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Impact Study of Contract Worker System After the Enactment of the Job Creation Law and Its Derivative Regulations

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Abstract

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Polemik berkenaan dengan pelaksanaan pekerja kontrak dalam perusahaan-perusahaan di Indonesia merupakan sesuatu hal yang sangat memprihatinkan. Sejak ditetapkannya UU No. 13 Tahun 2003 tentang Ketenagakerjaan sampai dengan adanya UU No. 11 Tahun 2020 tentang Cipta Kerja penggunaan tenaga kontrak masih terjadi pelanggaran yang dilakukan oleh para pelaku usaha dengan berbagai pola dan aneka ragam caranya. Penelitian ini dimaksudkan agar semua pihak dapat memahami bahwa dalam praktek kegiatan usaha masih terdapat pelanggaran terhadap penggunaan tenaga kontrak. Dalam penelitian ini menggunakan pendekatan peraturan perundang-undangan yang akan coba dikaji dalam memberikan pendalam terhadap hal-hal yang berhubungan dengan pelanggaran penggunaan tenaga kontrak. Data yang dipergunakan adalah data sekunder yang terdiri dari bahan hukum primer yang terdiri dari peraturan perundang-undangan yang berhubungan dengan penelitian, bahan hukum sekunder yang terdiri dari referensi pandangan para ahli yang berhubungan dengan materi penelitian, serta bahan hukum sekunder yaitu data yang diperoleh dari internet, website, majalah. Hasil dari penelitian ini bahwa walaupun ketetuan perundangan yang mengatur tentang penggunaan tenaga kontrak seperti yang terbaru yaitu UU No. 11 Tahun 2020 tentang Cipta Kerja tetapi dalam pelaksanaanya masih terjadi pelanggaran-pelanggaran dalam menggunakan tenaga kerja kontrak.

Kata Kunci : Pekerja, Ciptakerja, Kontrak, Pelanggaran, Perusahaan

The polemic regarding the implementation of contract workers in companies in Indonesia is something that is very concerning. Since the enactment of Law No. 13 of 2003 concerning Manpower until the enactment of Law No. 11 of 2020 concerning Job Creation, the use of contract workers has still been violated by business actors with various patterns and various methods. This study is intended so that all parties can understand that in the practice of business activities there are still violations of the use of contract workers. This study uses a statutory regulatory approach that will be examined in providing in-depth information on matters related to violations of the use of contract workers. The data used is secondary data consisting of primary legal materials consisting of statutory regulations related to the research, secondary legal materials consisting of references to expert views related to the research material, and secondary legal materials, namely data obtained from the internet, websites, magazines. The results of this study are that although the provisions of the laws governing the use of contract workers such as the latest, namely Law No. 11 of 2020 concerning Job Creation but in its implementation there are still violations in using contract workers.

Keywords: Workers, Job Creation, Contract, Violations, Companies

INTRODUCTION

After the ratification of the Job Creation Law Number 11 of 2020 concerning Job Creation and officially came into effect on November 2, 2020, many elements of society in terms of workers/laborers rejected it and even held large-scale demonstrations. This was triggered by one of the reasons being the existence of a contract worker system that changed the provisions in the previous article of the Manpower Law, namely Law No. 13 of 2003 concerning Manpower.¹

Based on online news on July 17, 2024, at 11:45, CNBC Indonesia reported that a mass of workers who are members of the Confederation of Indonesian Trade Unions (KSPI), the Federation of Indonesian Metal Workers Unions (FSPMI), and the Labor Party held a demonstration at the Arjuna Wijaya Horse Statue, Central Jakarta. In the demonstration, Said Iqbal emphasized his rejection of lifelong outsourcing, arguing that the Job Creation Law no longer limits the types of jobs that can be outsourced, thus eliminating job certainty for workers. He said that this is the same as making the state an outsourcing agent, and allowing repeated work contracts without any guarantee of becoming a permanent worker, which has the potential to threaten job stability.

Based on the news and seeing the facts in the field, that the changes in the laws and regulations in the field of employment are considered to be able to cause losses to the community, especially workers/laborers. The losses for workers/laborers include the work contract system with the existence of a Fixed-Term Employment Agreement or referred to as PKWT. The problems that will arise as a result of the enactment of the Job Creation Law are several things that the author has summarized, including; severance pay, contract work system, severance pay value, long breaks, outsourcing and the elimination of UMSK

In this case, the author will underline the contract work system or PKWT, where the employment relationship is established by holding an employment agreement between the employer (entrepreneur) and the worker/laborer. The employment agreement in Article 1 Number 21 of Law Number 11 of 2020 concerning Job Creation is an agreement between the Worker/Laborer and the Employer or Employer which contains the terms, rights, and obligations of the parties.

¹ CNBC Indonesia (2024, Juli 17). Mengutip sumber berita online.

FOCUS OF PROBLEMS

In writing this paper, the topic of the problem and will be explained in the discussion are:

1. Can the contract work system be justified by the Job Creation Law and its derivatives, and how is the legal certainty for contract workers after the Job Creation Law comes into effect?
2. What are the legal consequences received by employers, regarding the implementation of a contract system that is not in accordance with its intended use?

