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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE

Pupu Sriwulan Sumaya

Doctoral Program, Faculty of Law, Diponegoro University

E-mail: pupusumaya25@gmail.com

ABSTRACT

Generally, the development of the stage of world's implementation of outsourcing in globalization era increases significantly. In the field of work force, outsourcing is constitutes as the use of work force to produce or execute the work by a company, through a work force supplying company. In the implementation of outsourcing, the potential of disputes may arise, in some sort of violation of company rules by some workers or the emerging disputes between the outsourcing worker with another worker, disputes over the wage, social security of the worker, different requirements of the worker. Issues of interests between Outsourcing and the supplying company sometimes bring many problems in industrial relationship, complex of industrial relationships frequently bring disputes between outsourcing as labors and the supplying company. It can be said that the disputes of industrial relationship will always occur among labors and the employer. Therefore, outsourcing mostly is intentionally implemented to press the labor cost with law protected and the working requirements which are given under the standard given so that it harms the worker/labor. Referring to article 66 verse (2) letter c of the Act No 13 Year 2003 on Labor, the resolution of disputes that emerge becomes the responsibility of the company supplying the labors. The dispute of the parties mostly occur when one the parties has other party to do or not to do something, yet the other party refuse to obey it. So it happens in industrial relationship, only the scale of the scope is around the interest of the worker/labor, employer, and the government, therefore these three subject of law is the pillar to support the success of the implementation of law of labor including for the success of the resolution of disputes on industrial relationship.

Keywords: Outsourcing worker, Company employs outsourcing service, industrial relationship disputes

A. INTRODUCTION

1. Background

The protection of work force is a law that has certain provisions that must be implemented recalling that work force is one of important factors in production. Seen from the offering side, commonly in many countries show increasing development from year to year so that policies that may encourage the production growth is needed in order to be able to absorb work force. One of the important labor policies is the legalization of

the implementation of outsourcing policy in almost all countries. Even, the practice of outsourcing has begun since more than two decades ago.¹

Generally, the development from the stage of implementation of outsourcing in the world in globalization era increases significantly. Therefore, Bartkus and Jurevicius call it as the age of outsourcing.² The condition makes the practice of outsourcing spread to many sectors, for instance in services sectors.³ The practice of outsourcing in service industry, especially, increases drastically on the industry that needs information technology/IT. Other service sector that mostly employ outsourcing labor is business of hotel. In such business, outsourcing labors are employed as cleaning services, laundry, security, and information technology. Even in such business, the use of outsourcing labor touch the core production.⁴

The legalization of the implementation of outsourcing in Indonesia is written on Article 64 of Act Number 13 Year 2003 on the Act of Labor (hereinafter will be written as Act of Labor), where the company may hands the execution of the work partly to other company through contracting out the work or the providing of the service of worker/labor that is made in written". In the implementation of various potential of disputes that may arise, for example the violation of company rules by the worker or the emerging disputes between outsourcing worker and other worker. The disputes between outsourcing labor and the company employing the outsourcing labor sometimes cannot be avoided, the trigger of the disputes maybe the dispute of rights, interests, and the termination of employment. It will emerge issues of law which have been explained above, the issue between companies either the company that employs the outsourcing service or the one that provides it because of unclear reference about the mechanism of the resolution of disputes of industrial relationship between the company that provides the service and the outsourcing worker based on the Act of Labor. Besides the Act of Labor, to rule the mechanism of resolution of disputes of industrial relationship for the work force in

¹ M.J.Mol. *Outsourcing: Design, Process, and Performance*. (Cambridge, UK: Cambridge University Press, 2007). Lihat juga, R. McIvor. *The Outsourcing Process*. (Cambridge, UK: Cambridge University Press, 2005).

² Edverdas Vaclovas Bartkus and Virginijus Jurevicius. "Production Outsourcing in the International Trade." *Engineering Economics*, Vol.51, No.1, 2007, pp.59-68.

³ Mary Amiti and Shang-Jin Wei. "Fear of Service Outsourcing: Is It Justified?" International Monetary Fund WP/04/186, IMF Research Department, October 2004.

⁴ Li Song. "An Analysis on Chinese Hotel Enterprises Outsourcing Strategic Modes and Corresponding Development Conception." *International Journal of Business and Management*, Vol.3, No.3, 2009, pp.76-81.

Indonesia, it can be explained in Act Number 2 Year 2004 about the Resolution of Disputes of Industrial Relationship (herein after will be called Act of Resolution of IR).

How to have the resolution of disputes of the outsourcing worker that works in the area of the company that employs outsourcing service can be completed so that it may minimize the issue of industrial relationship disputes. Of course the mechanism of the resolution of disputes must be recognized by the outsourcing work force which sometimes it is still ambiguous about who is responsible for the decision maker in resolution of disputes. Even though, in article 66 verse (2) letter c of Act of Law, the resolution of disputes that emerges becomes the responsibility of the company supplying the work force.⁵

2. Statement of the Problems

- a. How is the mechanism of resolution of disputes of industrial relationship towards the work force?
- b. How is the resolution of disputes over the outsourcing labor in the company that employs outsourcing service?

3. Objectives of the Research

- a. To study and analyze the mechanism of resolution of disputes of industrial relationship on the work force.
- b. To study and analyze the resolution of disputes of outsourcing work force in the company that employs outsourcing service.

4. Research Method

The method used in this research uses normative law research type: concepting the law as norm, principle, foundation or dogma, using Statute Approach⁶ that is explained descriptively based on the issues with various rules of law and literature, as well as to seek of law opinion about the problem that has become the object.

B. DISCUSSION

1. Mechanism of Resolution of Dispute of Industrial Relationship towards Work Force

What is meant by Resolution of Disputes of Industrial Relationship in the General Provision Article 1 of Act of Labor and Act of Resolution of IR, explain that:

⁵ <https://kendesdesdotcom.wordpress.com/2012/01/10/outsourcing/> accessed on November 28th, 2016

⁶ Peter Mahmud Marzuki” *Penelitian Hukum*” (Jakarta; Kencana Prenada Media Group; 2005) p.96

”Disputes of Industrial Relationship is different opinion that cause conflict between the employer or a group of employers with the worker/labor or the labor association for the disputes of rights, dispute of interest, dispute of termination of employment and the disputes between the association of labor within the company.”

There are also types of disputes or conflict of opinion according to Article 2 Act of Resolution of IR, it says that the type of disputes of industrial relationship has four types: dispute or conflict of opinion may cause⁷: (1) Dispute of Right, which constitutes a dispute that emerges from the existence of different interpretation of labor and employer or Memorandum of Understanding. The disputes of right is also often called as normative dispute: a dispute towards matters that has been ruled or it has the foundation of law. (2) Conflict of Interest, is the dispute that emerges towards matters that has not been ruled within the act or statutes, company rules or Memorandum of Understanding. Thus, the conflict of interest is also often called as not-normative disputes. (3) Disputes due to termination of employment, is a dispute that occurs from the termination of employment. According to the act of labor, the request of termination of employment may be done by the employer and also can be done by the labor. (4) The dispute between the associations of labor in a company. It means that at the same company, there are more than one associations of labor. It may occur because the act number 21 year 2000 about the associations of labor, it enables labor to establish associations.

In the resolution of disputes caused by the four types above, the act of labor provides 2 (two) mechanism to overcome the dispute of industrial relationship: (1) outside the act of labor and; (2) resolution on the court of Industrial Relationship.

a. Resolution of disputes of industrial relationship outside the act of labor.

Some resolution of industrial relationship outside the dispute of industrial relationship: (a) Resolution through **bipartit** negotiation process done between the parties: the employer and the labor or the association of labor. Bipartit negotiation principally is a conference to make an agreement between employer party and labor or association of labor party. In the case of bipartit negotiation fails, one of the parties is obliged to record the disputes to the responsible institution in the field labor. The officer in charge in the institution must offer the parties to offer the resolution through conciliation for conflict of interests,

⁷ Sehat Damanik, *Hukum Acara Perburuhan menyelesaikan Perselisihan Hubungan Industrial Menurut UU No. 2 Tahun 2004*, (Jakarta: DSS Publishing, 2006) p. 21.

the termination of employment or disputes between the labor in a company or through arbitration for the conflict of interest and the conflict between the association of labor in a company.⁸(b) *Conciliation or Arbitration: Conciliation* through conference with one or more neutral conciliator as the mediator. Within no more than seven working days, and on the eighth day, the first court of conciliation must have been done. Conciliator must be registered on the responsible institution in the field of labor and the required requirements must be met as well as it has to be legitimated by the ministry or the officer in charge in the field of labor. **Arbitration** is resolution of dispute of industrial relationship outside the court of industrial relationship through an agreement from the conflicting parties to hand out the resolution of disputes to the arbitrary which the decision is binding the parties and it is the final decision (Final and binding); (c) *Mediation of Resolution through* mediation of industrial relationship is the resolution of disputes of industrial relationship through conference with neutral mediator. If the process of mediation of resolution done does not achieve any agreement expected by both parties, then the mediator will deliver a written suggestion to give opinion in its resolution.

b. The Court of Industrial Relationship

In addition to what has been explained above, the mechanism of resolution of disputes can be done outside the act of labor, there is other mechanism if the resolution cannot be achieved through conciliation or mediation, then one of the parties or the parties may propose accusation to the court of Industrial Relationship.

