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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



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



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# LEGAL POLITICS OF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA

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## Abstract

The handover of part task to other companies is currently being practiced by the company in the context to efficiency and effectiveness. In the midst of the controversy of the practice in handover of part task to other companies, the government still does not remove the regulations that have been issued. Based on observation, the regulation of the handover of part task to another company has been very dynamic in five years last. The movement of this regulation is more directed at efforts to improve its implementation, especially for legal protection. These conditions are very different compared to previous years that seemed untouched. This paper discusses the legal politics of the labor, which focuses on the field of study of the handover of parttask to other companies in Indonesia.

**Keywords:** task, company, handover, legal politics.

## A. BACKGROUND

Actually the employer can manage and operate their company by their selves, but sometimes they also can collaborate with other company to carry out some working performance. Along with the economic conditions that demand efficiency and effectiveness, employers should be more creative in creating a conducive business climate in order to be able to open up business opportunities and maintain or even develop the implemented business before. The employers should also be able to capture every business opportunity, either through the use of various facilities provided by the Government and businesses through internal efforts. One of the opportunities provided by the Government is about the handing over working performance to other company (as well-known as outsourcing). The practice of outsourcing is mostly implemented by many companies nowadays. The handing over working performance to other companies can be in form of employment contract or providing service to do some working performance.

On the one hand, the existence of outsourcing program has already opened up opportunities for the emergence of new companies engaged in the contract of employment or the provision of worker / laborer. On the other hand, it also allows companies that have been established before to improve efficiency through the use of enterprise services contract of

work or the provision of worker / labor to produce products or services that are not directly related to the main business of the company.

Since the government issued regulations regarding outsourcing program, many people tends to give negative reaction for denial. Most employees will always deny this program if their demands to improve the regulation of outsourcing have not been accommodated. In the context of a state of law<sup>1</sup>, the improvement efforts should be realized in the form of legislation issued by the Government. The policies issued by the government are basically intended to organize and realize a sense of security to the parties involved in the practice of outsourcing. Hopefully, there is not any problem anymore during its implementation. The Government policies set out in the form of legislation is a political form of government law.

In the middle of this controversial issue about outsourcing, it becomes urgent to explore and understand the legal politics on outsourcing. As we know, this program is always banned every time. However, the Government still does not abolish this system. Through the Decision of the Constitutional Court, the activity of outsourcing is still maintained with several improvements relating to the protection of workers / laborers.

Based on the description of the dynamic development of outsourcing system and its regulation within last five years, this paper discusses the labor law politic focused on studies in the field of handing over working performance to other companies, by formulating problems, "How is Manpower law politic in the field of handing over working performance to other companies in Indonesia ".

## **B. DISCUSSION**

### **1. The Definition of Law Politic**

The understanding of law politic expressed by scholars is not exactly the same between the one and the other. Satjipto Rahardjo in Legal Studies book reveals that politics is a field in which people relate to the community. Politics is also an activity in selecting a particular social purpose. Similarly, in the law, there is an obligation to choose a goal and the ways how to achieve that goal. Law is not an institution that is completely autonomous, but it will always be associated with other sectors of society. Laws must constantly adapt to the

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<sup>1</sup> Konsepsi negara hukum di Indonesia merupakan konsepsi sintesis dari beberapa konsep yang berbeda tradisi hukumnya yaitu diwarnai oleh konsep-konsep *rechtsstaat*, *the rule of law*, negara hukum formal, dan negara hukum materiil yang kemudian diberi nilai keindonesiaan sebagai nilai spesifik sehingga menjadi negara hukum Indonesia. Lihat Moh. Mahfud MD. *Hukum dan Pilar-Pilar Demokrasi*. (Yogyakarta ; Gama Media, 1999). Halaman 138.

goals needed by the community. So it can be dynamic. Law politic is one of the factors that led to this dynamic, because it is directed to the *iure constituendo*.<sup>2</sup>

