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Synchronization of Outsourcing Arrangements in Employment Law with Human Rights and Ratification of the International Covenant of Economic, Social and Cultural Rights

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ABSTRACT

Law No.13 of 2003 on Employment is reaping problems. There has been much controversy and assessment that the outsourcing arrangements in the Labor Act constitute a violation of human rights and violate labor rights, much to the approson of those who disagree with the passage of this act. Because of this assessment the implication is that there are many rejections including through demonstrations and pressures especially from outsourced workers to remove the system of contract workers for a short period of time (outsourcing). And after going through the assessment, anilysis and discussion on Law No.13 of 2003 on Employment finally came to the conclusion that the articles governing outsourcing in Law No.13 of 2003 on Employment there was a misalignment both horizontally and vertically with Article 8, Article 11, Article 38 of Law No. 39 of 1999 on Human Rights and Article 7 of Law No. 11 of 2005 on Ratification of the International Covenant on Economic Rights, Social and Cultural. There must be special regulations or regulations that are more detailed, responsive and objective in outsourcing arrangements, so that later there must be understanding and understanding between the Government, Employers and Workers / Workers in terms of the establishment of regulations that specifically regulate socially equitable outsourcing for all Indonesian people.

Keywords: *Synchronize, Outsourcing, Employment*

INTRODUCTION

The deteriorating economic conditions have forced the government and the business world to be more creative in creating a conducive business climate in order to be able to open new investment opportunities and or maintain/advance existing businesses. Competition in the business world between companies makes the company must concentrate on a series of processes or activities for the creation of products and services related to its main competencies. With the concentration of the main competencies of the company, a number of products and services will be produced that have quality and competitiveness in the market. In a climate of increasingly fierce business competition, companies strive to make production cost efficiency (cost of production). One solution is with an outsourcing system, where with this system the company can save expenses in financing human resources (HR) working in the company concerned. (Wirawan)

With the enactment of Law No. 13 of 2003 concerning Manpower (Statute Book No. 19 of 2003), the employment agreement stipulated in Chapter 7 A Book III B.W. and stipulated in the Regulation of the Minister of Manpower Number: PER-02/MEN/1993

concerning Certain Time Work Agreements, no longer applies. One of the strategic reasons for the outsourcing system is to use existing personnel for more effective and efficient activities by bringing producers or companies closer to the market or consumers. Through the method of delegation or outsourcing, the company only thinks about how to do business, while for the procurement of outsourcing services is left to other parties (companies in the field of outsourcing service providers).

Outsourcing service providers have a very broad legal responsibility, not only at the stage of contract implementation but also in the pre-contract phase, namely the obligation to conduct in-depth research on the workers who will be employed outside. That the purpose of the in-depth research is because it is an absolute obligation for outsourcing service providers to verify all accuracy related to the procurement of outsourcing services handed over to them by the company (service recipient). This must be done by the outsourcing service provider to be able to guarantee and ensure that the company as the recipient of the service gets the right outsourcing employees, who will do the work in accordance with their fields and will be subject to the outsourcing contract.

Protection of workers or workers is a form of government intervention (interference) in relation to participate in dealing with this labor problem through regulation and deregulation of legislation that can provide legal certainty of rights and obligations both for employers and for workers or workers.

It must be recognized that workers or workers urgently need work to meet their daily needs, while companies also need cheap labor so that their companies still exist in the midst of economic conditions as they are now. The relationship of mutual need is the seed of a feud between workers or workers with entrepreneurs, if both parties understand each other's needs, conflicts do not arise. But when workers feel aggrieved by social security and welfare, and experience termination of employment, companies can take refuge with a Certain Time Work Agreement (PKWT). Termination of Employment carried out by employers unilaterally, will harm the workers, including (Alfredo Risano, 2006):

1. The worker will lose his livelihood which is a source of livelihood for himself and his family.
2. In terms of finding a job again he has to spend a lot of energy (in and out of the company), the cost of the cover letter, photocopy of the letters and others.
3. The cost of living with his family as long as he has not got a replacement job.
4. Increasing the burden on the government, with increasing unemployment will have a negative impact on the security of society, nation and state

Problems regarding outsourcing are quite varied. This is because the use of outsourcing in the business world in Indonesia is now increasingly rife and has become a necessity that cannot be delayed by business actors, while the existing regulations are not too adequate to regulate the outsourcing that has been running.

