

## **Legal Analysis of Employment Agreements in Outsourcing Practices Based on Law Number 13 of 2003 Concerning Employment (Decision Study Number 1438k/Pdt.Sus-Phi/2017)**

**Azra Alfiyah Husna, Henry Aspan, Hasdiana Juwita Bintang**

### **Abstract**

The employment agreement is one of the bases in the employment relationship that creates a legal relationship or relationship for the parties, giving birth to rights and obligations. So that with the existence of an employment agreement, it is expected to realize the implementation of rights and obligations for the parties fairly. Can an employment agreement in outsourcing practices realize the implementation of workers' rights and obligations in employment relations. How is the legal protection for workers in employment agreements in outsourcing practices in employment relations (study of decision number 1438K / Pdt.Sus-PHI / 2017). The nature of this journal research is descriptive analytical, the type of research used is empirical legal research. The research method used is qualitative research or library research. *The* purpose of this research is to find out about the rights and obligations of the parties in employment relations and to find out the legal protection for the parties in employment agreements in employment relations. The results of the study indicate that the existence of an employment agreement has not been fully realized in implementing the rights and obligations of the parties in employment fairly. However, to be able to realize it, government intervention is needed, which is in accordance with the characteristics of employment law in Indonesia which is mixed. In addition, the principles contained in the agreement must be in harmony with the principles contained in the law of agreements.

**Keywords:** Employment Agreement, Employment Relations, Outsourcing

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### Introduction

Because Indonesia is a legitimate country, every action taken in daily life is intertwined with the law. In order to achieve legal certainty in the life of the nation and state, the Indonesian state is required to guarantee and ensure justice for every citizen or legal entity, as stated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

"to form an Indonesian state government that protects all the Indonesian people and all Indonesian blood and to advance public welfare," according to the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia. From the fourth paragraph it is known that one of the goals of a nation's survival is to ensure the welfare of its citizens.

In this case, the government also helps create job opportunities for Indonesian citizens. There is no doubt that there is a legally binding agreement between the parties in a legal partnership. similar to the provisions of the employee-employer employment agreement. According to the legal definition, "An employment agreement is an agreement between a worker/laborer and the employer or employer's work containing the working conditions, rights, and obligations of the parties." Article 1 number (14) of Law Number 13 of 2003 concerning Manpower regulates the existence of an agreement between the employer and the worker. As part of an agreement, the employment agreement must meet the requirements for the validity of an agreement as regulated in Article 1320 of the Civil Code. These provisions are stated in Article 51 paragraphs (1) and (2) of the Manpower Law. Then, based on the provisions of Article 1 number (15) of this Law, it states that: an employment relationship is a relationship that occurs between a Business Actor and a worker which is based on an employment agreement that has elements of work, wages and orders.

Industrial relations are relationships that are created when there is a working relationship between an employer and an employee. Industrial relations are defined as "a system of relationships formed between actors in the process of producing goods/services consisting of elements of employers, workers/laborers, and the 1945 Constitution of the Republic of Indonesia" in Article 1 Number 16 of Law Number 13 of 2003 concerning Manpower.

So it can be said that industrial relations are a legal relationship carried out between the employer and the employee. Which parties in this industrial relationship certainly expect the relationship to run well and harmoniously. However, it is possible that industrial relations cause many disputes which basically arise because of differences of opinion or desires in something.<sup>1</sup>This can be seen from the many legal problems related to disputes that arise in industrial relations themselves. Several types of disputes regulated in Article 2 of Law Number 2 of 2004 concerning Industrial Relations Disputes, consist of disputes of interest, rights, labor unions and disputes over termination of employment. According to Article 1 Number 25 of Law Number 13 of 2003 concerning Manpower, it reads "termination of employment is the termination of employment due to a certain matter which results in the termination of rights and obligations between workers and employers".

Settlement of industrial relations disputes is regulated in Law Number 2 of 2004 which outlines two possible settlements, namely through the court system or through alternative means outside the court. Settlement in court is facilitated by the competent District Court, conducting examinations, trying and making decisions in industrial relations disputes.

In business, using an Outsourcing system *is* very important. Many businesses today implement an outsourcing workforce system because it seems to offer a number of advantages. The outsourcing workforce system strategy has many advantages, including the following, according to Iftida Yasar, a human resources (HR) and outsourcing consultant at PT. Perdana Perkasa Elastindo (PERSAELS), who wrote the book " *Outsourcing Never Can Be Eliminated*":

1. Benefits for the government: Can help develop and encourage growth and encourage economic growth of the community and the national economy.

