

Outsourcing Agreement In The Perspective Of Pancasila Industrial Relations

Rizal Anugrah Bachriar¹

Abstract. In the midst of the rebirth of public concern over the dangers of capitalism, the government would legalize the practice of outsourcing that are economically and morally detrimental to workers / laborers. Outsourcing is an agreement made between employers and workers / laborers, which the company can transfer part of its work to other companies through chartering agreement / service provider's written work. The outsourcing company usually makes a contractual agreement with the workers if there are companies that need workers. The contract is usually only valid for jobs are still available, and if the contract for the work has expired, then the working relationship between workers and outsourcing company also ended.

Key Words: Outsourcing; Pancasila; Employment Act.

1. Introduction

Basically the agreement is originated from the two difference or dissimilarity between the parties, which previously held the agreement begins with the negotiation or bargaining particular in order to equate the concept and importance, therefore, if abbreviated business agreement is more initiated from the different interests of the parties to try met by appointment. Through agreements such differences are accommodated subsequently framed with legal instruments that bind the parties.²

The term outsourcing itself is not recognized in the laws and regulations in Indonesia, particularly in the legal instruments of labor that is in Act Number 13 of 2003 on Labor or its implementing regulations, but the material set out in these regulations is material about outsourcing, so that it can be said to have no regulations on the implementation of the outsourcing (Article 64, Article 65 and Article 66), which also provides opportunities for companies to submit Part of the implementation of work in the company to another company through a contract of work and labor services company.

In order to protect the legal rights of workers postscript very weak economically, the regulation agreement outsourced work which was originally the domain of civil law (private) required the presence of the government so that it can become public law, so that the construction of the law shifted into contracts mix demension between public law and private law government interference in civil law in order to protect the weaker party is then called by socialicering process. A form of government intervention in the labor agreement of outsourcing is to issue a decree of the Minister of Manpower and Transmigration Number 101 of 2004 on the procedures for licensing procedures and company service providers Labor and Minister of Manpower and Transmigration Number 220 of 2004 on the Transfer some of the work to the Company Outsourcing ,

¹Student of Master of Law, Universitas Islam Sultan Agung Semarang and Legislative Council Secretariat of Central Java province, email: rizalanugrahbachriar@gmail.com

²Agus Yudha Hernoko, Contract Law Principle of Proportionality in Business Contracts, Kencana, Jakarta, 2010, p 2.

then the Indonesian Constitutional Court Decision Number 27 / PUU-IX / 2011 Outsourcing followed by Circular of the Minister of Manpower and Transmigration Number B.31 / PHIJSK / 2012 Outsourcing and Employment Agreement Specific time (PKWTT) and the Ministry of Manpower and Transmigration Number 19 of 2012 on the Terms of delivery Part of implementation of the work to another company. Then the Indonesian Constitutional Court Decision Number 27 / PUU-IX / 2011 Outsourcing followed by Circular of the Minister of Manpower and Transmigration Number B.31 / PHIJSK / 2012 Outsourcing and Employment Agreement Specific Time (PKWTT) and Ministry of Labor and Transmigration Number 19 of 2012 concerning requirements surrender Part of implementation of the work to another company. Then the Indonesian Constitutional Court Decision Number 27 / PUU-IX / 2011 Outsourcing followed by Circular of the Minister of Manpower and Transmigration Number B.31 / PHIJSK / 2012 Outsourcing and Employment Agreement Specific Time (PKWTT) and Ministry of Labor and Transmigration Number 19 of 2012 concerning requirements surrender Part of implementation of the work to another company.

Act Number 13 of 2003 on Manpower is one of the legal instrument principal in the implementation of labor law reform in Indonesia, in the instrument Marina Sidabutar, believes there has been a paradigm shift in labor relations (labor relations) in Indonesia, which is marked by a shift regime of labor relations of Corporatist Model to Model Contractualist³, In the Employment Act which can be regarded as an 'umbrella' implementation of the working practices of outsourcing in the preamble her with mention of Article 5, paragraph (1), Article 20 paragraph (2), Article 27 paragraph (2), Article 28 and Article 33 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945, which was then firmly in Article 1 paragraph 16 mentions of Industrial relations is a system of relationships formed between the actors in the production process of goods and / or services that consist of elements from employers, workers / laborers and the government which is based on the values of Pancasila and the Constitution of the Republic of Indonesia Year 1945, which later became known as Pancasila Industrial Relations.