LITERATURE REVIEW

Law Synchronization

In the Great Dictionary Indonesian Synchronization means alignment, adjustment, derived and synchronous words i.e., simultaneously, in line, parallel, aligned, conforming and aligned (Anton. M. Moeliono, 1989)

Normative law or literature research includes one of them is research on the level of vertical and horizontal synchronization. (Soerjono Soekanto, Sri Mamudji., 2006)

In research on the level of vertical and horizontal synchronization, what is studied is to what extent the written positive laws that exist are compatible. It can be reviewed vertically, namely whether the legislation that applies to a particular area of life does not conflict with each other, when viewed from the point of the hierarchy of

the legislation. Regarding this research, it can be used as a starting point for the Order of Laws and Regulations of the Republic of Indonesia according to the 1945 Constitution (Memorandum of Source of Legal Order dpr-GR dated June 9, 1966) (Soerjono Soekanto, Sri Mamudji., 2006)

Research on the level of legal synchronization can be done on the basis of at least two starting points, namely the level of synchronization vertically and horizontally. If the vertical repulsion point is taken, then what is studied is the level of synchronization of rules or legislation according to the hierarchy. If research is done on the level of synchronization horizontally, then what is studied is the extent to which a law governing fields that have functional relationships, is consistent levels of synchronization horizontally and various certain kinds (Soerjono Soekanto, 1989).

Regarding research on the level of synchronization horizontally, it can be done in more detail by making a parallel inventory. By placing equal legislation in an equal position, it will be easier to identify the low, medium or high level of synchronization. The level of synchronization is examined by examining the legislation of a particular area of life, in accordance with the improvement of legislation. If research is carried out on the level of horizontal synchronization, then what is reviewed is the equivalent legislation governing the same field (Soerjono Soekanto, Sri Mamudji., 2006). The level of vertical and horizontal synchronization in this study is a synchronization between Law No. 13 of 2003 on Manpower as a sectoral law with higher or equivalent Invitation-Invitation Regulations. It is said that vertical synchronization or higher manpower is an organic law, which is a law made due to a direct order of the 1945 Constitution or it can also be called the implementing law of the 1945 Constitution. In No. 13 of 2003 on Manpower regulates the subjects regarding outsourcing only as ordered by the 1945 Constitution. Meanwhile, what is said by the Regulation per Law is equivalent, including law No. 39 of 1999 on Human Rights and Law No. 11 of 2005 (Ratification of the International Covenant on Economic, Social and Cultural Rights).

Overview of Outsourcing

Outsourcing is defined as the transfer or delegation of several business processes to a service provider body, where the service provider body carries out administrative and management processes based on the definition and criteria agreed upon by the parties. Outsourcing in labor law in Indonesia is defined as the contracting of work and the provision of labor services. The regulation of outsourcing law in Indonesia is regulated in The Law of Manpower No. 13 of 2003 and the Law on Job Creation No.11 of 2020 (Articles 64, 65 and 66) and the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No.Kep.101/Men/VI/2004 of 2004 concerning Procedures for Licensing Workers/Workers Service Provider Companies. The arrangement on outsourcing itself is still considered by the government to be incomplete.

Labor law expert Aloysius Uwiyono said that there are basically two forms of outsourcing that are to be introduced by the Labor Law. The first form is worker outsourcing (Article 66) and the second form is job outsourcing (Article 65). Uwiyono assessed that outsourcing the first form can be viewed as human trafficking. Uwiyono's assessment is based on the assumption that there is an agreement in which the service provider company provides labor and the user (user) handed over a sum of money, then it is as if there was a sale of labor. As for the second type, Uwiyono believes there is no human trafficking. According to him, in this second form, workers / workers still have a working relationship with the contractor company.

Meanwhile, according to Richardus Eko Indrajit quoted by Sehat Damanik,

outsourcing is one of the byproducts of business process reengineering (BPR). BPR is a change made by one company in its management, which is not just an improvement. BPR is carried out to respond to global economic development and rapid technological progress, which gives rise to very fierce global competition. (Healthy Damanik, 2007)

The definition of outsourcing is specifically defined by Maurice F Greaver II, in his book Strategic Outsourcing, A Structured Approach to Outsourcing: Decisions and Initiatives, described as follows: "Strategic use of outside parties to perform activities, traditionally handled by internal staff and respurces." (Alfredo Risano, 2006).

