

Legal Protection of Outsourced Labor Based on Law No.13 of 2003 in PT Pertamina Trans Continental Port Jakarta

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| Article Info | ABSTRACT |
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| <p>Keywords: Outsourcing, Legal Protection, PT. Pertamina Trans Kontinental Port</p> | <p>The outsourcing system is regulated legally, but in reality many workers feel disadvantaged and want the outsourcing system to be abolished. In this case, the request for legal protection for workers at PT Pertamina Trans Kontinental Port Jakarta was caused by problems with the outsourcing system at PT Pertamina Marine Solution, the problem is that workers whose outsourcing contracts are regulated to be Effective from January 1 to December 31, but when changing or extending a new contract, it is usually issued or signed by outsourcing workers around March. The new contract has not been issued but workers have started working and their salaries are paid continuously every month. If later a problem arises, how can workers claim insurance when there is no clarity in the outsourcing contract? The problem that occurs is the result of weak legal protection for outsourcing workers. The research method used is empirical with a normative approach. The data sources used are primary data and secondary data. Primary data is data obtained from related parties involved in this study, namely the entrepreneur PT Pertamina Trans Kontinental Port Jakarta, the outsourcing actor PT Pertamina Marine Solution (PMSol) and workers at PT Pertamina Trans Kontinental Port Jakarta. While secondary data is data obtained from literature studies. Based on the results of research on the implementation of legal protection for workers, the implementation of fixed-term work agreements at PT. Pertamina Trans Kontinental Port Jakarta still does not comply with the provisions of laws and regulations, namely, fixed-term work agreements that are not recorded or there is no renewal of worker documents, because the company realizes that the fixed-term work agreement is not in accordance with laws and regulations, weak supervision from the authorities, workers' ignorance of PKWT, workers' lack of courage because they are afraid of being laid off, and workers' apathy. and the legal consequences of fixed-term work agreements that are not recorded or there is no renewal of documents, namely by law they change into PKWTT.</p> |
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INTRODUCTION

Indonesia is one of the countries with the largest population in the world. In 2024, Indonesia will be recorded as having the 4th largest population in the world. The rapid development of the population has resulted in an increasing number of unemployed. This is due to the unavailability of jobs and the lack of quality Human Resources in Indonesia.

But with the development of science and technology, many Indonesian people or communities cannot follow the development of science and technology. So that many Indonesian people are still left behind and lack skills. This is because many Indonesian people or communities do not go to school and lack knowledge. The development of science and technology also has a positive impact on Indonesian society, especially in the field of employment. With the development of science and technology, it creates opportunities for someone or Indonesian people who have sufficient education to work, thereby reducing the number of Indonesian people who are unemployed or often referred to as unemployed. The number of unemployed is marked by the development of science and technology that occurs rapidly and widely which causes business competition, especially in terms of employment. Unemployment in Indonesia is also quite large with a percentage of 4.91% totaling 7,466 people, this is due to the lack of education and the increasingly rapid development of science and technology.

Workers, especially laborers, are often in the public eye regarding their economic fate during unstable economic times like today. The problem that is often raised is when workers demand decent wages for them and on the other hand, employers are facing less than ideal business conditions that stem from many factors such as rising production costs and so on. Such conditions are important factors in the emergence of labor laws and regulations. The goal is to balance the legal treatment of both employers and workers so that they can realize rational welfare and justice.

Another problem that often arises, apart from workers' wages, is the unclear work agreement implemented by the outsourcing party, which often harms the workforce. Protection of workers is intended to guarantee the basic rights of workers/laborers and guarantee equality, opportunity, and non-discriminatory treatment on any basis to realize the welfare of workers/laborers. Protection of workers is protection that concerns aspects of social security, working hours, minimum wages, the right to associate, the right to assemble and protection of worker safety. Fundamental protection of workers/laborers' rights can create conditions that are conducive to the development of the business world.