2. Benefits for the community and workers/laborers: Reducing unemployment rates and preventing urbanization.
3. Benefits for the company: Increase the focus of the core company. If all activities are carried out by the company itself, then the company's attention and energy will be absorbed in things that are not *core business*, by handing over some of the work to other parties who are more expert, the company can focus more on the core business .

The reality that occurs in the practice of Outsourcing in Indonesia, employers and Outsourcing companies often ignore the applicable laws and regulations so that violations of the rights of Outsourcing workers often occur. The placement of Outsourcing workers who should only be in the supporting section, in practice are placed in the main business process section. The author analyzes the cassation decision of the Medan District Court number: 1438K / PDT.SUS-PHI / 2017.

The case in the Supreme Court's Cassation Decision Number 1438K/Pdt.Sus-PHI/2017, which is a type of litigation-based conflict resolution, is used in writing this journal. Unilateral termination of employment, industrial relations conflicts arising between employers and their employees, are covered in this cassation decision.

### **Formulation of the problem**

1. Can an employment agreement in outsourcing practices realize the rights and obligations of workers in employment relations?
2. How is the legal protection for workers in employment agreements in outsourcing practices in employment relations (study of decision number 1438K/Pdt.Sus/PHI/2017)?

### **Literature Review**

#### **Employment agreement**

An employment agreement is a legal document that describes a situation in which two people make a commitment to each other or to carry out a task. If the agreement complies with the rules outlined in Article 1320 of the Civil Code, it is considered legal. The protection and fairness of the parties to the agreement are the legal purposes of having an employment agreement.

BW uses the terms contract and agreement for the same meaning. This can be clearly seen from the Title of Chapter II of Book III B W, namely: About the obligations born from contracts or agreements. From the title it can be understood that contracts and agreements are interpreted with the same meaning.

According to Subekti, an agreement is a situation in which two people make a commitment to each other or to carry out a task. Engagement, on the other hand, is a legal arrangement in which two people or parties have the right to sue each other and the other party is required to comply.

"Legal relations between two or more parties based on an agreement to give rise to legal consequences" is what Sudikno Mertokusumo defines as an agreement. Article 1313 of the Civil Code states "An agreement is an act by which one or more persons bind themselves to one or more persons".

Therefore, an agreement in the form of a contract or agreement is practically binding; even according to paragraph 1 of Article 1338 of the Civil Code, this agreement has legal rights for the parties involved. Outsourcing The term "outsourcing" is not specifically stated in Law Number 13 of 2003 concerning Manpower. However, the definition of outsourcing can be found in Article 64 of Law Number 13 of 2003 concerning Manpower, which states that outsourcing is a written work agreement between an employer and an employee that allows a company to transfer part of the work to another company.

Regarding the meaning of *outsourcing* , it can be found in several definitions according to experts, namely as follows:

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1. *Outsourcing* according to Candra Soewondo is the delegation of daily operations and management of a business process to an external party (service provider).
2. *Outsourcing* according to Greaver in Indrajit is the act of transferring or handing over internal activities that occur repeatedly and decision-making rights owned by a company to *outside provider services*, as stated in the work agreement.

From the definition of *outsourcing* above, a conclusion can be drawn, namely work to an external party or service provider as stated in the contract agreement.

### Employment

According to Soetikno, employment is a comprehensive set of laws that regulate employment relationships that cause a person to be directly under the direction or leadership of another person, as well as regulating living conditions that are closely related to employment relationships.

Meanwhile, Mollenaar asserts that labor law is a component of the law that basically regulates the interaction between employees and their employers, as well as between employees and other employees. According to the above-mentioned interpretation, labor law consists of the following components:

1. A series of written and unwritten regulations;
2. Regulates the occurrence of employment relations between workers and employers;
3. There are people who work for and under other people and receive wages as compensation;
4. Regulating protection for workers or laborers includes issues regarding illness, menstruation, pregnancy, childbirth, the existence of workers' organizations and so on.

Employment is defined as matters relating to employment before, during, and after the period of employment in Law Number 13 of 2003 concerning Employment, Article 1 Number 1. The explanation mentioned above leads people to the conclusion that the Employment Law consists of written and unwritten rules relating to employment, both during and after work.