The above opinion can be interpreted that Outsourcing is seen as the act of transferring some of the company's activities and decision-making rights to other parties (outside providers), where this action is bound by a cooperation contract.

In Indonesia the practice of outsourcing has been known since the Dutch colonial era. This practice can be seen from the arrangements regarding the contracting of work as stipulated in article 1601 b of the Civil Code. In it mentioned that the contracting of work is an agreement between two parties that bind each other, to hand over a job to the other party and the other party pays a certain price (Sehat Damanik, 2007)

METHODOLOGY

Research is a basic means in the development of science and technology. This is because research aims to reveal the truth systematically, methodologically, and consistently. Through the research process, analysis and construction were held on the data that has been collected and processed (Soerjono Soekanto, Sri Mamudji., 2006). Legal research is a scientific activity based on certain methods, systematics and thoughts aimed at studying a particular legal phenomenon or some by analyzing (Soerjono Soekanto, 1986)

The research methods in this study are as follows:

Types of Research

Research in general can be classified into several types, and the selection of the type of research depends on the problems specified in the study. This research is a type of normative legal research or doctrinal research.

This legal research is normative legal research that is descriptive, which is normative research that can be interpreted as a problem-solving procedure that is researched by describing or describing the state of the object or subject being studied at the present time based on facts that appear or as they are. Descriptive research aims to describe precisely the properties of an individual, circumstances, symptoms, or certain groups in society (Soerjono Soekanto, 1986) So from that understanding the author seeks to describe the state of an object that is used as a problem.

Research Location

The location of this research was carried out in libraries including the Provincial Library, The Pemko Public Library and the Post Library of the University of North Sumatra by conducting a literature study to obtain the materials needed, this is in accordance with the type of research used in writing this law, which is the type of normative research.

Data Type

In legal research, the data used can be distinguished between data obtained directly from the public and literature materials. Data obtained directly from the public is called primary data (basic data), while those obtained from library materials

are usually called secondary data (Soerjono Soekanto, Sri Mamudji., 2006).

With regard to the type of research that is normative research, then the type of data used in this study is a secondary type of data. Secondary data is data obtained through literature studies. Secondary data is obtained from a number of information or facts obtained indirectly, namely through the study of literature consisting of documents, literature books, and others related to the problem being studied.

Data Source

The data source is the place where the research was obtained. The data source in this study is a secondary data source, which is the place where secondary data is obtained used in this study, including:

1.Primary legal materials

Primary legal materials are legal materials that are binding (Soerjono Soekanto, Sri Mamudji., 2006).

The primary legal materials in this legal research are:

a. Law No. 13 of 2003 concerning Employment,
b. Law No. 39 of 1999 on Human Rights,
c. Law No. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights and
d. Constitution of 1945.

2. Secondary legal materials

Secondary legal material is legal material that provides an explanation of primary legal materials (Soerjono Soekanto, Sri Mamudji., 2006). Secondary legal materials in this study include: literature, books and so on related to the problems studied.

3.Tertier legal materials

Tertier legal material is a material that provides instructions and explanations for primary and secondary legal materials (Soerjono Soekanto, Sri Mamudji, 2006). The most common legal materials in this study include: Indonesian Dictionary, Legal Dictionary.

Data Collection Techniques

The technique used in this research by the author uses the Literature Research Technique, which is a technique in the form of literature studies on books and literature and laws and regulations related to the subject matter studied.

Data Analysis

Data analysis is the process of organizing and sorting data in basic patterns, categories, and descriptions, so that themes can be found and can be formulated work hypotheses as suggested by the data (Lexi J Moleong. 2002). Data analysis technique is a description of the ways of analysis, namely by collecting data then editing is held first, to be used as analytical materials that are qualitative in nature.

Data analysis is the most important stage in normative legal research. Data processing is essentially an activity to carry out the systematization of written legal materials (Soerjono Soekanto, 1986).

The data analysis technique used in this research is data processing which is essentially to systematize written legal materials. So that the activities carried out in the form of data collection, then the data is reduced so that special data related to the problem being discussed will then be studied using material norms or taking the contents of the data in accordance with existing provisions and finally conclusions / verifications will be obtained so that objective truth will be obtained.

In accordance with the type of descriptive data, qualitative data analysis techniques are used, namely by collecting data, qualifying, then connecting theories related to problems and finally drawing

conclusions to determine the results. Data analysis is the next step to process research results into a report.