Outsourcing labor is outsourced labor provided by a company providing outsourcing labor services and distributed to other companies that require outsourcing labor. This outsourcing labor is contracted by a company that requires outsourcing labor through an employment agreement with the outsourcing labor provider company. The employment agreement in outsourcing is carried out in two stages, namely the agreement between the company using the outsourcing service and the outsourcing company as the labor service provider, and the agreement between the outsourcing company and the worker/laborer. An employment agreement is an agreement between an entrepreneur or employer and a worker that contains the terms of employment, rights, and obligations of the parties.

The daily practice of outsourcing has been recognized as being more detrimental to workers/laborers because the employment relationship is always in the form of a non-permanent or contract (a fixed-term work agreement, lower wages, social security if any is only minimal, no work supervisors, and no guarantee of career development. Thus, if it is true in such circumstances, it is said that the practice of outsourcing will cause misery to

workers/laborers and lead to industrial relations disputes.

The outsourcing system is regulated legally, but in reality many workers feel disadvantaged and want the outsourcing system to be abolished. The request to abolish the outsourcing system seems to be an annual agenda for workers or labor unions in Indonesia. One of them was the Peaceful May Day action (May Day 2018) at the Adipura Monument in Bandar Lampung with demands for decent wages for workers and also the abolition of the outsourcing system.

METHOD

Legal research method is a scientific activity based on certain methods, systematics and thoughts, which aims to study one or several specific legal phenomena by analyzing them. The function of the legal method is a tool to find out a problem to be studied, whether social science, legal science, or other sciences that aim to gain knowledge about legal phenomena so that they can formulate problems and to describe completely the legal aspects.

RESULTS AND DISCUSSION

Legal Protection for Outsourcing Workers at PT Pertamina Trans Kontinental Port Jakarta

PT. Pertamina Marine Solutions is an outsourcing company that provides services and distributes workers with certain skills to companies that need outsourcing services, especially for PT Pertamina Trans Kontinental Port Jakarta. The company provides workers who have expertise in all fields that aim to help companies using outsourcing services in overcoming all the needs required and facilitating the development of a business owned by the company using outsourcing services.

An employment agreement is made based on an agreement between the employer and the employee, namely that the employee binds himself to the employer with the employment agreement, then the employment relationship between the employer and the employee can begin. The mechanism for making an employment agreement is regulated in Article 54 paragraph (1) of Law Number 13 of 2003 concerning Employment, which explains that an employment agreement made in writing must at least contain the identities of the parties, positions, types of work, amount of wages, work conditions containing the rights and obligations of the employer and employee, date and term of the employment agreement, signatures of both parties. The employment agreement that has been made in Article 54 paragraph (1) letters e and f cannot conflict with company regulations, joint employment agreements, and laws and regulations. After that, the employment agreement is made in at least 2 (two) copies, which have the same legal force, and the employee and employer each receive 1 (one) copy of the employment agreement. In making this agreement, what often happens in the employment law system is regarding fixed-term employment agreements and indefinite-term employment agreements. The implementation of employment agreements is often not in accordance with the provisions of labor laws, there are still frequent violations committed by several companies related to the implementation of fixed-term employment agreements. As is the case with PT. Pertamina Marine Solutions in the implementation of fixed-term employment agreements that still violate the provisions of labor laws and

regulations.

The implementation of the work agreement at PT. Pertamina Trans Kontinental Port Jakarta is a Fixed Term Work Agreement (PKWT) and an Indefinite Term Work Agreement (PKWTT). Which almost all types of work carried out at PT. Pertamina Trans Kontinental Port Jakarta uses a contract system carried out by outsourcing PT Pertamina Marine Solution (PMSol). The following is an explanation from Fictor Krismanto as the HRD Manager of the company representative at PT Pertamina Marine Solution (PMSol). regarding the use of the PKWT system "in the initial contract, employees will be contracted for 1 year, if it has been 1 year then the contract will be extended, the contract period is January to December".

Related to the statement that PT. Pertamina Marine Solution (PMSol) provides an initial contract with a period of 1 (one) year and can be extended again, the substance of which is the date of making a fixed-term work agreement and the agreement of both parties to make the agreement. The identity of the company as the first party containing the name, position, address, the making of the work agreement the company is represented by the HRD manager, the identity of the worker as the second party containing the name, NIK, position, or type of work to be obtained, and the address of the worker, the term of the fixed-term work agreement, this contains that this work agreement is valid for 1 (one) year. The provisions of the work rules in this case contain the work rules and rights and obligations between the company and the worker, the type of work, which contains the position and description of the work assigned to the worker, then the closing.

In the implementation of a fixed-term employment agreement at PT. Pertamina Marine Solution represented by Mr. Fictor as HRD Manager and Mr. Adhitya as Staff Employee of PT Pertamina Marine Solution (PMSol), the employment agreement made by PT Pertamina Marine Solution (PMSol) agreed to by the workers in fact complies with the provisions of the Manpower Law, namely the employment agreement made by PT. Pertamina Marine Solution (PMSol) in accordance with Article 51 of Law Number 13 of 2003 concerning Manpower where the employment agreement can be made in writing or verbally. PT. Pertamina Marine Solution (PMSol), uses a written work agreement, then Article 52 of Law Number 13 of 2003 concerning Manpower in the case of a work agreement both parties have agreed to enter into a work agreement, then the implementation of the work agreement is also in accordance with Article 54 of Law Number 13 of 2003 concerning Manpower where the agreement must have the identity of both parties, position, amount of wages, and the rights and obligations of employers and workers, all of which are in the work agreement between the company represented by Mr. Fictor and Mr. Adhitya as representatives of the company PT Pertamina Marine Solution (PMSol), then the work agreement that has been made by PT. Pertamina Marine Solution (PMSol) uses Indonesian, in this case it is in accordance with Article 57 of Law Number 13 of 2003 concerning Manpower where the article explains that a fixed-term work agreement must be made in Indonesian and in writing.

However, in the implementation of a fixed-term work agreement at PT. Pertamina Trans Kontinental Port Jakarta, it was found from the results of worker interviews that there are still several employees at PT. Pertamina Trans Kontinental Port Jakarta who still use the contract system or Fixed-Term Work Agreement (PKWT) continuously. This is in accordance with the

statement of Mr. Dian Setiawan as a worker representative who stated that "I have worked for more than 5 years, but until now my status is still a contract employee, the creation of the work contract that I received is for a period of once a year".

The implementation of a fixed-term employment agreement continuously is not in accordance with Article 59 paragraph (4) of the Manpower Law where a fixed-term employment agreement based on a certain period of time can be made for a maximum of 2 (two) years and may only be extended once for a period of 1 (one) year. In this case, the implementation of a fixed-term employment agreement carried out continuously by PT. Pertamina Marine Solution (PMSol) is not in accordance with the period stipulated by the manpower provisions. The law clearly stipulates that a fixed-term employment agreement may not be made continuously. This provision is also regulated in Article 3 paragraph (2) of the Minister of Manpower and Transmigration Decree Number 100 of 2004 concerning the Implementation of Fixed-Term Employment Agreements which regulates that fixed-term employment agreements are made for a maximum of 3 (three) years. Then in Article 59 paragraph (6) of Law Number 13 of 2003 concerning Manpower regulates that the renewal of a fixed-term work agreement can be done 1 (one) time in a period of 2 (two) years, this can be done after exceeding the grace period of 30 (thirty) days from the end of the previous fixed-term work agreement. In this case, Mr. Dian as a representative of workers at PT. Pertamina Trans Kontinental Port Jakarta said that "after three years of contract, the annual contract is extended but the signing of a new contract between workers and the company is usually in the middle of the year. The contract period is January to December. However, the new contract is signed around March so that at the beginning of the year the outsourcing workers work without a contract." From this statement, the renewal of the fixed-term work agreement is not in accordance with the provisions of the employment law, because the renewal did not go through a grace period of 30 (thirty) days from the end of the old work agreement. This is also stated in Article 3 paragraph (6) of the Minister of Manpower and Transmigration Decree Number 100 of 2004 concerning the Implementation of Fixed-Term Work Agreements, where a fixed-term work agreement is made after exceeding a grace period of 30 (thirty) days from the end of the first work agreement.

Dian Setiawan has worked for more than 5 years, where the extension of a fixed-term work agreement can only be done once for 1 (year) and the renewal of a fixed-term work agreement can only be done once for a period of 2 (two) years, from this, the maximum period of a fixed-term work agreement is 5 (five) years. So that the work agreement according to Article 59 paragraph (7) of Law Number 13 of 2003 concerning Manpower states that "A fixed-term work agreement that does not meet the provisions as referred to in paragraph (2), paragraph (6) then by law becomes a fixed-term work agreement (PKWTT)".

Dian Setiawan stated that "during the contract extension, I have not received the latest work agreement in the initial period, usually the latest contract I receive in March or even in the middle of the year, but I still continue to work as usual as it should be, with this I am very worried about the protection of my job if at some point there is a problem either from within the health and safety of the work it is difficult to make a claim for such behavior, because I have not signed the latest work agreement and have not received it in the initial period in

January as it should be". A fixed-term work agreement must be made in accordance with laws and regulations where one of the requirements is Article 59 paragraph (4) is that the term of the work agreement may not exceed 3 years and in writing. "So if PT. Pertamina Marine Solution (PMSol) applies a fixed-term work agreement/contract system that is carried out continuously and not in writing, then PT. Pertamina Marine Solution (PMSol) is violating the rules, therefore the company that makes the work agreement with its workers by implementing a fixed-term work agreement continuously, then this cannot be justified.

In the case of a fixed-term employment agreement, the first and most important point in making an employment agreement is the agreement of the parties. Fixed-term employment agreements that are carried out continuously and work that is continuous in nature, according to the provisions of the Manpower Law are indeed not permitted because it is clear in Article 59 paragraph (7) that if paragraphs (2) and (6) are violated, the legal consequences of the employment agreement will by law change into an indefinite-term employment agreement. However, it goes back to the valid conditions of an employment agreement which are regulated in Article 52 paragraph (1) letter a that the employment agreement is based on the agreement of the parties. So if the worker does not take issue with this to the company, the employment agreement will continue to apply, even though the fixed-term employment agreement is not in accordance with the law. This is because to legally declare whether or not a fixed-term employment agreement is a PKWT, the worker must file an industrial relations dispute, where this is a dispute over the right to change the status of PKWT to PKWTT related to the violation of Article 52 paragraph (1) and Article 59 paragraph (7) of Law Number 13 of 2003 concerning Manpower.

In Article 59 paragraph (1) in conjunction with the explanation of the article indirectly states that a fixed-term work agreement must be registered with the relevant agency responsible for Manpower in this case the Manpower Office, then in Article 13 of the Minister of Manpower Decree where companies that implement a fixed-term work agreement system for their workers are required to register the work agreement at the Regency/City Manpower Office. In its implementation, PT. Pertamina Marine Solution (PMSol), which did not implement a written extension of the work agreement, the company argued through Mr. Fictor as the HRD Manager representing the Company at PT. Pertamina Marine Solution (PMSol) that "the fixed-term work agreement was actually extended but was not issued in the proper period because there was a difference between the current situation and the desired goal (GAP) of signing the contract between the outsourcing service provider and the outsourcing workforce." This clearly contradicts the Minister of Manpower Decree. The fixed-term work agreement made by PT. Pertamina Marine Solution (PMSol) in the extension and renewal did not have a written work agreement.

The process of recording a fixed-term work agreement is in accordance with the law because a fixed-term work agreement made by an employer must be in accordance with Article 59 paragraph (1) of Law Number 13 of 2003 concerning Manpower, where all of these requirements must be fulfilled. If the company making the fixed-term work agreement is deemed by the Manpower Service to not have complied with the law, it will be returned and given the opportunity to improve the work agreement.

In addition to the reasons above, based on an interview with Mr. Fictor as the HRD Manager representing the Company at PT. Pertamina Marine Solution (PMSol), the reasons for extending the work agreement not in accordance with the period are because there is a difference between the current situation and the desired goal (GAP) of signing the contract between the outsourcing service provider and the outsourcing workforce. According to these reasons, there are 2 factors that cause companies not to make a written fixed-term work agreement, namely the first is related to workers' ignorance of the recording of the fixed-term work agreement, this ignorance of workers is often used by companies to violate the provisions governing the fixed-term work agreement, especially related to the obligation to record the fixed-term work agreement to the district/city labor office. In addition, workers' ignorance of the company's obligation to record the fixed-term work agreement indicates a lack of socialization from related agencies to workers, even though workers' knowledge is very important because it aims to protect the rights of these workers. The absence of a labor union is also an important factor because the purpose of the labor union is to provide protection, and defense of rights and interests, as well as improve the welfare of workers and their families.

The second factor is the weak supervision of companies related to the implementation of the obligation to record fixed-term work agreements, which is an important concern in the aspect of law enforcement in the field of employment. In the field of supervision, the lack of quality and quantity of human resources in labor inspectors at the Manpower Office is one of the factors in the weak supervision of the implementation of fixed-term work agreements. Meanwhile, the implementation of supervision should be adjusted to the provisions of Article 134 of Law Number 13 of 2003 concerning Manpower, which states that "In realizing the implementation of the rights and obligations of workers/laborers and employers, the government is obliged to carry out supervision and enforcement of laws and regulations."

Outsourcing Responsibilities

Outsourcing workers become part of the outsourcing company, where their welfare, including wages and dispute resolution, is the responsibility of the service provider company. This provision is regulated in Article 66 of the Job Creation Law and PP No. 35 of 2021, which stipulates the obligations of outsourcing workers. The service provider company is responsible for meeting all the needs of workers while they are working in another company and resolving disputes if workers commit unlawful acts in the workplace. If a dispute occurs where the worker's actions harm the main company, the main company or the company using the outsourcing workforce has the right to demand accountability from the service provider company.

Responsibility also reflects an awareness of the obligations that must be fulfilled. The concept of responsibility indicates human actions related to self-control and is part of the intellectual or mental thought process. Article 81 number 20 of the Job Creation Law emphasizes legal protection for outsourcing workers, regulating the obligations of outsourcing companies to protect workers' rights related to salaries, welfare, work conditions, and dispute resolution in accordance with applicable regulations. If an outsourcing company uses PKWT to employ workers, then the protection of their rights must be transferred when

the outsourcing company changes, as long as the work they do still exists. This indicates that the protection of workers' rights must be transferred in the case of a change in outsourcing company, so that the rights and responsibilities obtained by workers while working at the main company or their current workplace must remain intact and must not be reduced.

If the work period is less than one year, workers are entitled to receive payment equivalent to one month's wages. For a work period of between one and two years, the payment received is equivalent to two months' wages. Meanwhile, for a work period of between two and three years, the payment given is three months' wages. According to PP 35 of 2021, if the employment contract is terminated before the end of the contract period due to intolerable worker behavior or violation of criminal law, the outsourcing company must provide compensation to the worker or their family as a form of responsibility and appreciation. This compensation is referred to as severance pay or replacement rights money (UPH), with special provisions depending on the cause of the termination of the employment relationship.

The implementation of the employer's obligations towards outsourcing workers is strictly regulated in Article 65 paragraph (4) which states: Work protection and work conditions for workers in other companies as referred to in paragraph (2) are at least the same as the work protection and work conditions at the employer company or in accordance with applicable laws and regulations. In the case of PT. Pertamina Trans Kontinental Port Jakarta, the employer did not provide the latest written work agreement to the recipient of the work. Violations of the conditions as regulated in Article 65 paragraph (2) letter c are often carried out by employers in outsourcing practices, the absence of clear boundaries between the forms of business/main work and the company's supporting activities as a whole in laws and regulations makes people interpret the differences themselves. Because in every company activity it will always be related to the production process, both regarding goods and services, therefore it is very difficult to sort and classify the main work and supporting work. In addition, if in practice the employee experiences a work accident or something similar, it is difficult to account for this incident due to the lack of clarity regarding the work documents in an employment agreement.

Work protection covers quite broad aspects, namely physical protection which includes protection of safety from work accidents and health as well as the maintenance of work morale and treatment in accordance with human dignity as well as morals and religion as a consequence of the birth of an employment relationship, which is generally stated in Law Number 13 of 2003 such as:

1. The right to obtain equal opportunities and treatment without discrimination (Article 5, Article 6).
2. The right to obtain competency improvement and development and to participate in training (Article 11, Article 12).
3. Equal rights and opportunities to choose, obtain, or change jobs (Article 31).
4. Right to Certainty in Employment Relations (Article 50 to Article 66).
5. Rights to Working Hours, Rest Time, Leave, Overtime Work and Overtime Pay (Articles 77 to 85).

6. Rights related to wages, social security and welfare (Articles 88 to 101).
7. The right to receive protection for Occupational Safety and Health, morals and decency, as well as treatment in accordance with human dignity and dignity as well as the right to obtain insurance for death due to work accidents (Articles 86 to Article 87).
8. The right to organize and associate (Article 104).

Outsourcing workers have the same rights to guarantee protection from all risks that may arise as a result of the work they do, concerning physical and mental health risks, social, moral and morality. Because the physical and mental abilities of workers as humans have limited ability to work effectively up to a certain time limit, which if forced can cause physical accidents, mental fatigue and decreased productivity.

Fixed-term employment agreements include rights disputes, so the first effort that can be made by workers in accordance with Article 3 of Law Number 2 of 2004 concerning Industrial Relations Disputes is that all efforts to resolve industrial relations disputes must first be attempted to be negotiated through bipartite negotiations, but if the negotiations are deemed not to have reached an agreement, then it can be continued by efforts to register the dispute with the Manpower Office by providing the results of the bipartite settlement efforts that have been carried out between the workers and the company, after being received and recorded by the Manpower Office, then the workers and the company will be given the opportunity to choose a settlement through arbitration or conciliation, but if both parties do not choose one of these settlements, then according to Article 4 paragraph (4) of Law Number 2 of 2004 concerning Industrial Relations Disputes it states "that the settlement of the dispute is delegated to the Mediator where the workers and the company will carry out the settlement through Tripartite/Mediation." Furthermore, if the settlement of the dispute is still deemed not to have reached an agreement, one of the parties can file a lawsuit with the Industrial Relations Court. This is regulated in Article 5 of Law Number 2 of 2004 concerning Industrial Relations Disputes.

However, if the worker does not file a dispute regarding the failure to register a fixed-term employment agreement, the employment agreement can still be implemented even though the fixed-term employment agreement does not comply with the provisions of applicable laws and regulations.

CONCLUSION

The Employment Law and the Job Creation Law in Indonesia have established clear legal provisions in regulating outsourcing workers, so as to ensure clarity in the implementation of outsourcing services. Outsourcing that involves the transfer of some or all of the workforce and decision-making power to a third party is regulated by law, specifically Article 66 of the Job Creation Law and PP No. 35 of 2021 concerning the responsibilities of service providers and service users towards outsourcing workers. Companies that offer outsourcing services place great emphasis on fulfilling their responsibilities, including ensuring protection, resolving disputes, and providing compensation in the event of violations of the law in the workplace. This is in line with the understanding of legal responsibility regulated in civil law

and employment regulations. Therefore, the main objective of this law is to ensure fair protection for outsourcing workers and the obligations of outsourcing service providers. All parties involved in the outsourcing system must work together to ensure that this system runs fairly and responsibly. The importance of government responsibility in supervising and implementing existing policies to uphold justice in the employment sector is also needed.

The implementation of fixed-term employment agreements at PT. Pertamina Trans Kontinental Port Jakarta still does not comply with the provisions of laws and regulations, namely, fixed-term employment agreements that are not recorded or there is no renewal of worker documents, because the company realizes that the fixed-term employment agreement is not in accordance with laws and regulations, weak supervision from the authorities, workers' ignorance of PKWT, workers' lack of courage because they are afraid of being laid off, and workers' apathy. and the legal consequences of fixed-term employment agreements that are not recorded or there is no renewal of documents, namely by law they change into PKWTT, this is based on the provisions of Article 59 paragraph (7), However, to be declared legally changed into PKWTT, workers must make efforts to resolve industrial relations disputes, if workers do not make these efforts, then the fixed-term employment agreement can still be implemented even though it does not meet the provisions of applicable laws and regulations.

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