The purpose of the Employment Law is as regulated in Article 4 of Law Number 13 of 2003 that the development of Employment Law aims to:

1. Empowering and utilizing the workforce optimally and humanely;
2. Realizing equal employment opportunities and providing a workforce that is in accordance with national and regional development needs;
3. Providing protection to workers in realizing prosperity;
4. Improving the welfare of workers and their families.

### Research Methodology

The author's research methodology for this paper is empirical legal research. Research on the compatibility of theories and practices operating in society is known as empirical legal research; In other words, this type of research looks at and evaluates how law functions in society. To find the necessary facts and data are collected, then identify the problem and its solution.

This research is descriptive qualitative, conducting analysis with a legal approach referring to research that focuses on legal aspects using secondary data as study material.

Secondary data is used in this investigation. Secondary data is research information that has been collected indirectly through intermediary media (obtained and documented by other parties) and can be in the form of public or unpublished documentary materials, such as records, evidence, or historical reports that have been compiled in archives. The focus of empirical legal research is to understand the law by examining legal norms and regulations and the justifications that accompany them.

This research data collection method utilizes documentation and literature review. Literature study can be considered as a series of tasks related to how to obtain information from the library, read, document, and process research materials. Meanwhile, documentation study is a means of obtaining information by examining papers to obtain information related to the

subject being studied. An example of documentation study is the Cassation Decision Number 1438K/Pdt.Sus-PHI/2017.

## Discussion

### 1. Employment Agreement in Outsourcing Practices to Realize the Implementation of Workers' Rights and Obligations in Employment Relations

An employment agreement is defined as "an agreement between a worker/laborer and an employer or employer containing the working conditions, rights and obligations of the parties" in Article 1 Paragraph (14) of Law Number 13 of 2003 concerning Employment. According to Subekti, an employment agreement is "an agreement between a "worker" and an "employer". This is distinguished by the existence of mutually agreed wages or salaries and a strengthened relationship, which implies that the employer has the authority to issue directives that must be followed by the other party. Meanwhile, a work contract agreement is an agreement between one person (the party contracting out the work) and another person (the party contracting out the work) where the first party wants a work result that is agreed to by the other party, for payment of a certain amount as the contract price.

Regarding the rights and obligations of workers in the company, it is not only regulated in the Employment Law alone, but also regulated in the Civil Code. As in Article 1603, Article 1603a, Article 1603b and 1603c of the Civil Code, it is regulated regarding the obligations of workers/laborers as follows:

1. Workers/laborers are required to carry out work where carrying out the work is the main task of a worker which must be carried out alone, however with the permission of the employer, someone else may be delegated;
2. Workers/laborers are required to obey the rules and instructions of their employers;
3. Obligation to pay compensation and fines,

Regarding the obligation to pay compensation and fines, it can be interpreted as a step or method or effort by employers to take preventive measures against actions by workers/laborers that could harm the company.

In addition, before the enactment of the Manpower Law No. 13 of 2013, employee responsibilities were regulated by other labor laws and regulations. Law Number 1 of 1970 concerning the State of Occupational Safety and Health. The following are the rights and obligations of workers as stated in Article 20, namely:

1. Provide correct information when requested by supervisory employees and work safety experts;
2. Wear required personal protective equipment;
3. Meet and comply with all required safety and health requirements;
4. Request the management to implement all mandatory safety and health requirements;
5. Expressing objections to work in jobs where the occupational safety and health requirements and the required personal protective equipment are in doubt, except in special cases determined otherwise by the supervisory officer within limits that can still be accounted for.

Rights are interests protected by law. Rights provide enjoyment and freedom to individuals in carrying them out. Obligations are positive legal norms that order individual behavior by setting sanctions for contrary behavior. The concept of legal obligations is basically related to the concept of sanctions. The subject of a legal obligation is an individual whose behavior can be a condition for imposing sanctions as a consequence.

The right to a decent wage is one of the basic rights of workers regulated in the Manpower Law. Article 88 of Law No. 13 of 2003 concerning Manpower states that workers have the right to a minimum wage set by the government, which is intended to guarantee their welfare so that they can meet their living needs. The Manpower Law also highlights the importance of protecting occupational health and safety. The 1945 Constitution always guarantees and upholds the rights of citizens and workers under the provisions of human rights.