RESULTS AND DISCUSSION

Synchronization of Outsourcing Arrangements in Law No. 13 of 2003 concerning Manpower with Law No. 39 of 1999 concerning Human Rights

Article 8 of Law No. 39 of 1999 (HUMAN RIGHTS) which reads: "Protection, promotion, enforcement, and fulfillment of human rights is primarily the responsibility of the Government"., in its explanation it is mentioned that what is meant by "protection" is the defense of human rights. The substance in the Article is the protection, promotion, enforcement, and fulfillment of human rights, especially the responsibility of the Government. Government interference including the legislature is very large in fulfilling the rights of citizens, including labor. The birth of this repressive Law actually raises the assessment that policymakers are less able to meet the sense of justice, and usefulness in society.

The analysis:

The substance in the Article is the protection, promotion, enforcement, and fulfillment of human rights, especially the responsibility of the Government. Government interference including the legislature is very large in fulfilling the rights of citizens, including labor. The birth of this repressive Law actually raises the assessment that policymakers are less able to meet the sense of justice, and usefulness in society.

Based on the above analysis, it can be stated that Article 64, Article 65 and Article 66 of Law No. 13 of 2003 concerning Manpower are not in sync with Article 8 of Law No. 39 of 1999 concerning Human Rights.

Article 11 of Law No. 39 of 1999 (HUMAN RIGHTS) which reads: "Everyone has the right to fulfill their basic needs to grow and develop properly".

The analysis:

The substance in the Article is that everyone has the right to fulfill his basic needs to grow and develop properly. So that the application of outsourcing must also pay attention to the needs and feasibility of each outsourced worker / worker.

Based on the above analysis, it can be stated that Article 64, Article 65 and Article 66 of Law No. 13 of 2003 concerning Manpower are not in sync with Article 11 of Law No. 39 of 1999 (Human Rights).

Article 38 of Law No. 39 of 1999 (Human Rights) The substance is (1) Every citizen, in accordance with talent, proficiency, ability, entitled to a decent job; (2) Everyone has the right to freely choose the job he likes and is entitled to fair employment conditions; (3) Everyone, whether male or female performing the same, comparable, equal and similar work, shall be entitled to the wages and conditions of the same employment agreement; (4) Every man, both male and female, in doing work commensurate with his human dignity is entitled to a fair wage in accordance with his achievements and can guarantee the survival of his family.

The analysis:

The substance is (1) Every citizen, in accordance with talent, proficiency, ability, entitled to a decent job; (2) Everyone has the right to freely choose the job he likes and is entitled to fair employment conditions; (3) Everyone, whether male or female performing equal, comparable, equal and similar work, is entitled to wages and conditions of the same employment agreement; (4) Every person, both male and female, in doing work commensurate with his human dignity is entitled to a fair wage in accordance with his achievements and can ensure the survival of his family. Outsourcing arrangements in the labor law and its implementation regulations are intended to provide legal certainty and at the same time provide for workers / workers. That in practice there is something that has not been implemented as it should be is

another matter and not because of the rules themselves. It's just that it is recommended to further multiply or strengthen the juridical argument that this Law is indeed needed.

Based on the above analysis, it can be stated that Article 64, Article 65 and Article 66 of Law No. 13 of 2003 concerning Manpower are not in sync with the legal basis of outsourcing in Law No. 13 of 2003 on Manpower.

Synchronization of Outsourcing Arrangements in Law No. 13 of 2003 concerning Employment with Law No.11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights

Article 7 of Law No. 11 of 2005 (Ratification of the International Covenant on Economic, Social and Cultural Rights), namely:

a. Rewards that all workers provide, at least:
1. Fair wages and equal rewards for equal work of value without any distinction, especially for women should be guaranteed working conditions not lower than those enjoyed by men of equal pay for the same work;
2. A decent life for them and their families;
b. Occupational safety and health;
c. Equal opportunity for everyone to be promoted to a higher level without any consideration other than seniority and ability;
d. Rest, holidays and restrictions on reasonable working hours and periodic holidays with salaries and rewards on public holidays.

