phrase in Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of Law Number 13 of 2003 concerning Manpower is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as the work agreement is not required to transfer the protection of rights for workers / laborers whose work object still exists, even though there is a change of company that carries out part of the contract work from another company or worker / laborer service provider company. " and so on in the decision above applies as a condition if the employer uses the PKWT system.

The following are some notes related to the decision regarding the Court's decision and legal considerations above:

a) The Constitutional Court stated Article 59, Article 64, Article 65 except paragraph (7) and Article 66 except paragraph (2) letter (b) of Law No. 13 of 2003 concerning Manpower does not conflict with the 1945 Constitution. That is, provisions other than paragraph (7) in Article 65 and paragraph (2) letter (b) of Article 66 remain valid as positive law. Thus, employers can still submit or buy their work to other companies so that the outsourcing system can still be implemented. This is in accordance with the MK's consideration stating "... the partial surrender of work to other companies through an agreement to write work in writing or through a service provider company (outsourcing company) is a reasonable business policy of a company in the context of business efficiency. "

b) The Constitutional Court does not state the outsourcing system as a prohibited system in business relations and employment relations between workers and employers. In that position, Article 64 of Law No. 13 of 2003 remains legal as a legal basis for companies to carry out outsourcing and Article 65 except paragraph (7) and Article 66 except paragraph (2) letter (b) as technical work relations in outsourcing companies.

c) What is not binding in Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of Law No. 13 of 2003 is only about the phrase "certain time work agreement" as long as it does not regulate the guarantee of transfer of rights to the next tender winner company. The Constitutional Court does not mention what is meant by the transfer of protection of workers' rights but it can be understood to include 4 (four) things, namely: (a) guarantee of continuity of work when the contract is over / provision of labor; (b) the guarantee of receiving wages is not lower than that of the previous service provider / chartering company; (c) guarantee of the fulfillment of the rights of workers / laborers in accordance with the laws and regulations that have been agreed upon; and (d) guarantee of the calculation of the working period if there is a change in the worker / laborer service provider company for wage adjustments calculated from the accumulated work period that has passed.

d) Employers can implement an outsourcing system with PKWT status as long as the PKWT work agreement contains a clause that guarantees the protection of workers' rights that the work relationship of the workers / laborers concerned will continue to the next company, in the event the work object remains (the same). If the object of the work persists while the terms of the transfer of rights protection are not regulated in the PKWT work agreement, then the work relationship of the worker / laborer must be in the form of PKWTT. Technically, the PKWT requirements can be arranged in the closing part of the agreement. Basically, the clause functions as a measuring tool to assess the form of work relations, whether in the form of PKWT or PKWTT;

e) Amar the decision of the Constitutional Court does not explicitly state that the labor / labor agreement in the outsourcing company must be with an unspecified time employment agreement (PKWTT). In its legal considerations, the Constitutional Court offered PKWTT as one of the outsourcing models. In accordance with the description above, the Constitutional Court does not require companies to implement PKWTT. The status of PKWTT in the company only occurs if: (a) PKWT does not require the transfer of protection of workers '/ laborers' rights whose work object remains (the same); or (b) the company has implemented PKWTT from the start.

IV. CONCLUSION

1. The outsourcing work system has existed since hundreds of years ago in Indonesia. Outsourcing actually makes it possible to benefit both the employer and the workers. It's just that in practice, the regulation of the Manpower Act regarding outsourcing work systems often creates multiple interpretations which are finally utilized by certain parties or deliberately interpreted incorrectly to look for gaps from the weaknesses of the articles that govern them. As if every job can be outsourced, even if the core work. In addition, protection for workers is minimal because workers are tied up with PKWT, so when the contract expires, there is also a work relationship with the company and the company that has no obligation to compensate the severance pay for workers who get Termination of Employment (PHK). These things must be recognized as elementary weaknesses of the concept of outsourcing norms regulated in the Manpower Act.

2. Differences in interests between employers and workers should be immediately resolved by the Government by adopting all workers 'demands, protecting workers' rights so that they do not only benefit one party. In economic theory, it is stated that capital and labor together are economic tools in which both have a significant influence and are a major factor in the economy of a country, therefore as far as possible both must be regulated by the State so that both synergies can be managed properly.

3. The many deviations in outsourcing practices from positive legal concepts and their original legal theories seem to be more in favor of the interests of employers and always disadvantage workers / laborers, giving rise to the pros and cons of removing this outsourcing system. In work relations can be the occurrence of conflict or dispute, whether it is between workers and companies using outsourcing workers and workers with outsourcing labor supply companies, there are several tools that can be used to solve it, namely bipartite, then arbitration, conciliation, mediation (all three of which include settlement outside the court), then the Industrial Relations Court (PHI) at the first level and the Supreme Court at the appeal level (in court).

4. To perfect the positive law, currently there is enough reason for the government and the Indonesian Parliament to amend the Labor Law. According to the author, the legal opinions contained in this review are described in the material on the Legal Opinion of Transfer of Employment Contracts or Providers of Workers' Services (Legal Opinion on Outsourcing Transfers) related to the existing Constitutional Court ruling and Labor Law. If necessary, it must be revised immediately into the Law so that the implementation of the decision is more optimal. For this reason, the authors expect a change to the Manpower Act, to achieve a legal revision of outsourcing that will tighten the implementation of outsourcing in the future.

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