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Rather than being a set of rules, rights and obligations represent a balance of power in which the individual rights of one party are reflected in the obligations of the other party. A person's rights and obligations are the powers granted to him by law. <sup>2</sup>The Civil Code defines an agreement as follows: "An employment agreement is an agreement in which one party, the worker, binds himself to be under the orders of another party, the employer, for a certain period of time, performing work in return for wages. "This definition is contained in Article 1601 letter an of the Civil Code. Due to the existence of an employment agreement, the relationship that occurs in this article is an employment relationship between the employer and the employee. Employees do carry out their duties under the direction or guidance of their employer.

Then, regarding the rights and obligations of the parties (laborers/workers), this has been regulated in Article 1603 of the Civil Code, letters (a), (b) and (c) of the Civil Code, which in essence states that:

- a) Workers/laborers are required to do their own work and are not permitted to have this work replaced by a third person other than with the employer's permission.
- b) In carrying out work, workers/laborers are obliged to obey the rules and instructions given by the employer.
- c) The obligation to pay compensation and fines if workers/laborers commit acts that can harm the company, either intentionally or negligently, then according to legal principles, workers are required to pay compensation or fines.

"The relationship between workers and employers where the employment relationship occurs after an employment agreement between the two parties," is how Soepomo defines the employment relationship, as quoted by Abdul Khakim. They are bound by an agreement where the employer employs workers/laborers by paying wages, and the workers/laborers agree to work in return for wages."

According to Aloysius Uwiyono, an employment relationship is "a legal relationship that arises between workers and employers based on an employment agreement that has the characteristics of wages, orders and work" under Indonesian law." In Article 1 paragraph (15) of Law Number 13 of 2003 concerning Employment, it is stated that an employment relationship is "A legal relationship that arises between workers and employers based on an employment agreement that has the characteristics of wages, orders and work.

The existence of work, the existence of orders, and the existence of wages are components of an employment relationship, according to the perspective presented above. An employment agreement is something real or actual, while an employment relationship is something intangible. An employment agreement will strengthen the relationship between employer and employee. Stated differently, an employment relationship is a relationship created by an employment agreement."

## **2. Legal Protection for Workers in Employment Agreements in Employment Relations (Study of Decision Number 1438K/Pdt.Sus/PHI/2017)**

Legal protection is the preservation of human rights held by legal subjects and the defense of these rights against arbitrary actions or as a system of regulations that can protect one item from another.

Law Number 13 of 2003 concerning Manpower, Article 5, contains specific regulations relating to worker protection. According to the Article, every worker, regardless of gender, ethnicity, race, religion, or political affiliation, has the same rights and opportunities to obtain respectable work and a livelihood that suits their interests and abilities, including treating people with disabilities equally. Furthermore, Article 6 requires employers to provide the rights and obligations of workers/laborers regardless of gender, ethnicity, race, religion, skin color, and political affiliation.

Raharjo on the other hand, defines legal protection as "enabling the community to enjoy all rights granted by law while providing protection to human rights violated by others,"

according to Satjipto. " Protection of labor is intended to guarantee the basic rights of workers and ensure equality and non-discriminatory treatment on any basis to realize the welfare of workers and their families while still paying attention to the development of the progress of the business world.

The cassation decision related to industrial relations conflicts, especially concerning PHK (Termination of Employment) and workers' rights, is Decision Number 1438K/Pdt.Sus-PHI/2017. According to Judex Facti of the Industrial Relations Court at the Medan District Court, there was no error in applying the law. According to Judex Facti, on June 14, 2016, Defendant I dismissed the Plaintiff and a number of other workers/employees, totaling 14 (fourteen) people, citing the findings of Defendant II's work evaluation on that date.

It was decided that, in accordance with Article 66 paragraph 4 of Law Number 13 of 2003 concerning Manpower, the employment relationship between the plaintiff and the workers/laborers (PT. Tiffa Mitra Sejahtera/Defendant I) has been changed to an employment relationship between the plaintiff and the workers/laborers (PT. Garuda Indonesia (Persero), Tbk/Defendant II) for the purposes of legal status. It is very appropriate that Defendant II is responsible for the payment of the rights of the Plaintiff who was dismissed because the Plaintiff's work as a service provider and selling airline tickets and travel documents issued by Defendant II is the main, core, or part of the production of Defendant II's company and not a supporting job. Therefore, the Cassation Application filed by the Cassation Applicant, in this case (PT. Garuda Indonesia (PERSERO) Tbk., is rejected.