Pancasila industrial relations were reinforced in the explanation of the Employment Act with the aim of fostering industrial relations in accordance with the values of Pancasila directed to cultivate a harmonious relationship, dynamic and equitable between the perpetrators of the production process.

Based on these considerations above, the formulation of the problem in this writing that How Outsourcing Labor Agreement in the perspective of Pancasila Industrial Relations to The pattern of labor agreement Outsourcing generally prevailing in Indonesia in the period of post in Act Number 13 of 2003 on employment and post-issuance of Constitutional Court Decision Number 27 / PUU-IX / 2011 on the Workers Outsourcing can be defined as the 'legality' practice outsourcing in Indonesia?

2. Discussion

2.1. Overview of the Concept of Outsourcing.

³Marina Sidabutar, demands the abolition of the contract labor system by the workers in Indonesia, Varia Justice, Law Magazine Number XX years 239 in August 2005, page 25

Prior to understand and analyze this problem using the concept of the theory of Justice Law. Issues of justice can not be separated when discussing the issue of agreement or contract, as the legal instrument that brings two or more parties in exchange of the interests of fair and balanced, so it is very relevant and timely research on the Employment Agreement Outsourcing in Prospective Pancasila Industrial Relations begins on aspects philosophical justice in the outsourcing employment agreement.

Plato, to interpret the concept of justice in a way that qualifies justice in three ways, namely:

- A characteristic or trait give naturally within each individual human being;
- In this state, justice allows people working for coordinating (arranging) and restrict (control) at the level of 'emotion' in the effort to adjust to the environment in which he mixed; therefore,
- Justice is what allows human society run nature of humanity in ways that are intact and properly⁴,

HLA Hart, argued the hallmark of justice and special relationship with the law began to emerge when we observe that most of the criticisms made in the review is fair and not fair nearly as can be expressed by the words "fair" and "unfair". Balance is definitely not co-exist with public morality. The general principle in the application of the concept of justice is that the presence of other individuals entitled to the relative position of certain form of equality or inequality. From where according to tradition justice is seen as the maintenance or restoration of equilibrium (balance) or falling parts (proportion)⁵ According to Thomas Aquinas distributive justice is basically a respect for the human person (acceptio personarum) and generous nature (definitio)⁶, In the context of distributive justice, fairness and compliance (equity) is not achieved solely by the determination of the actual value, but also on the basis of similarity between one thing with another (aequalitas re ad rem). There are two forms in common, namely:

- Similarity proportional (aequalitas proportionis).
- The similarity of the quantity or amount (aequalitas quantitatis).

Teguh Prasetyo jurist Indonesia has the opinion of its own on the theory of justice, he said that in order to achieve fairness in law the legal system in Indonesia should refer to and based on the ideals of law (rechtsidee) Pancasila as the source of law, as Pancasila as the basic philosophy of the state and the state ideology containing state contains the values of the nation is the source of law of philosophical, historical, sociology which aims to create a community of law with justice and dignity. Teguh Prasetyo call the theory as a theory of justice that dignity is a human law that is able to humanize the legal means which treats and uphold the values of humanity by nature and purpose of his life⁷

2.2. Overview outsourcing agreement.

In the concept of industrial relations in Indonesia based on Pancasila existed since long before the reform that is born from the seminar nationwide through the National

⁴Herman Bakir, *Philosophy of Law, Design and Architecture Historical*, Refika Aditama, Bandung, 2009, p 177.

⁵HLA Hart, *Concept of Law, The Concept of Law*, trans M. Khozim, Nusa Media, Bandung, Cet V, 2013, p 246.

⁶E. Sumaryono, *Relevansi Legal Ethics Theory of Natural Law of Thomas Aquinas*, Canisius, Yogyakarta, 2002, p 90-91.

⁷Teguh Prasetyo, *Law and Legal System based on Pancasila*, Media Perkasa, Yogyakarta, 2014, p 113.

Consensus on Labor Relations Pancasila on December 7, 1974 in Jakarta, the basic idea came from a speech by President Soeharto on the need to think about the relationship between employers and workers in Pancasila, Interest Pancasila Industrial Relations is to carry out the ideals of the Declaration of independence of the Republic of Indonesia August 17th, 1945 in the development of realize just and prosperous society based on Pancasila and participate in the establishment of world order based on freedom, lasting peace and social justice through the creation of tranquility, serenity and working order, as well as the tranquility of business, increase production, and improve the welfare of workers and rank in accordance with human dignity.