The analysis:

The substance in the article is the right of everyone to enjoy fair and favorable working conditions, and in particular guarantees: a. Rewards that all workers provide, at least: (i) Fair wages and equal rewards for equal work of value without any distinction, especially for women should be guaranteed working conditions that are not lower than those enjoyed by men with equal pay for the same work; (ii) A decent life for them and their families; b. Occupational safety and health; c. Equal opportunity for everyone to be promoted to a higher level without any consideration other than seniority and ability; d. Rest, holidays and restrictions on reasonable working hours and periodic holidays with salaries and rewards on public holidays. Outsourced workers have been easily fired and recruited. This is because workers are placed as a factor of production only (aka as merchandise) in contract and outsourcing work schemes, where the scenario of labor market flexibility is determined by whether or not workers are fired and recruited again with low wages (hiring and firing politics).

Based on the above analysis, it can be stated that Article 64, Article 65 and Article 66 of Law No. 13 of 2003 concerning Manpower are not in sync with the legal basis of outsourcing in Law No. 13 of 2003 on employment.

Based on the above exposure, actually Law No. 13 of 2003 on Manpower does not have good enough legitimacy in outsourcing arrangements, both from the juridical and sociological side. Especially when synchronized with higher or equivalent Invitation-Invitation Rules, including:

First, ideologically, the birth of articles of contract work and outsourcing that harm workers is the dominant product of neoliberalism which is very contrary to the economic character of the Indonesian nation embraced in article 33 of the 1945 Constitution, based on the principle of family and togetherness (also referred to as the "popular economy"). The article of contract work and outsourcing associated with the competitive power of investment (labour market flexibility) is clearly based on providing opportunities for the free power of financiers to deprivate the principles of the popular economy. In short, the ideological battle between populist economics vs. neo-liberal economics.

Second, in terms of job worthiness guarantees, that the consequences of

contract work and outsourcing have directly reduced workers' rights, especially regarding various benefits, social security and proper job security.2 The status and rights between permanent workers and contract workers are clearly different, especially regarding these two things. Many found the fact that excessive efficiency to solely increase investment will encourage the policy of low-cost wages and result in reduced social security and security work for workers (Standing 1999). That is, repressive investment politics actually has the potential to reduce the quality of life and welfare of Indonesian workers.

Third, inconsistencies in the application of working relationships. When viewed from the definition of Employment Relations in Law No. 13 of 2003, article 1 paragraph (15) which states: employment relationship is a legal relationship that arises between workers and employers based on employment agreements that have the characteristics of wages, orders, and the existence of employment. However, in Article 66 paragraph (2) a it is stated that between workers' service providers, there must be an employment relationship. Whereas between the company providing workers' services with workers the legal relationship does not meet the elements of orders, employment and wages. But in Article 66 paragraph (2) required the existence of a working relationship between workers and worker service providers. The application of such inconsistent working relations is indeed once again not in accordance with the model of economic democracy and the principle of togetherness as stated in article 33 paragraph (4) of the 1945 Constitution.

Fourth, workers are easily fired and recruited. This is because workers are placed as a factor of production only (aka as merchandise) in contract and outsourcing work schemes, where the scenario of labour market flexibility is determined by whether or not workers are fired and recruited again at low wages (hiring and firing politics).

Fifth, the legal guarantee of the sale of modern humans (legalized modern slavery). Others call it modern-day slavery. The legalization of "work-building" (outsourcing) as stipulated in Articles 64-66, is a practice of buying and selling people who take advantage of the situation of economic downturn, so that it is the workers who must be sacrificed in investment politics, most easily enslaved and treated as a land cow of the owners of capital alone. The argument that in practice outsourcing has been going on and "rather than not being regulated it is better regulated" cannot be an excuse, because in practice Indonesian workers have long had to experience this.

Sixth, the paradigm of conflict. The legal paradigm should be used as a basis in the formation of a law, namely the partnership paradigm, of course with the foundation of the 1945 Constitution article 33. But in reality, Law No. 13 of 2003 is not applying a partnership paradigm that must be used as a theoretical basis for drafting laws, but a conflict paradigm. (Uwiyono, Aloysius, 2003)

Outsourcing arrangements in the labour law and its implementation regulations are intended to provide legal certainty and at the same time provide for workers / workers. That in practice there is something that has not been implemented as it should be is another matter and not because of the rules themselves. It's just that it is recommended to further multiply or strengthen the juridical argument that this Law is indeed needed. Therefore, to ensure its implementation properly so that the goal is achieved to protect workers / workers, it is necessary for the Labour Supervisor and by the community in addition to the need for awareness and good faith of all parties.

In fact, this conflict is not only with the constitution, but also many collide with a number of other laws and regulations, especially regarding human rights.

It should also be stated that the Law has been tested to the Constitutional Court, where among the 9 judges, only two have opposed (dissenting opinion) the rules of

contract work and outsourcing in Law No. 13 of 2003, namely Prof. H. Abdul Mukthie Fadjar and H.M. Laica Marzuki. According to the two of them:

"The outsourcing policy listed in Articles 64-66 of the Labour Law has disrupted the peace of work for workers / workers who at any time can be threatened with termination of employment (LAYOFF) and downgrading them as just a commodity, so they are less protective of workers / workers. That is, the Labour Law is not in accordance with the paradigm of humanitarian protection listed in the Opening of the 1945 Constitution and is contrary to Article 27 paragraph (2) of the 1945 Constitution" (Constitutional Court Ruling, 2004)

While the other 7 judges argued with the consideration that the attractiveness of foreign interests in the rule of law of one country entered through persuasion to balance the economic interests of the affected party of one law, cannot be said to be interference in the sovereignty of one country, as long as the authority to form the law is still carried out freely and independently by the lawmakers, without coercion, deceit and direct intervention of force. Foreign capital interests are reasonably considered freely and independently by lawmakers with regard to national interests. (Constitutional Court ruling, 2004) What an absurd thought and disavows the ideological dimension of economic effort under Article 33 of the 1945 Constitution and fails to understand the context of the policy paradigm that actually harms workers' rights.

With the six arguments mentioned above, actually the articles on contract work and outsourcing in Law No. 13 of 2003 are clearly problematic and contrary to not only the 1945 Constitution as the basic and highest law in Indonesia, but also contrary to human rights. From an ethical perspective, it is not too difficult to state that such rules of contract work and outsourcing have reduced human values as the basis of state philosophy and article 27 paragraph (2) of the 1945 Constitution. Then, what does it mean to treat "decently" and "humanity" when human beings have been regarded as goods, which are traded and enslaved. This can clearly be said unjust law is not law (unjust law is not law), because it loses its essence of law as a protector of the weak.

Therefore, it is not so surprising that now we easily witness how much it has an impact on the non-conducive and counterproductive problems of outsourcing in Indonesia, nor does it reduce poverty and unemployment. The wrong mantra, this is the politics of our labor law today that are truly legalized and systematic human rights violations (systematic and legalized violations of human rights).

Ideal Concept for Regulating Labor Problems in Order to Guarantee Labor Rights

In principle, companies that accept jobs that have a working relationship with workers / workers. Likewise, the rights and obligations of the employer and the company receiving the job must be clearly and firmly regulated in a "written agreement" between the employer and the receiving company.

However, legal violations carried out solely to follow the demands of the community will eliminate legal certainty if it is not restricted. The absence of legal certainty will certainly make the guarantee of human rights protection of citizens not exist when they face a case in court. Therefore, restrictions on law enforcement must also be carried out so that community demands can be met by not ignoring the realization of legal certainty and law enforcement officials are not only the mouth of the law. With such an arrangement, it is expected to provide opportunities for the business world to develop its business, but also provide certainty of rights for workers related to the outsourcing system.

Kranenburg is a student as well as a substitute for Prof. Krabbe trying to find a proposition that becomes the basis for the

functioning of people's legal awareness. The proposition was formulated by Kranenburg as follows: everyone receives benefits or loses as much as the basics have been set out in advance. This proposition by Kranenburg is called the principle of balance. Kranenburg continued Krabbe's understanding by suggesting that the reaction of the legal consciousness has agency properties (wetmatig heid). The reaction is balanced with the action embodied in his theory called ovenredigheids, postulat. For example, in a buying and selling relationship where profit and loss to go to balance.

Balance Theory (Prof. Mr. R. Kranenburg): the legal consciousness of people becomes the source of the law, the law functions according to a real proposition Kranenburg including adherents of the welfare state theory. According to him, the purpose of the state is not only to maintain law order, but also actively strive for the welfare of its citizens. Welfare also covers a wide range of fields, so it should be called the country's goals in a plurality: the goals of the state. He also stated that efforts to achieve the country's goals are based on justice in an even, balanced manner.