According to the findings of the decision, the rights of outsourcing workers in this case must be given in the form of severance pay, money for the provision of work period, and total compensation of Rp. 22,024,611.00 (twenty two million twenty four thousand six hundred and eleven rupiah). Every worker or laborer has the right to receive income that meets a reasonable standard of living for everyone, as explicitly stated in Article 88 Paragraph (1) of the Manpower Law. In addition, it is explained that a decent livelihood is defined as the amount of money received by workers or laborers as a result of their work so that they are able to meet the basic needs of their families, including clothing, food and drink, housing, education, health care, recreation, and security in old age. According to Article 1 Paragraph (1) of the Regulation of the Minister of Manpower Number 01/Men/1999 concerning Minimum Wages, wages paid to workers/laborers must meet the minimum wage requirements. The minimum wage is the lowest monthly wage which includes basic wages and fixed allowances.

Legal protection is provided for both workers/laborers and employers. According to Senjun H. Manulang, as quoted by Hari Supriyanto, the objectives of labor law are :

1. To achieve or implement social justice in the field of employment;
2. To protect workers against unlimited power from employers, for example by making agreements or creating coercive regulations so that employers do not act arbitrarily against workers as the weak party.

According to Zaeni Asyhadie, there are two ways to protect workers: by making demands, paying them, or by promoting human rights, physical protection, and socio-economic protection through norms throughout the company. Legal relations are reflected in the rights and obligations granted and guaranteed by law.

According to Article 27 of the 1945 Constitution, the status of workers and employers is identical from a legal perspective, but they differ from each other in terms of socio-economic status. Because of the high relationship created by the high and low positions in this employment relationship, employers/employers have a tendency to act arbitrarily towards workers/employees. The lower status of workers and laborers requires government intervention to provide legal protection. Legal protection has a dual purpose of ensuring that the basic rights of workers and laborers are upheld, providing equal opportunities and treatment free from discrimination on any basis, and enabling the realization of the welfare of workers and laborers and their families while overseeing progress in the business sector.

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Law enforcement is another way to implement legal protection, along with strict supervision. In order to maintain a balance between the rights and obligations of employers and employees, maintain business continuity and peace in the workplace, increase productivity, and protect employees, labor inspection is a system that has an important and effective mechanism to ensure the effectiveness of labor law enforcement and the implementation of labor laws and regulations. An important component of worker protection and efforts to fully implement labor laws is labor inspection.

Through monitoring, it is possible to achieve legal protection for workers' rights. A key component of workers' protection and efforts to enforce labor laws in general is labor inspection. Labor inspection is a system with an effective and vital mechanism in ensuring the effectiveness of labor law enforcement and the implementation of labor laws and regulations in order to maintain a balance between the rights and obligations of employers and workers, maintain business continuity and work peace, increase work productivity and protect workers.

Therefore, having law enforcement in the workplace is very important. Both the implementation and the formulation of positive laws are considered aspects of law enforcement. In the event of a labor dispute, the presiding judge must consider the coherence of all principles in contract law to ensure protection and justice for the parties, rather than basing their decisions solely on agreements based on freedom of contract and consistency.

## Conclusion and Suggestions

### Conclusion

- a. It is assumed that the presence of an employment agreement will allow for the fair implementation of the rights and responsibilities of the parties involved in the employment relationship. Justice is realized and the parties are protected by the implications of balance. However, despite the existence of an employment agreement, this has not been fully implemented.
- b. The existence of government intervention in line with Indonesia's mixed employment law, namely, private and public, is one way to ensure that employment agreements provide legal protection for parties involved in the employment relationship. Furthermore, the principles found in the law of agreements include, but are not limited to, the principles of legal equality, consistency, good faith, personality, trust, legal certainty, and freedom of contract. These principles form the basis for binding agreements and are all interconnected, indivisible, fair, and proportional.

### Suggestion

- a. All parties can agree that there is a work agreement, so there needs to be legal certainty, protection, and justice. The role and action of the government are needed for this, especially:
  - 1) Making regulations that are oriented towards protecting parties, especially weak parties;
  - 2) Raising awareness through education for all parties involved.
- b. It is hoped that the employment agreement will provide protection and justice, so employers must view workers/laborers as partners and every problem can be resolved through a *win-win solution approach* by paying attention to balance, protection and justice.

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