RESEARCH METHODS

Law is a normative science, namely, a science that lays the foundations of norms and standards of human behavior in a particular situation that can be enforced through sanctions by the state. What distinguishes law from other social sciences is its normative character. This fact, coupled with the fact that legal stability and certainty are the goals and social values desired by law, makes this doctrinal legal research a major concern for legal researchers. The data used is secondary data consisting of primary legal materials, namely laws and regulations related to the object of research. Secondary legal materials are doctrinal references from legal experts and tertiary legal materials consisting of internet references, websites and others.²

DISCUSSION

1. The contract work system can be justified by the Job Creation Law and its derivatives.

An employment agreement is a derivative of an agreement in general, where each agreement has special characteristics that distinguish it from other agreements. An employment agreement is specifically regulated in Chapter VII of the Civil Code concerning agreements to carry out work. According to Article 1601a of the Civil Code, an employment agreement is an agreement in which one party, the worker, binds himself to work for another party, the employer, for a certain period of time, by receiving wages³

Work contract in employment is a written agreement between employees and employers that regulates the working relationship between the two. While in the term of work contract is the existence of good cooperation and commitment starting from verbal,

² Tan, D. (2021). Metode penelitian hukum: Mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478.

³ Jurnal; : Falentino Tampongango "Penerapan Sistem Perjanjian Kerja Waktu Tertentu Di Indonesia" hal 383

signal, or written, on two or more parties that have legal implications that are bound to do it.⁴

Furthermore, in Article 1 number 14 of Law Number 13 of 2003 concerning Manpower, an employment agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains the terms of employment, rights and obligations of the parties.⁵ From the sound of these articles, it can be said that what is called an employment agreement must meet the following elements: (1). There are people under the leadership of another person, (2). Completion of work, (3). Within a certain time, (4}. The existence of wages

Article 59 paragraph 1 of Law Number 13 of 2003 stipulates the categories of work for PKWT as follows; 1. Work that is completed once or is temporary in nature 2. Work that is estimated to be completed not too long and no longer than three years 3. Seasonal work 4. Work related to new products, new activities, or additional products that are still in the trial period.

A fixed-term employment agreement (PKWT) as regulated in Article 56 paragraph (2) of Law Number 13 of 2003 concerning Manpower is only based on the time period or completion of a certain job and cannot be made for permanent work. Likewise, the term contract labor attempted by the company or agency itself is also not found in the Manpower Law. In the Manpower Law, the terms contract labor, contract workers, work contracts and contract work systems. In Articles 56, 57, 58 and 59 of the Manpower Law are referred to as PKWT. The contract work system can be justified by the Job Creation Law and its derivative regulations because this Law regulates the use of Fixed-Term Employment Agreements (PKWT) for work with a certain time period or nature, while providing limitations, legal certainty, and protection for contract workers in accordance with applicable provisions

2. Legal certainty of employment for contract workers after the enactment of the Job Creation Law

Protection of workers through the regulation of a fixed-term work agreement (PKWT) is to provide certainty for those who do work that is continuous in nature will not be limited by the time of their work agreement. Meanwhile, for employers who use this fixed-term work agreement (PKWT) regulation, employers are given the opportunity to apply it for

⁴ Fayruz abadiyy majd al-Din Muhammad ibn ya'qub, Al-Qamus Al-Muhit (Beirut: Dar al-Jayl, 1786), 327

⁵ Himpunan peraturan perundang undangan republik indonesia tentang ketenagakerjaan, nusa aulia, 2007

work that is limited in time, so that employers can also avoid the obligation to appoint permanent workers/laborers for work that is limited in time.⁶

According to Subekti, an agreement is "an event where a person promises to another person or where two people promise each other to do something". From this event, a relationship arises between the two people which is called an agreement. In its form, an agreement is a series of words containing promises or abilities that are spoken or written.⁷

According to Rutten: In his book, Purwahid Patrik states that an agreement is a legal act that occurs in accordance with the formalities of existing legal regulations, depending on the agreement of the statements of will of two or more people intended to give rise to legal consequences for the benefit of one party at the expense of the other party or for the benefit and at the expense of each party reciprocally. After the enactment of the Job Creation Law, legal certainty for contract workers is guaranteed through clear regulations regarding the rights and obligations of workers and restrictions on the use of contracts for certain jobs, which provide protection for their rights such as wages, social security, and severance pay.⁸

3. Legal consequences received by the Employer, for the Implementation of a Contract System that is not in accordance with its intended use

The Manpower Law never found the word outsourcing directly, but this Law is a new milestone that regulates and delegates outsourcing issues. The term used in this law is a work contract agreement or a provider of worker/labor services. This term is adopted from the term used in the Civil Code as explained above. More specifically, the provisions governing outsourcing can be found in Articles 64 to 66 of the Manpower Law. Manpower Law Article 64 states that companies can hand over part of the implementation of work to other companies through a work contract agreement or a provider of worker/labor services.⁹

Furthermore, Article 65 essentially states that the transfer of part of the work to another company is carried out through a written work contract agreement. Further regulations regarding this regulation are stipulated through the Decree of the Minister of Manpower

⁶ Suwarto, *Hukum Ketenagakerjaan di Indonesia*, hal. 48

⁷ Subekti, *Hukum Perjanjian*, (Jakarta PT. Intermasa, 1987), hal. 1.