In line with the concept of Pancasila Labor Relations whose name was then born Pancasila Industrial Relations through the Ministry of Manpower Number Kep-465 / Men / 1985 on Guidelines for the implementation of Pancasila Industrial Relations. The term industrial relations was initially called labor relations (labor relations) turned into Pancasila Industrial Relations.

From that sense evolved in Article 1 point 16 of Law Number 13 of 2003 on Manpower which outlines the understanding of Industrial Relations is a system of relationships formed between the actors in the production process of goods and / or services that consist of elements from employers, workers / laborers, and a government that is based on the values of Pancasila and the Constitution of the Republic of Indonesia Year 1945, from the concept can be said that the working relationship that exists between employers, employees / workers must use the principles contained in the noble values of Pancasila and the 1945, or by the Employment Act itself that there must contain and describe the noble values of Pancasila.

The application of the concept of employment (labor relationship) who was born on employment contracts (labor contract) in the Employment Act known as the Employment Agreement Specific Time (PKWT) and CLA Time Indefinite (PKWTT), as in Article 56, which is due to provisions it can lead to conflict in industrial relations between workers and employers for their employment agreement within a certain time which resulted in no certainty of legal status and welfare of the workers sustained because of his working life which is limited by the specified time.

Although Act Number 13 of 2003 are not known yet in the literature outsourcing is defined by observers of Labor, among others, the delegation of the daily operation and management of a (series of) business processes (from another company or the user) to other parties as preveder.⁸ The more general term and understood globally, there is the Black Law Dictionary⁹, Noted that "outsourcing service provider promises to provide the necessary service; especially the data processing and information management, using its own staff agreement, is an agreement between a business and a service provider in the which the and equipment, at its own facilities ", when loosely translated, outsourcing is an agreement (to do work) between a business entity with company service providers (providers) in which the provider promises to provide the service / services required (as needed), such as data processing and information management, using its own employees and equipment facilities.

⁸Chandra Suwondo, Outsourcing, Implementation in Indonesia, Elex Media Computindo, Jakarta, 2003, p 3

⁹Brayn A. Garner, Black Law Dictionary, Eight Edition, west publishing, USA, 2004, page 1136 (as quoted by Umar Kasim).

The concept of outsourcing is delegating the daily operation and management of a business process to outside parties (outsourcing service providers). By delegating, then manage no longer done by the company, but rather delegated to outsourcing services company. Employment that occurred in the practice of outsourcing is different from the employment relationship in general, as in outsourcing there is a working relationship triangle because there are three (3) parties involved in the employment relationship outsourcing, the company's employer (principal), the service provider / the receiver work (vendor) and the latter is a worker / laborer. Because it is a triangle then the working relationship that exists among the three is the working relationship between the principals with the vendor, and the vendor with the working relationship between the worker / laborer.

Principal only bound to fulfill its obligations on the vendor and vice versa, so under normal circumstances no principal is responsible for fulfilling the rights of workers / laborers except in case of violation of the terms and conditions of the outsourcing. Who is directly responsible to meet the interests and rights of workers / laborers are a vendor, because he was bound in a labor agreement with workers / laborers.

Minister of Manpower Regulation Number 19 of 2012 on the terms of surrender in part of its work to other companies as regulatory falsifies Decree Number 101 and Number 202 of 2004, as a follow up of the Constitutional Court Decision Number 27 / PUU-IX / 2011 on Labor Outsourcing in essence, the Constitutional Court believes outsourcing is a reasonable business policies of a company in Rangkah business efficiency, and as a consequence of the Constitutional Court ordered that guarantee the rights of outsourced workers remain protected in the constitution.

After the release of a Constitutional Court decision on outsourcing is increasingly strengthening where outsourcing legally in the employment system in Indonesia, workers are still working in the agent through a mechanism of employment agreement certain time is not directly working on the company owner (user) directly with the system work agreement for an unspecified time ,

System agreement outsourced work every year would be a routine agenda workers' struggle to fight for the workers to get any kind of decent work, the system of decent work for the sake of prosperity workers themselves, struggle to create a system of industrial relations through agreements decent employment in accordance rights of all the people of Indonesia in Article 27 1945 who have a right to decent work for industrial relations of justice and dignity in accordance with Pancasila.

If it is associated with the basic constitutional Act of 1945, Article 27 paragraph (2) which reads details of each citizen the right to work and a decent living for humanity. Article 27 paragraph (2) is in line with the precepts of five Pancasila namely social justice for all Indonesian people, which can be interpreted that welfare and justice is the right of every citizen, from the above agreement for outsourcing based on the Employment Act which should harmonize with the noble values of Pancasila as the provisions of the Industrial Relations Pancasila.

There are some things contradictory in outsourcing labor agreement if it is associated in industrial relations Pancasila, namely:

First the Pancasila Industrial Relations requires that a system of relationships formed between the actors in the production process of goods consisting of representatives of

employers, workers / laborers and the government which is based on the values of Pancasila and the Constitution of 1945 was not reflected in Article 56 through Article 63 regulating for working time, Article 64 which regulates companies can submit Part of the work to another company and Integration employment service, the provisions of Article 64 are then set out in Article 65, Article 66, the legal effect of the provisions of those chapters is companies that sell wholesale trade job executing the work of the employment relationship, on the contrary among workers with companies that sell wholesale there is no employment relationship. Provisions of the articles can be categorized as modern slavery that wrapped in Labor Law, that it is so contrary to the values of Pancasila as in Industrial Relations.

Second, Task is to make the country prosperous citizens to obtain decent employment and life would not be achieved if the labor law system in Indonesia using the system outsourcing employment agreement as contrary to the noble values of Pancasila.

Third, There are inconsistencies forming the Employment Act in Act Number 13 of 2003 which was expecting the birth of the Act to build complete Indonesian man and the development of Indonesian society to create a society that is prosperous, just and prosperous equitable, both materially and spiritually based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, which it confirmed in Article 1 paragraph 16 which states that industrial relations are based on the values of Pancasila and the Constitution of the Republic of Indonesia Year 1945, while the subsequent chapters set about working practices implemented by the labor agreement outsourcing system that can not provide decent jobs and justice for every citizen who is forced to work with the outsourcing system.

Regulatory systems outsourcing has actually existed long before Indonesia's independence, with the adoption of the form of contract of work that is contained in the Burgerlijk wetboek (BW) contained in Chapter Seventh A third book (engagement), Article 1601b, noted that the contract of work (aan neming van werk) is consent (agreement) with the one (aannemer) bind themselves to hold a job for the other person to receive a wholesale price that is determined. Formulations is exactly the inspiration in the formation of labor law in Indonesia.

Supposedly in formulations employment relationship between employers and workers with pristine implement what is in the industrial relations Pancasila, because the relationship industrial Pancasila is formed by the foundation philosophy of the nation and state, because every nation has a philosophy that is different then with its own system of industrial relations was different too. Indonesia using Pancasila values applied in industrial relations Pancasila with source Pancasila as the philosophical foundation, then normative all the legal rules governing industrial relations Pancasila in the form of a basic law that is the 1945 Constitution and other rules should be the implementation of Pancasila value.¹⁰

Application of the principle of social justice for all Indonesian people, it contains values of social justice, among others, (a) fair treatment in all fields of life, especially in politics, economics, and social culture. (B) the realization of social justice that includes all the people of Indonesia, (c). The balance between rights and obligations. (D) respecting the property of others. (E) the ideals of a just and prosperous society are

¹⁰Imam Supomo, Labor Law field of labor relations, Bridge, Jakarta, 1975, page 6.

evenly materially and spiritually for all Indonesian people. (F) the love of progress and development. Practice the five precepts to include a fairly high economic growth associated with the distribution of development and the results towards the creation of equitable prosperity for all Indonesian people in the economic system that is structured as a joint venture based on family principles.¹¹

Pancasila in industrial relations there is a balance between the rights and obligations of both parties in the company. This balance was achieved not on the balance of power (balance of power) but on the basis of decency and justice, and industrial relations Pancasila also view the results that have been achieved by the company based on cooperation between workers and employers, should be able to enjoy fair and equitable manner in accordance sacrifice respectively.¹² From this it is increasingly apparent disparity between outsourcing agreement with lofty ideals of Pancasila industrial relations.

Pancasila values used in managing the relations industrial in Indonesia is very appropriate, because since the foundation of the Indonesian state, the founding fathers have set up Indonesia as a legal state, with its legal source is derived from Pancasila and the Constitution of 1945. Pancasila is the outlook of the nation Indonesia, which was born from the idea of the founding fathers were excavated from the values and cultures that live in the peoples of Indonesia, therefore Pancasila should be placed as a foundation for the life of the nation in various fields, as the foundation of national and state life that Pancasila has four pre-eminent position ie as the state, the state philosophy (Philosophische gronslag), state ideology (staatsidee) and legal ideals (rechtsidee).

Pancasila has been placed as an ideal law (rechtside) and the source of all sources of law is the highest level in theoretical level of legal norms,¹³ so that the ideals of law Pancasila (rechtside) in the development of the national legal system has three values, namely: first, the basic value, namely the principles postulated a more or less absolute, basic values of Pancasila is the belief, humanity, unity, the value of democracy, and justice. Second, the instrumental value, the general implementation of basic values. Especially in the form of legal norms which subsequently crystallized in the legislation, and a third practical value, the real value carried in fact derived from the basic value and instrumental value.

3. Closing

- That the employment agreement with the system Outsourcing whether through a working agreement specific time (PKWT) or chartering of work gave rise to modern slavery (modern slavery) legalized through Act Number 13 of 2003 on Manpower very detrimental to workers on the side of justice and well-being that is not guaranteed due to the lack of legal certainty and continuity of employment is

¹¹Teguh Prasetyo., Abdul Halim Barkatullah, Philosophy, Theory and Legal Studies, thinking towards an equitable and dignified, Radjagrafindo Persada, Jakarta, 2014, p 376.

¹²Ibid, p 14.

¹³Teguh Prasetyo, Ari Purnomosidi. Build a Law based on Pancasila, Nusa Media, Bandung, 2014, p 156.

limited welfare benefits to work in the agreed time was not in accordance with the values of Pancasila as in industrial relations.

- That in the regulations on the employment law system in Indonesia, particularly on the employment relationship between workers and employers with reference to industrial relations are not based on the values of Pancasila and the 1945 Constitution, namely by abolishing the system of outsourcing of labor law system in Indonesia.

4. References

Book

- [1] Agus Yudha Hernoko, 2010, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Bisnis*, Kencana, Jakarta.
- [2] Aloysius Uwiyono, 2014, *Asas-asas Hukum Perburuhan*, Rajagrafindo Persada, Jakarta.
- [3] Brayn A. Garner, *Black Law Dictionary*, Eight Edition, west publishing, USA 2004.
- [4] Chandra Suwondo, 2003, *Outsourcing, Implementasi di Indonesia*, Elex Media Computindo, Jakarta.
- [5] E. Sumaryono, 2002, *Etika Hukum Relevansi Teori Hukum Kodrat Thomas Aquinas*, Kanisius, Yogyakarta.
- [6] H.L.A Hart, 2013, *Konsep Hukum*, The Concept of Law, diterjemahkan M. Khozim, Nusa Media, Bandung, Cet V.
- [7] Herman Bakir, 2009, *Filsafat Hukum, Desain dan Arsitektur Kesejarahan*, Refika Aditama, Bandung.
- [8] Imam Soepomo, 1975, *Hukum Perburuhan bidang hubungan kerja*, Jambatan, Jakarta.
- [9] -----, *Pengantar Hukum Perburuhan*, Djambatan, Jakarta, 1985.
- [10] Marina Sidabutar, *Tuntutan penghapusan sistem kerja kontrak oleh kaum buruh di Indonesia*, Varia Peradilan, Majalah Hukum tahun ke XX No. 239 Agustus 2005.
- [11] Neltje F. Katuuk, 1996, *Hubungan industrial Pancasila*, Gunadarma, Jakarta.
- [12] Subekti, 1995, *Aneka Perjanjian*, Citra Aditya, Bandung.
- [13] Sudikno Mertokusumo, 2003, *Mengenal Hukum (suatu pengantar)*, Liberty, Yogyakarta.
- [14] Teguh Prasetyo, Ari Purnomosidi, 2014, *Membangun Hukum berdasarkan Pancasila*, Nusa Media, Bandung.
- [15] -----, 2014, *Hukum dan Sistem Hukum berdasarkan Pancasila*, Media Perkasa, Yogyakarta.
- [16] -----., Abdul halim Barkatullah, 2014, *Filsafat, Teori dan Ilmu Hukum, pemikiran menuju masyarakat yang berkeadilan dan bermartabat*, Radjagrafindo Persada, Jakarta.
- [17] Yohanes Sogar Simamora, 2009, *Hukum Perjanjian*, Laksbang Presindo, Jakarta

Website

- [1] Umar Kasim, *Correlation Works Works (BW) with Outsourcing*, www.jdih.depnakertrans.go.id, downloaded dated January 9, 2015, at 02:11.