Prof. Mr. R. Kranenburg is a German jurist who initiated the welfare state theory. According to him, the purpose of the country there are 3, namely:

- The state is not merely maintaining law order, but actively pursuing the welfare of its citizens.
- The state must really act fairly that can be felt by all citizens equally and equally
- The state of law is not only for certain rulers or groups but for the welfare of all the people in the state.

Since long ago, humans lived together, grouped to form a certain society, inhabit a place, and produce culture according to these circumstances and places. Human beings are naturally individual beings and social beings. Humans as individual beings have a solitary soul life, but humans as social creatures cannot be separated from society. Every human being has his own nature, character, and will. But in society humans have relationships with each other, cooperate, please help, help to obtain the needs of their lives. Every human being has interests, and often these interests are different and some are even contradictory, so as to cause disputes that interfere with the harmony of living together.

If the imbalance of community relations that become disputes is allowed, then there may be divisions in society. Therefore, from human thought in society and social creatures the human group produces a culture called a certain rule or rule or law that regulates all its behaviour so as not to deviate from the human heart.

Along with the passage of time and the development of the times, human culture has developed as well. Including legal developments. The growing civilization makes human life in dire need of rules that can limit human behaviour itself which has deviated a lot along with the development of human thought that is increasingly advanced. The rules or laws undergo changes and continue to undergo changes that are adjusted to the progress of the times. For this reason, a country of law urgently needs to pay attention to this.

In terms of the interests of workers, the existence of contracting jobs or labour service providers need to have a clear work relationship firmness so that the fulfillment of workers' rights based on labour laws and regulations is clearly responsible. For this reason, workers must be bound by an employment agreement with the company that employs them.

This is important because in recent years the implementation of outsourcing has been done deliberately to reduce the cost of workers (labour costs) with protection and work conditions provided far below what should be given so that it is very detrimental to workers.

The implementation of such outsourcing can cause worker unrest and is not infrequently followed by strike action,

so the intention of holding outsourcing as mentioned above becomes unattainable, due to disruption of the process of producing goods and services.

Therefore, both companies and workers in order to always be able to live together without conflicts of interest as a result of different opinions or thoughts, it is necessary to implement outsourcing in accordance with applicable laws and regulations, as a guideline for behaviour formally.

The guidelines, known as the rule of law, aim to achieve peace in a common life, where peace means harmony between order and tranquillity, or harmony between attachment and freedom. That is the purpose of the law, so that the task of the law is nothing but to achieve a harmony between legal certainty and the comparability of the law.

This should be in line with R. Kranenburg's Theory of Balance which states that the state must actively strive for welfare, act fairly that can be felt by the whole community equally and balancely, not the welfare of certain groups but all the people. Then it will be very careless if the economic development is denied, then economic growth is only viewed and concentrated on a mere percentage figure. The well-being of the people is a real indicator. The development of the global economy and rapid technological progress have brought many changes in various sectors, causing such fierce business competition in all business sectors. This highly competitive condition requires the business world to adapt itself to market demands that require a quick and flexible response in improving service to customers.

On the basis mentioned above, that disruption of the implementation of outsourcing that protects workers' rights may occur, if there is a mismatch between values, rules and behaviour patterns. The disorder occurs when the mismatch between the values in pairs, which incarnate in the rules of the siur, and the pattern of undirected behaviour that interferes with the implementation of the above.

Changes in these various sectors are also one of the causes of social change, including in the field of labour law. The above statement, will remind us to: first, the soul of the Opening of the 1945 Constitution and article 27 (2) of the 1945 Constitution. Second, Law No. 13 of 2003 concerning Manpower (UUK)

R. Kranenburg's statement in relation to the implementation of outsourcing expressly states that the task of the state politically in meeting the needs of its people and to realize the balance is needed that the state in a political perspective also seeks to agree on the fulfillment of the needs of the community through development planning and the administration of the state that realizes or implements it. Therefore, the implementation of outsourcing must protect workers' rights not solely the implementation of law enforcement. The above factors need to get attention in the implementation of outsourcing. This is intended so that workers really get the protection they deserve in accordance with the rights they have. In addition, protection for workers is a very important factor in order to create balance in working relationships, so that equitable social justice is realized in the field of labour in accordance with the foundation of Pancasila and the 1945 Constitution.

One form of legal protection and certainty, especially for these workers, is through the implementation and application of work agreements. An Employment Agreement is an agreement made between an employer and a worker that contains the rights and obligations of employers and workers, including terms of employment, wages, and means of payment. With the employment agreement, it is expected that the parties who agree to work relations are more aware of the rights and obligations of each party and know for themselves whether he has implemented the agreement properly or he violated the agreement.

CONCLUSION

There is a misalignment both horizontally and vertically between Law No. 13 of 2003 on Manpower and higher and equivalent Regulations. The legal basis for the enactment of outsourcing (Outsourcing) in Law No.13 of 2003 concerning Manpower, is not in sync with the regulation per higher or equivalent Law, including article 8, Article 11, Article 38 of Law No. 39 of 1999 concerning human rights and Article 7 of Law No. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights.

In everyday practice, "outsourcing" has been recognized as more detrimental to workers' rights. This can happen because before the Labor Law No. 13 of 2003, there was no single law in the field of labor that regulates the protection of workers in the implementation of outsourcing. This is what causes controversy over outsourcing which is certainly a problem for companies, especially for the workforce. Therefore, there are pros and cons to the use of outsourcing, because it turns out to be related to the use of outsourcing in Indonesia.

The solution in overcoming the problem or controversy of outsourcing, the author analyzes it using a theory from Kranenburg called the theory of balance, that is, with the legal awareness of people being the source of the law, the law functions according to a real proposition. in relation to the implementation of outsourcing expressly states that the task of the state politically in meeting the needs of its people and to realize the need for balance that the state in a political perspective also seeks to agree on the fulfillment of the needs of the community through development planning and the administration of the state that realizes or implements it. Therefore, the implementation of outsourcing must protect workers' rights not solely the implementation of law enforcement. The above factors need to get attention in the implementation of outsourcing. This is intended so that workers actually get the protection they deserve in accordance with the rights they have. In addition, protection for workers is a very important factor in order to create balance in working relationships, so that equitable social justice is realized in the field of labor in accordance with the foundation of Pancasila and the 1945 Constitution.

SUGGESTION

Law No. 13 of 2003 and its revised package is one form of re-regulation that means deregulation of true labor law. Therefore, it is necessary to re-regulate or amend the deregulated labor law that regulates specifically on outsourcing. As a protection for workers' rights deprived by the new regulations. So that later it is expected to be in sync or at least be able to minimize incoherence with higher laws and regulations and equivalents.

The obligation of an employer or company is to communicate with workers or workers, through trade unions of business decisions that impact workers or outsourced workers, so that controversy can be immediately suppressed. And the government's obligation to bridge employers and labor must be fulfilled, one of which is by making regulations that can give a sense of justice for both parties. so that later there must be understanding and understanding between the Government, Employers and Workers / workers in terms of the formation of regulations that regulate specifically regarding socially just outsourcing for all Indonesian people.

REFERENCES

1. Alfredo Risano, Paper: Introduction to Legal Science: Outsourcing, Universitas Airlangga, Surabaya, 2006
2. Anton. M. Moeliono. A big dictionary Indonesian. Ctk. First. Language Development and Development Center Team DEPDIKBUD. Graha Pustaka. Jakarta . 1989.

3. Soerjono Soekanto, Sri Mamudji. Normative Law Research (Statu Brief Review).. First Print PT. Raja Grafindo Persada. Jakarta. 2006.
4. Sehat Damanik, Outsourcing dan Perjanjian Kerja Menurut UU No.13 Tahun 2003 tentang Ketenagakerjaan, DSS Publishing, Jakarta, 2007.
5. Soerjono Soekanto, Introduction to Legal Research, Third Print, University of Indonesia (UI-Press) Jakarta, 1986.
6. Lexi J Moleong. 2002. Qualitative Research Methodology. Second print, PT Remaja Rosdakarya. Bandung.
7. Uwiyono, Aloys ius "Statement as An Expert Witness", Constitutional Court Hearing in Judicial Review of Law No. 13 of 2003 on Manpower, Jakarta, 2003.
8. Constitutional Law 1945
9. Law Number 13 of 2003 concerning Employment
10. Law Number 39 of 1999 concerning Human Rights
11. Law Number 11 of 2005 concerning Ratification of the International Covenant on Social and Cultural Economic Rights
12. Constitutional Court Decision, Case Number: 012/PUU-I/2003, Thursday, October 28, 2004.
13. Wirawan, Rubric of The Law Of Barking: What Is an Outsourcing System?, http://www.pikiran-rakyat.com/cetak/0504/31/teropong/komenhukum.htm.

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