2. The Resolution of Disputes of Outsourcing Work Force in the Company that Employs Outsourcing Service

Based on the law of labor, the term outsourcing comes from the provision within the article 64 of Act of Labor, that states that the company may share some part of the implementation of the work to the other company through working contract agreement or providing the work force that is made in written⁹, based on that, the outsourcing system can run. Rajaguguk suggests and understanding of Outsourcing

⁸ Adrian Suredi, *Hukum Perburuhan*, cetakan pertama, (Penerbit Sinar Grafika : Jakarta) 2009 , p. 103.

⁹ Retno Kusumayan, <http://S2.hukum.unvpancasila.ac.ad/attachments/061.Retnokusumayanti5207229991> pelaksanaan *outsourcing*, p.31.

as¹⁰; Working relationship where work/labor occupied in a company with contract system, yet the contract is not given by the company with contract system, however, the contract is not suggested by the company that provides the work, but by the company that provides the labor.

Company that employs outsourcing labor is the company, that will share some of the work to the work contracting company.¹¹ **Company that provides** outsourcing service will provide to be employed in the company that provides work and is obliged to have operational permit from the institution that is responsible in the field of labor.¹² While the **outsourcing labour** is the work force that executes the agreement in written with the company that provides outsourcing service to be placed within the area of the company that employs outsourcing service.

Disputes in the implementation of outsourcing emerge because of the violation of the company rule by the labor or that there is dispute between the outsourcing labor with other labor. According to article 66 verse (2) point c of the act of labor¹³, the resolution of dispute that emerges will be the responsibility of the company that provides the outsourcing service. Therefore, even though what is being violate by the outsourcing labor is the rules of the company that provides the work or the company that employs outsourcing service, the one who is in charge in resolving the dispute is the company that provide the outsourcing.

In case of the occurrence of violation or disputes done by the outsourcing labor, there will not be a charge from the company that employs outsourcing service to execute the resolution of disputes since between the company that employs outsourcing as a workplace in a regular basis, since legitimately there is no working relationship, so it is clear that the one in charge to finish the dispute is the company that provides outsourcing service. Even though what is being violated is the rules of the company that employs the outsourcing. The outsourcing labor in the workplace as per rules of work and discipline of work must follow the applying rule within the company where s/he works, it means that outsourcing labors who work in the area of the company that employs outsourcing service must follow all requirements of the

¹⁰ H.P.Rajaguguk, *Peranserta Pekerjadalam Pengelolaan Perusahaan (Co-determination)*, (Jakarta : Yayasan Obor Indonesia, 2002) p.79

¹¹ Hidayat Muharam, *Panduan Memahami Hukum Ketenagakeraan serta Pelaksanaannya di Indonesia*, (Bandung: Citra Aditya Bakti, 2006) p. 17.

¹² *Ibid.*, p. 18.

¹³ Swari Natari Tarigan, *Tesis Analisis Hukum Perjanjian Kerja Outsourcing di Sumatera Utara (Implementasi Undang-Undang Ketenagakerjaan No. 13 Tahun 2003)* p.121

rule that apply on the company that uses outsourcing. In the Memorandum of Understanding between the company that provides outsourcing service with the one that employs outsourcing must be clear about what needs to be obeyed by the outsourcing labor during his/her time in a company in a company that employs outsourcing service. By not obeying the rule of the company by outsourcing labor is the violation of rules of the company.

Resolution of disputes because of violation by the outsourcing labor in the workplace based on the provision of the act of labor is the responsible of the company that provides the outsourcing labor.¹⁴ Therefore, the authority for mechanism of the resolution of disputes is on the company that provides outsourcing labor, even though the violation is done by the outsourcing labor in the location of the company that employs outsourcing labor. In the act of labor article 66 verse (2) point c states that: “**The company that provides the labor is responsible for** the protection of wage and the prosperity, working requirements and the disputes.” However at least the company that employs outsourcing cannot just get away from the responsibility if it deals with the working safety, dispute emerging in the company that employs the service because there is conflict as well as social unfairness between the work force of the company that employs outsourcing labor. The company that employs outsourcing labor can be the mediation or conciliation for the outsourcing labor in overcoming those problems.

In this case, the company that provides outsourcing must be able to place itself and be wise so that it can accommodate the interests of outsourcing labor, or the company that employs outsourcing labor. Recalling that the company that employs outsourcing service is actually the party that know more about the daily performance of the outsourcing labor than the company the provides the outsourcing labor. The company that provides the outsourcing labor in the resolution of disputes emerging as the right is not fulfilled, for the different implementation or interpretation about the opinion of the provision of working agreement, or because the opinions are not met about the making, and/or the changes of working requirements, that has been determined within the working agreement that is made between outsourcing labor with the company that provides them, or the disputes since the opinions of the termination of employment which is done only in one side does not meet the agreement.

¹⁴ *Ibid.*, p. 122

In the resolution of disputes that occurs in the area of the company that employs outsourcing labor: that the principles of the resolution must be held that the resolution of disputes must be done by the company that provides outsourcing labor in facing and finish the disputes that is occurring, so that at best each disputes will always use conference through bipartit negotiation in the level of the company that provides outsourcing service, if this bipartit negotiation cannot be completed then it can be done the negotiation through mediation, or conciliation as well as arbitration.

C. PROBLEM ANALYSIS

About the disputes of industrial relationship, sometimes it can be avoided. Therefore, all parties involved in the disputes must be accepting to complete the problem that is being faced.¹⁵ The strategical step is how someone manages the dispute well to obtain the exact and accurate solution.¹⁶ Labor disputes is a conflict between employer or a group of employers with the association of labor or a group of associations of labor for the non-existence of the adjustment of understanding about the working relationship, working requirements or the condition of labor. Principles of resolution of disputes of industrial relationship that has been explained earlier must be the guidance for the parties to face and complete the dispute occurring between the company that provides outsourcing labor as well as the outsourcing labor that works in the area of the company that employs the outsourcing labor, therefore, if the dispute occurs it must always put conference up front through bipartit negotiation in the level of company. Not the reverse, each time the disputes occurs it must be reach the responsible institution in the field of labor (mediation), conciliation, arbitration, or to the court of industrial relationship.

In the case of the dispute is done by the labor, in this case there is no authority from the company that employs the labor to run the resolution of disputes since between the company that provides the labor (user) with the outsourcing labor legitimately does not have any working relationship, so that the one that is responsible for the resolution of the dispute is the company that provides the labor, even though the rules that is violated belongs to the company that employs the labor.

Resolution of disputes for the occurring violation by the outsourcing labor in the workplace based on the provision of article 66 verse 2 point c of act of labor is

¹⁵ Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Bandung: Citra Aditya Bakti, 2007), p. 145

¹⁶ Zaenal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: Grafindo Persada, 1993) p. 163

the responsibility of the company that provides outsourcing labor.¹⁷ Therefore, the authority for the mechanism of resolution of disputes is the company that provides the outsourcing labor, even though the violation is done by the outsourcing labor in the location of the company that employs the outsourcing labor, at best each conflict will always apply conference through bipartit negotiation in the level of company that provides the outsourcing labor.

The rule of the company contains the right and the responsibility between the company and the outsourcing labor. The right and the responsibility describe a legitimate relationship between worker and the company where both parties are bond to the working agreement that has been agreed.¹⁸ While the relationship of the existing law is the company that provides outsourcing labor with the company that employs the labor, is in the form of agreement to provides the workers. The company that employs the labor with the labor labor itself has a direct working relationship, either in the form of a certain period working agreement or uncertain period of working agreement.

The role of the law in the prosperity of the outsourcing labor is very influential in determining the policies that will be made, it needs an act from the people or from the legislative assembly to represent the people in formulating provisions that enables to integrate the powers in making policies dealing with the issue of prosperity of the outsourcing labor so that it will be able to create law provisions that rule more focused on the outsourcing labor. The role of the act of law is to protect, rule and plan the lives of the people so that the dynamics of the activity of labor can be directed to the right direction and the prosperity for all people.

D. SUGGESTION

In the Resolution of disputes, even though in the act of labor article 66 verse 2 point c states that the disputes emerge is the responsibility of the company that provides outsourcing labor, yet the company that employs the labor cannot just get away from the responsibility if it deals with the working safety, disputes that emerges in the company that employs the labor for the existence of dispute as well as social jealousy between the labor in the company that employs the labor and the outsourcing

¹⁷ *Ibid.*, p.122

¹⁸ Swari Natari Tarigan, Tesis *Analisis Hukum Perjanjian Kerja Outsourcing di Sumatera Utara (Implementasi Undang-Undang Ketenagakerjaan No. 13 Tahun 2003)* p.121.

labors. The company that employs outsourcing labor as the mediator (mediation) and conciliation for the outsourcing labor in completing the issues. There must be a clear mechanism about the resolution of disputes that may occur among the outsourcing labor. The awareness and good will needs to be increased from all parties: from the company that employs the outsourcing labor, the company that provides outsourcing labor and the outsourcing labor as well as the government as the supervisor.

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