Moh. Mahfud MD gives definition of law politic as a legal policy or the direction of law that will be enforced by the government in the form of making new laws and the replacement of the old law.<sup>3</sup> From the assumption that the law is a product of politics, so when the politics change, the law will also change.<sup>4</sup> Law as the outcome is the result of a political process in accordance with the configuration, meaning that every legal product is the crystallization of thought and / or the political process.<sup>5</sup>

Other definition expressed by Siswanto S, states that the law is political ideals, ideas, and the will of the government realized in the form of rules.<sup>6</sup> The law is not regarded as a goal but only a bridge that brings us to the desired idea. Thus, legal politics are expected to create the desired national laws. In this case the legal politics can not be separated from the existed social and traditional realities. As a member of the world community, Indonesian law politic can not apart from political reality and international law.<sup>7</sup> If we review the overall scientific study of law concerning *das sollen* and *das sein*, legal politics examines the relationship between *das sein* with / into *das sollen* means the state or the mindset of the people who give rise to the legal provisions.<sup>8</sup>

Law politic generally helpful to know the processes covered in the six study regions<sup>9</sup> to produce a legal policy that suits your needs and sense of justice.

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<sup>2</sup> Satjipto Rahardjo. *Ilmu Hukum*. Cetakan Kelima. (Bandung : Citra Aditya Bakti, 2000). Halaman 352.

<sup>3</sup> Moh. Mahfud MD. *Membangun Politik Hukum Menegakkan Konstitusi*. (Jakarta : Rajagrafindo Persada, 2010). Halaman 5.

<sup>4</sup> Moh. Mahfud MD. *Konstitusi dan Hukum dalam Kontroversi Isu*. Cetakan Kedua. (Jakarta : Rajagrafindo Persada, 2010). Halaman 71.

<sup>5</sup> Moh. Mahfud MD. "Perkembangan Politik Hukum : Studi tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia". Disertasi. (Yogyakarta : Universitas Gajah Mada, 1993). Halaman 28.

<sup>6</sup> Siswanto S. *Politik Hukum Pidana dalam Unda-Undang Narkotika (UU Nomor 35 Tahun 2009)*. (Jakarta : Rineka Cipta, 2012). Halaman 60.

<sup>7</sup> Sunaryati Hartono. *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Cetakan Pertama (Bandung : Alumni, 1991). Halaman 1.

<sup>8</sup> Abdul Latif dan Hasbi Ali. *Politik Hukum*. Cetakan Kedua. (Jakarta : Sinar Grafika, 2011). Halaman 36.

<sup>9</sup> Enam wilayah kajian adalah (1) Proses penggalian nilai-nilai dan aspirasi yang berkembang dalam masyarakat; (2) Proses perdebatan dan perumusan nilai-nilai dan aspirasi ke dalam bentuk rancangan perundang-undangan; (3) Penyelenggara negara yang berwenang merumuskan dan menetapkan politik hukum; (4) Peraturan perundang-undangan yang memuat politik hukum; (5) Faktor-faktor yang mempengaruhi dan menentukan suatu politik hukum; dan (6) Pelaksanaan peraturan perundang-undangan tersebut sebagai implementasi politik hukum. Lihat Imam Syaukani dan A. Ahsin Thohari. *Dasar-Dasar Politik Hukum*. Cetakan kesembilan. (Jakarta : RajaGrafindo Persada, 2013). Halaman 51 – 52.



## 2. The definition of Outsourcing

Indonesian Wikipedia defines outsourcing is the transfer of jobs (operations) from one company to another. This is usually done to reduce production costs or to focus on the main points of the company.<sup>10</sup>

If we refer to Black's Law Dictionary, outsourcing agreement is defined as "an agreement between a business and service provider in the which the service provider promises to provide necessary services, esp. Data processing and information management, using its own staff's equipment, and usu. at its own facilities".<sup>11</sup>

Then Husni provides an understanding of outsourcing from two points of view, namely in terms of Manpower and management side. In term of Manpower, outsourcing means the use of labor to produce or carry out a job by a company, through the provider of Manpower. As the management view, outsourcing is interpreted as delegating the daily operation and management of a business process to outsiders.<sup>12</sup> This concept is in line with Sehat Damanik that divides the definition of outsourcing into two aspects of Manpower and management aspects.<sup>13</sup>

The term outsourcing can not be found in the draft Civil Code (hereinafter the Civil Code). Civil Code provides an understanding of the contract of work agreement. Similarly, in the Law of the Republic of Indonesia Number 13 Year 2003 on Manpower (hereinafter referred to as the Labor Law).

Civil Code provides an understanding of the contract of Manpower, especially with regard to the agreement. In the Civil Code Article 1601 b is determined that the contract of Manpower is an agreement by which one party, the contractor, undertaking to organize a job for another, of contracting parties, to receive a specified price.<sup>14</sup>

Labor Law also does not mention the term or definition of outsourcing, but in Article 64 we can know about the regulation of handing over working performance to other companies. Article 64 of the Labor Law stipulates that "a certain company may subcontract part of the working performance to another company through an agreement contract of work

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<sup>10</sup> Wikipedia bahasa Indonesia, ensiklopedia bebas. [https://id.wikipedia.org/wiki/Alih\\_daya](https://id.wikipedia.org/wiki/Alih_daya)

<sup>11</sup> Bryan A. Garner. *Black's Law Dictionary – Ninth Edition*. (Texas : West-A Thomson Reuters Business, 2009). Halaman 1213.

<sup>12</sup> Lalu Husni. *Pengantar Hukum Ketenagakerjaan – Edisi Revisi*. (Jakarta : PT Rajagrafindo Persada, 2014). Halaman 168-169.

<sup>13</sup> Sehat Damanik. *Outsourcing dan Perjanjian Kerja menurut UU No. 13 Tahun 2003 tentang Ketenagakerjaan*. Jakarta : BDSS Publishing, 2007). Halaman 2-3.

<sup>14</sup> R. Subekti dan R. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata – Burgelijk Wetboek*. Pasal 1601 b. Cetakan Keduapuluh. (Jakarta : Pradnya Paramita, 1986). Halaman 349.

or the provision of worker or labor which is made in written form."<sup>15</sup>

Based on the previous definitions of outsourcing, there is a common view that outsourcing is a handover or transfers some activities of the company to other companies. This submission is generally done to minimize production costs or to focus on the core competencies of the company. This submission is made on the basis of submission of work agreements made by both parties that the company receiving job / service providers with enterprise user / company employer.

### **3. Legal Politics of Employment in Term of Part of Task Handover to Other Companies**

#### **a. The Efforts in Facing Global Competition**

The industrial revolution brought the implications of the emergence of new breakthroughs made by companies to win business competition. The ability to do something is not enough to win a competitive basis, but it must be accompanied by the ability to create a product with the best quality with the lowest cost. Furthermore, various economic meetings have led to the diversification of the business, with the goal of getting benefit from the development of the world economy. Through this diversification business is expected to bring efficiency to create profits for the business world.<sup>16</sup>

In 1970 and 1980, the companies faced global competition and experienced difficulties due to lack of preparation because of the management structure of the swelling. As a result, the business risk in all respects increased including the risk of Manpower. This is the beginning of the emergence of thought outsourcing. To increase flexibility and creativity, many large companies that create new strategies and concentrate on its core business. The idea is to share the risk in various ways, including Manpower. Furthermore, around 1990, outsourcing has begun to act as supporting services. High competition requires management companies perform calculations cost reduction. The company began to outsource the functions that are not directly related to the core business of the company. In its development, outsourcing does not just share the risk but grow more complex and becomes a management tool that not only solves the problem of Manpower but also support the business goals and objectives.<sup>17</sup>

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<sup>15</sup> Sekretariat Negara. *Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan*. (Jakarta : Sekretariat Negara, 2003), Pasal 64.

<sup>16</sup> Damanik. *Op.Cit.*. Halaman 7.

<sup>17</sup> *Ibid.* Halaman 7-8. Lihat juga Husni. *Op.Cit.*. Halaman 167-168.

Considering that outsourcing is closely related to labor practices, the regulations related to Manpower is an important factor in development of outsourcing in Indonesia. Talking about outsourcing rules then it surely includes political discussions about labor law on outsourcing.

#### **b. From Colonial Era to the New Order Era**

In colonial era, the practice of outsourcing are well known and regulations pertaining to outsourcing can be seen with the regulation of contract of work as stipulated in Article 1601b Civil Code. Civil Code Article 1601 b stated that the agreement of contract of work as an agreement where the contractor undertaking to make a relationship work to other parties that contracting work by receiving a fee, and others who give contract work commits themselves to the contractor with a particular fee . There is not any single rule in that the Civil Code concerning any type of work that can be handed over. This means that if both parties agree on the kind of work that is handed over then chartering agreement can be implemented.

Although outsourcing regulation during this period are not tough enough, and it only takes priority to the case that the agreement among the parties who made contract of work does not contradict with the law, morals, and norms of justice. But the development of outsourcing in Indonesia is very slow. Most companies in Indonesia still manage their own business in both their core businesses and non-core business. One on factors which is considered as the cause is a lack of support for the legislation. Then it brings an impact to the slow socialization and lack of public understanding about the benefit of outsourcing in the company.

Law politic of contract of work as stipulated in Article 1601 b Civil Code was still unchanged until the New Order era. So the execution of contract of work in the colonial, the Old Order and New Order era referred to the provisions of Article 1601 b Civil Code.

#### **c. Reformation Era**

In the reformation era, the change has been seen in line with legislation of handing over working performance to other companies in the Labor Law. This law regulates about sectors which enables to give those companies some works excluded in the company main business. In line with that situation, it appears the awareness of companies to start replacing the employees who do not have any contributions to that company main business.

Regulation of handing over working performance to other companies in Indonesia has been stated in Labor Law section 64, 65 and 66. Then, the section 66 determines that the companies are able to give a half of working performance to other companies through contracting agreement or written labor service supply. Based on that section of law, it can be identified that companies give a half of working performance to other companies through two ways such as contracting out to another company based on the initial written agreement.<sup>18</sup> The section 64 and 65 in verse 1 seem that there are two parties of outsourcing activity, they are employer companies and contracting or labor company. This rule becomes a basic agreement in implementing partial work and stepping stone in making labor contract between outsourcing company and its employees. Besides, it has been clearly stated that working procedure is not for a whole part but for a half only.<sup>19</sup> It means that the overall works are not submitted because there are no basic standard rule to be implemented.

The Labor Law is also managing the work for another company in which it has to fulfill these requirements :

- a. Separately done from the main activity.
- b. Directly and indirectly carried out from the employers.
- c. It is a whole supporting activity of company.
- d. It does not hamper the entirely production process.<sup>20</sup>

Despitefully, stand upon the legal provision of Section 66 verse (1) of Labor Law, the employees of service supply company are not allowed to be occupied to run the main work or an activity relating to a production process.<sup>21</sup> This kind of work might be able to be executed for temporary contracting employees. Thus, that work can not be done by outsourcing employees.

Regarding to supporting service activity or an indirectly production process, the manpower law defines that the labor supply must follow these rules:

- a. There is working relationship between employees and labor Supply Company.
- b. Valid labor contract in working relationship which is mentioned in point “a” is working agreement in certain time that fulfills the requisite as stated in Section 59 of Labor Law and/or uncertain time agreement which is signed in both parties.

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<sup>18</sup> State Secretariat. *Op.Cit.* Section 65 verse (1)

<sup>19</sup> Endah Pujiastuti and A. Heru Nuswanto. *Outsourcing – Regulasi Perizinan di Indonesia.* (Semarang University Press, 2015). Page 13 – 14.

<sup>20</sup> State Secretariat. *Op.Cit.* Section 65 verse (2)

<sup>21</sup> The Supporting service work or this unrelated production process work is outside basic work (*core business*) in a company. That work is cleaning service, effort of providing food for labors, security officers, and labor accommodation.



- c. Wage and prosperity protection, working requirements, and dispute may occur, becomes the responsibility of labor supply company
- d. Agreement between labor service hiring company and another company acting as a labor service providing company is obliged to make written rules and contain the sections of Labor Law.<sup>22</sup>

Labor Law regulates the working protection and requisites of labor themselves. This kind of rules must be the same as the working protection and requisites in hiring company and accordance with an official valid legislation.<sup>23</sup>

#### **d. Post-Verdict of Indonesian Constitutional Court Number 27/PUU-IX/2011**

It has been significantly changed in half of practical work implementation to another company after issuing a Decision of Indonesian Constitutional Court Number 27/PUU-IX/2011 regarding to labor contract. That decision includes some points:

- a. to grant a demand of half petitioner.
- b. state phrase “...temporary contract” in Section 65 verse (7) and phrase “....temporary contract for certain time” Section 66 verse (2) point “b” The Labor Law Number 13 Year 2003 (State Sheet of Indonesian Republic 2003 Number 39, Extension State Sheet of Indonesian Republic Number 4279) in contradiction with Fundamental Law 1945 as long as in the labor contract is not allowed to divert protection of employee rights in which their object of work is still there. Although it has occurred the change of company which runs a half of contract works from another company or the employee service providing company.
- c. phrase “...temporary contract” in Section 67 verse (7) and phrase “...temporary contract for certain time” in Section 66 verse (2) point “b” The Labor Law Number 13 Year 2003 (State Sheet of Indonesian Republic 2003 Number 39, Extension State Sheet of Indonesian Republic Number 4279) does not have any law enforcement tied up as long as in the labor contract is prohibited to divert protection of labor rights which their workplace is still out there. Although there is a replacement of company that almost a half of their contract work from another company and labor service supply company.
- d. reject the demand of petitioner in more addition.
- e. command to make this decision in Indonesian Official Gazette of Indonesian Republic as should be.<sup>24</sup>

Based on the Decision of Constitutional Court, the two sections of Labor Law which are Section 65 verse (7) and 66 verse (2) point “b” changed by replacing sentence “...temporary contract” and “...temporary contract for certain time”,

<sup>22</sup> State Secretariat. Op.Cit. Section 66 verse (2)

<sup>23</sup> *Ibid.* Section 65 verse (4)

<sup>24</sup> Indonesian Constitutional Court Number 27/PUU-IX/2011

In this case, it does not have any law enforcement as long as in the work contract is not permitted of diverting protection for labors' rights and their workplace. Although it has been any changes of company replacement who did the half contract work from another company or other service providing companies.

Government regulation regarding to giving the half part of work activity which is not main job for another party in Labor Law after Decision of Constitutional Court of Indonesia Number 27/PUU-IX/2011MK, followed up with Official Regulation of – Manpower and Transmigration Minister Number 19, 2012 about requirements of giving half working contract to other companies. This Government Regulation is taking off all at once the decision of Indonesian Transmigration and Manpower Minister Number KEP.101/MENVI/2004 about mechanism the permit of providing labor service to other companies. Then, another the Decision of Transmigration and Manpower Minister Number 19, 2002 about requirements of providing labor service to other companies permit has been changed with the Decision of Transmigration and Manpower Minister Number 27, 2014 about the change the Decision of Transmigration and Manpower Minister Number 19, 2002 to other companies.

In order to optimize the implementation of giving a half of working contract to another company as stated in that Decision of Transmigration and Manpower Minister Number 19, 2002. And then, it later on will be arranged the fundamental implementation of the Decision of Transmigration and Manpower Minister Number 19, 2002 about requirements of providing labor service to other companies through the Encyclical Indonesian Transmigration and Manpower Minister Number: SE.04/MEN/VIII?2013 about Manual Book of Transmigration and Manpower Minister implementation Number 19, 2012 about requirements of providing labor service to other companies.

The next step is in order to organize the implementation of giving a half of working contract to other companies especially labor service supply companies which has been done by PMA, government issues the Decision of Indonesian Transmigration and Manpower Minister Number 6, 2005 about Procedure Operational Standard of Issuing working permit providing labor service in the One Door Joint Service at Investing Coordinating Board. The issued policy of government itself is to organize the practice of supporting a half of working contract to other companies in giving benefit of all elements. One of the substantial admission is regarding to the permit itself.

#### **e. National Medium Term Development Plan 2015-2019**

Manpower Law Politic as stated in the National Medium Term Development Plan 2015-2019 determines the way of strategy and policy which will be done to increase labor competitiveness as follow:

- 1) Improve the labor productivity and competence.
- 2) Reform labor climate and create Industrial Relationship.

In the context of reform labor climate and create Industrial Relationship especially the way and strategy which has been done through revising the regulation can increase labor solid infestation and absorb the manpower like textile and garment sector, footwear, food and beverages and other sectors. In line with that regulation, the legislation of fixed-terms contract and sub-contract regarding to seasonally output demand becomes priority to be accomplished.<sup>25</sup>

As stated in strategy and way of policy that government does not completely remove practice of providing a half working contract to other companies. The government plans to revise the regulations relating to that ones.

#### **f. Way of Manpower Policy 2014-2019**

The way of manpower policy 2014-2019 is to achieve harmoniously industrial relationship through *High Road Industrial Relation System*, which assures the flexibilities of working market without neglecting the humanity supreme values. Manpower law politic in delivery sector as working executor to other companies has to be suited to philosophy and vision of creating *High Road Industrial Relation System*. Moreover, it must assure the best harmoniously industrial relationship in labor contract in implementing their trade to other companies (*outsourcing*) as follow:

- show the commitment to guarantee the prosperity, work sustainability, and social welfare for labors in the work contract and handing over of working execution to another company.
- take a firm decision in law enforcement relating to implement work contract and delivering labor service to other companies.
- take firm steps in a contrary of implementing work contract and delivering labor service to other companies due to issuing Manpower Minister Decision Number 19,

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<sup>25</sup> Ministry of Development Plan/Development Plan Board. Rencana Pembanguna Jangka Menengah Nasioanal 2015-2019 – Buku I agenda pembangunan Nasional. (Jakarta : Ministry of Development Plan/ Development Plan Board, 2014). Pages 141 – 143.

2012 about requirements of delivering a half of labor service to other companies and Official Letter from Manpower Minister Decision Number SE.04/MEN/VIII/2013 about Guidance of implementing Manpower Minister Decision Number 19, 2012 about requirements of handing over labor service to other companies.<sup>26</sup>

It has been so clear that Labor Law Politic of handing over labor service to other companies as stated in Policy Ways of Manpower 2014-2019 is not completely removed.

## CONCLUSION

1. The Labor Law Politic of handing over labor service to other companies from colonial era until new order era (*orde baru*) is only organizing about labor contract. It has been arranged in the Civil Code Article 1601 b civil case.
2. In reformation era, the Labor Law Politic of handing over labor service to other companies is written in the Manpower Law in Section 64, 65, 66. In this era, the regulation of handing over labor service to other companies has been more complete than the inside regulation of Civil Code.
3. Post the decision of Indonesian Constitutional Court Number 27/PUU-IX/2011 has been significantly any changes in law politic of handing over labor service to other companies relating to work contract.
4. The Labor Law Politic of handing over labor service to other companies in National Medium Term Development Plan 2015-2019 has been consistently maintained by revising to related regulations.
5. The Labor Law Politic of handing over labor service to other companies is as stated in the Manpower Policy Ways 2014-2019 is not omitted.

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<sup>26</sup> Manpower Research and Development Center – Research Board, Development and Information. Arah Kebijakan Bidding Ketenagakerjaan 2014-2019. (Jakarta : Ministry of Indonesian Manpower and Transmigration, 2013). Pages 53-54.



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