⁸ Purwahid Patrik, *Dasar-Dasar Hukum Perikatan Yang Lahir Dari perjanjian dan Dari Undang-Undang*, 1994, hal. 46.

⁹ Lalu Husni, *Hukum Ketenagakerjaan Indonesia*. Edisi Revisi. Cetakan Kelima, Raja Grafindo Persada, Jakarta, 2005, hal. 189

and Transmigration No. Kep. 220/Men/X/2004 concerning the Conditions for Transferring Part of the Work to Another Company.¹⁰.

The legal consequences received by employers for implementing a contract system that is not in accordance with its intended use, in accordance with the Job Creation Law, are legal sanctions in the form of fines or obligations to change the status of workers to permanent workers and provide compensation or other rights that should be received by permanent workers. The implementation of a work contract system that is not in accordance with its intended use by employers, especially in the context of a Fixed-Term Employment Agreement (PKWT), can have serious legal consequences. This is regulated in Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023 concerning Job Creation (Job Creation Law) and various derivative regulations.

Such as :

3.1. Change of Worker Status to PKWTT (Permanent).

Article 59 of the Manpower Law: If PKWT is applied for work that is permanent in nature or does not comply with statutory provisions (for example, work that is continuous, not a specific project), then the employment relationship will change to an Indefinite Term Employment Agreement (PKWTT). This means that workers are entitled to permanent employee status, including the rights inherent in that status, such as severance pay, social security, and other rights.

3.2. Fines or Administrative Sanctions.

Based on Government Regulation Number 35 of 2021, employers who violate PKWT regulations can be subject to administrative sanctions, such as:

- Written warning.
- Restriction of business activities.
- Temporary suspension of some or all of the production equipment.
- Revocation of business license.

3.3. Lawsuits from Workers.

Workers who are harmed can file a lawsuit with the Industrial Relations Court (PHI). If the court decides that the employer has violated the provisions, the company can:

- Be required to pay compensation to the worker.

¹⁰ Much. Nurachmad, Tanya Jawab Seputar Hak-Hak Tenaga Kerja Kontrak (Outsourcing), Visimedia, Jakarta, 2009, hal. 15

- Change the worker's status to permanent employee.

3.4. Reputational Risk and Operational Impact

Inappropriate contract system practices can damage the employer's reputation in the eyes of the public and regulators. If a dispute occurs, it can also disrupt the company's operational stability.

CONCLUSION.

The implementation of the contract worker system after the enactment of the Job Creation Law and its derivative regulations has had a significant impact on employment relations in Indonesia. The Job Creation Law provides a clear legal framework regarding the use of Fixed-Term Employment Agreements (PKWT), limits the types of work that can use the contract system, such as seasonal work or certain projects, and provides legal certainty for contract workers regarding their rights and obligations. However, the implementation of a contract system that is not in accordance with the regulations can risk legal sanctions for employers, as well as threaten the protection of workers' rights. In addition, this law also introduces changes in the provisions for termination of employment and severance pay, which can worsen the conditions of contract workers if not implemented in accordance with applicable provisions. Therefore, although this law aims to increase the flexibility of the labor market, its implementation requires strict supervision in order to protect workers' rights and prevent misuse of the contract system that can harm both workers and employers.

REFERENCES

BOOK

Indrajit dan Djokopranoto, *Proses Bisnis: Outsourcing*, PT. Grasindo, Jakarta.

Lalu Husni, *Hukum Ketenagakerjaan Indonesia*, Raja Grafindo Persada, Jakarta

Much. Nurachmad, *Tanya Jawab Seputar Hak-Hak Tenaga Kerja Kontrak (Outsourcing)*, Visimedia, Jakarta, 2009, Hal. 15.

Nusa Aulia, *Himpunan peraturan perundang undangan republik indonesia tentang ketenagakerjaan*.

Purwahid Patrik, *Dasar-Dasar Hukum Perikatan Yang Lahir Dari perjanjian dan Dari Undang-Undang*.

Subekti, *Hukum Perdata Indonesia*, PT. Intermasa, Bogor.

Subekti, *Hukum Perjanjian*, PT. Intermasa, Jakarta.

JOURNAL

Falentino Tampongango, *Penerapan Sistem Perjanjian Kerja Waktu Tertentu Di Indonesia*, Lex Privatum, Vol.I., No.1.

Tan, D, *Metode penelitian hukum: Mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum*, Nusantara: Jurnal Ilmu Pengetahuan Sosial, Vol. 8., No. 8

LAWS AND REGULATIONS

Pasal 59 UU Ketenagakerjaan UU 13 Tahun 2003 jo. UU 6 Tahun 2023 Tentang tentang syarat dan ketentuan PKWT

PP Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja