

Legal Protection of Labour Outsourcing in Indonesia in the Perspective Human Rights

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Abstract

Labour development as an integral part of national development based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, held in the framework of the complete Indonesian human development and the development of Indonesian society. It is intended to enhance the dignity, dignity, and self-esteem Labour and to create a prosperous society, just, prosperous, and equitable, both materially and spiritually. Labour development should be arranged so that fulfilled the rights and fundamental protections for workers and workers / laborers and at the same time be able to create conducive conditions for the development of the business world. However, in practice more and more primary or principal work activity that not only support activities in companies that outsourced, of course, it is not in accordance with what is required by law - law. The main job should be done by permanent employees or contract employees but the reality is done by outsourced workers. In connection with the foregoing, the purpose of this study are: First, to review the implementation of outsourcing in the perspective of employment law in Indonesia; Second, to assess the implementation of Law No. 13 of 2003 on Labour in the practice of outsourcing in Indonesia; Third, to examine and analyze the role of the North Sulawesi government in providing legal protection for labor outsourcing. As the knife used in the research analysis of the Welfare State Theories, Concepts State of Law, Theory of Justice, Legal Protection Theory, Concept of Human Rights. The research method used is normative juridical (Legal Research). Juridical analysis method through deductive reasoning to analyze both the primary and secondary legal materials and attributed to the fact that relevant laws and is something that stems from the general to the specific.

Keywords: Protection, Law, Labor Contract.

INTRODUCTION

Based on the level of the problem of outsourcing practices in Indonesia is getting worse as the legalization of the practice of outsourcing by Law No. 13 of 2003 on Labour much controversy it. Amid public concern over the dangers of the rebirth of capitalism, the government would legalize the practice of outsourcing that are economically and morally detrimental to workers / laborers. The controversy was based on the interests underlying the concept of thinking of each subject. For those who disagree argue that outsourcing is beneficial in business development, stimulate the growth of other forms of new businesses (contractors), which indirectly provides jobs for job seekers, and even in many countries this practice is beneficial in terms of tax increases, business growth, the alleviation of unemployment and poverty and to increase people's purchasing power, while for sure, because every business policy remains oriented towards profit.

Action opposed the legalization of outsourcing system against the background of thought that the system is also a feature of modern capitalism that will bring misery to workers / laborers, and give the widest possible opportunity for entrepreneurs dominate the industrial relations with the capitalist perlakuanperlakuan by Karl Marx exploit the workers / laborers (Ritzer and Douglas, 2009). Legalization outsourcing is problematic if the terms of the legal validity of sociological terms the core on the effectiveness of the law, where the rule of law based on acceptance or recognition by those to whom the law was fixed. In fact the legalization of outsourcing system rejected by most people, as opposed to progression movement of workers / laborers and Labour / Trade Unions (SP / SB) that have been willed significantly to the quality improvement of the standard compliance of their basic rights.

Demands the abolition of outsourcing not only came from the workers / laborers, students of employment such as Prabowo has said that outsourcing system was abolished, he said "less human outsourcing system for exploiting workers"(Jawa Pos, 2 Juni 2009). Even in other occasions, Workers Challenge Alliance (ABM) and the People's Struggle Front (FPR) on the occasion of International Labour Day (May Day) in 2008 in the Roundabout Hotel Indonesia, has catapulted the issue of "Remove System Contracts and Outsourcing". ABM looked at the contract labor system and outsourcing (outsourcing) afflict workers / laborers, which the system has made the status of the workers is becoming less clear so that it can cut off his relationship whenever employers want. "Therefore, we must reject the contract labor system," cried the Chairman of ABM Sastro at the time (Mayday, 2008).

The reform era which was originally expected to be able to build a state of law, social, political, economic and cultural more transparent and democratic turns until now the benefits have not been felt by the

workers / laborers.

Indication of the weak legal protection of the workers / laborers, mainly contract workers who work in outsourcing companies can be seen from the number of irregularities and / or violations of labor norms and the norms of salvation and Health (K3) conducted by entrepreneurs in doing business outsourcing. Irregularities and / or infringement can be categorized as follows: First, the Company did not classify the main job (core business) and the work supporting companies (non-core business), which is the basis of the implementation of outsourcing, so that in practice that is outsourced is the nature and The company's main types of work. The absence of the classification of the nature and type of work that is outsourced lead to workers / laborers hired for the principal types of jobs or jobs that are directly related to the production process, instead of supporting activities as required by law; Second, the company that submitted the job (principal) subcontract part of the work to another company / company receiving job (vendor) that is not incorporated;

Third, employment protection and working conditions for workers / labor outsourcing is very minimal when compared with workers / laborers working more directly to the company Principal and / or not in accordance with the legislation in force.

The complexity of outsourcing requires the attention of a balance between the need for investors and legal protection of the workers / laborers, since the function of government intervention in labor issues and not as an instrument value otomom independent and alone, but must appear in the figure as part of the efforts of social engineering (law is a tool of social engineering).

Facts of the case study on the legal protection of the workers / labor outsourcing in North Sulawesi province, it will not differ much if the same study carried out in other areas, because wherever the practice of outsourcing is the fruit of fiction and speculation that function independently without referring to workers / laborers as the subject of production that must be protected, outsourcing remains an autonomous system with its own logic and dynamics.

Based on this conceptual background above, which is the case in this study, are: 1). How the implementation of outsourcing in the perspective of employment law in Indonesia; 2). How is the implementation of Law No. 13 of 2003 on Labour in the practice of outsourcing in Indonesia; 3). How is the role of the North Sulawesi government in providing legal protection for labor outsourcing.

This type of research is normative juridical (legal research) is research focused on assessing the implementation of the rules or norms of the positive law. juridical analysis method through deductive reasoning, which analyzes both the primary and secondary legal materials and associated legal facts related. Deductive method is one that stems from the general to the specific (Ibid, 2008).

RESULTS AND DISCUSSION

1. Implementation Outsourcing in Perspective Employment Law In Indonesia

Global economic developments and technological advances are so rapid has brought a lot of changes in different sectors, giving rise to competition so tight in all business sectors. This highly competitive conditions require businesses to adapt to the market demands that require quick response and flexibility in improving service to customers.

In the perspective of the law, according to Satjipto Rahardjo, that: the owner of the goods is only tied to goods only. He only has power over the goods has, but what were originally mastery and control over the goods, on the wage worker. This change occurred after the goods were to change its function as capital. The person who called the owner, burdening others with tasks, making that person as the target of his orders and at least in the early days of capitalism supervise the implementation of his orders, now can "impose" their will on persone.

Of the two statements above, will remind us of: first, the spirit of the 1945 Constitution and Article 27 (2) of the 1945 Second, the Act No. 13 Year 2003 on Labour (Labor Law). In the Preamble of the 1945 Constitution states that: State of Indonesia to protect the people and the country of Indonesia, promote the general welfare, educating the nation and participate in the establishment of world order based on freedom, lasting peace and social justice based on Pancasila. Then in article 27 (2) UUD 1945 states that: "Every citizen has the right to work and a decent living for humanity". Of the mandate of the founders of the Republic can be seen that the purpose of Labour development is creating jobs for citizens to earn a decent living.

According to Article 1601 of the Civil Code b, outsourcing is equated with the agreement of contract of work. So the terms of outsourcing is an agreement where the contractor commit ourselves to create a specific work for others who sell wholesale to receive certain payments and other contracting outside parties bind themselves to contracting outside work to the contractor with a fee.

Outsourcing is a viable alternative to do the job themselves. But outsourcing is not just contracting as usual, but far exceed it. Maurice F. Greaver II provides outsourcing definition as follows: "Outsourcing is the act of transferring some of a company's recurring internal activities and decision rights to outside providers, as set forth in a contract. Because the activities are recurring and a contract is used, outsourcing goes beyond the use of consultants. As a matter of practice model, not only are the activities transferred, but the factor of production and

decision Often rights are, too. Factors of production are the resources that the make the activities occur and include people, facilities, equipment, technology, and the other assets. Decision rights are the responsibility for making decisions over Certain elements of the activities transferred. "

According to the Regulation of the Minister of Labour and Transmigration No. 19 of 2012 section 29 subsection (1): described the working relationship between the service provider company workers / laborers and workers / laborers as referred to in Article 28 can be based on a work agreement for an unspecified time or agreement specified time ,

Paragraph (2) explains that the employment relationship is based on a certain time work agreement which the object works remain as described in paragraph (1) shall contain:

- a) Guarantee continuity of work
- b) Guarantee the fulfillment of the rights of workers / laborers according to the rules perundangan law and the agreement
- c) Warranty calculation work period if a change of service provider company workers / laborers to set wages
- d) The rights of workers / laborers as referred to in paragraph (2) letter b shall include: the right to leave if it has met the requirements of employment, the right to social security, the right to holiday allowance, rest for a minimum of 1 day in the first week, the right to receive damages loss in terms of the employment relationship is terminated by the service provider company workers / laborers before a certain time work agreement berakhir not because lkesalahan workers
- e) The right to wage adjustment is calculated from the accumulated years of service that has been traversed.
- f) Rights of other rights set out in legislation and or previous agreements.

Of workers' rights set out above is the obligation of service providers against workers and that most of the obligations are not fulfilled outsourcing company to workers.

Agreements made under Article 1320 of the Civil Code, namely regarding the validity of the terms of the agreement, namely:

- a) they agreed that bind themselves;
- b) ability to make an engagement;
- c) a certain thing;
- d) a cause that halal.

However in making the labor agreement in addition to referring to the provisions of Article 1320 of the Civil Code, there are still other elements that they must satisfy, according to an expert on labor law of the country the Netherlands, namely Prof, Mr. M.G. Rood, he mentioned that a new labor agreement exists, when in employment contracts that meet the 4 (four) requirements, namely in the form of elements comprising:

- a) There is an element of work or occupation;
- b) The existence of an element of service or services;
- c) The element of time or a certain time;
- d) There is an element of pay or wages.

It is all prepared to prevent the abuse of power of the parties.

At this time many companies in Indonesia using outsourced workers in running the company's activities, and in the employment relationship also use employment agreement. In the Minister of Labour and Transmigration No. 19 of 2012 section 29 subsection (1): described the working relationship between the service provider company workers / laborers and workers / laborers as referred to in Article 28 can be based on a work agreement for an unspecified time or agreement specified time ,

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Of workers' rights set out above is the obligation of service providers against workers and that most of the obligations are not fulfilled outsourcing company to workers.

The research results for outsourced workers, according to the confession of outsourced employees in their work do not receive welfare benefits including the severance pay, health insurance, old age security (Social

Security), and accident insurance at work because in this case the businessmen use PKWT (Employment Agreement Certain time), which is supposed to be workers who have worked are old and it could qualify to be a worker in PKWTT Agreement (work time Indefinite) but the company he works to lay before the taxable period of time PKWTT that held the reception as a new employee again so that the worker never considered working in the long term could make it as permanent workers.

Another area of concern the rights of workers with the occurrence of duplicate work that had not previously been agreed upon for example cleaning service workers in the treaty, but the field workers were employed also in office administration for example, so there needs to be clarity between the outsourcing company with actors who were given the workers. And also their need clearer agreements of guarantee, which will be agreed upon between the outsourcing company with outsourced workers.

According to the author, it is very detrimental to workers / laborers because they do not guarantee the welfare of employees and work agreements were adhered to as they should be between the workers and outsourcing company that does not provide legal protection for workers, it is not in line with the theory of legal protection proposed by Satjipto Raharjo that legal protection is their attempt to protect one's interests by allocating a power to him to act in the interests. Then also argued that one of the properties and is a goal of the law is to provide protection (protector) to the public. Therefore the legal protection of the public must be realized in the form of legal certainty (Raharjo, 1983).

In practice, the authors found that the service provider company workers / laborers no employment agreements with certain time with the object of work remains to workers / laborers, because service providers Labour / labor costs that much to fulfill the rights as provided for in Article 29 paragraph (2) & (3) of the Regulation of the Minister of Labour and Transmigration No. 19 Tahun 2012.

That the employment agreement for business people as to which are stipulated in the Regulation of the Minister of Labour and Transmigration No. 19 of 2012 which should put in writing in the form of a Memorandum of Understanding (MoU) between the worker / laborer with the provider of workers / laborers but in practice there are still many companies provider of workers / laborers who make a written employment agreement but have not implemented fully, but should is to make agreements between service providers workers / laborers employed by the workers and the written agreement between the service provider of workers / laborers and workers to the implementation of the obligations of the offender operations and protection of the rights of the workers.

From the results of the research with outsourced personnel in several companies there which revealed that in the work as outsourced personnel in question do not have employment agreements with the Company Provider of outsourcing services, so that the rights of workers are not guaranteed and are not fulfilled as it should be, while in the Regulation of the Minister of Energy Labour and Transmigration No. 19 of 2012 Article 28 that every labor agreement of worker / laborer must include provisions that guarantee the rights of workers / laborers in the employment relationship as regulated legislation.

From the results of the research results power outsourcingdi some of these companies revealed that in the work as outsourced personnel in question do not have employment agreements with the Company Provider of outsourcing services, so that the rights of workers are not guaranteed and are not fulfilled as it should be, while in the Regulation of the Minister of Labour and Transmigration No. 19 of 2012 Article 28 that every labor agreement of worker / laborer must include provisions that guarantee the rights of workers / laborers in the employment relationship as regulated legislation.

According to the authors the most important emphasis for service providers or contract of work is related to the government parties, especially the Department of Labor should provide more stringent oversight of the company's outsourcing of what is agreed and also the obligation of -kewajiban businesses.

In a ministerial regulation of Labour and Transmigration No. 19 of 2012 Article 27 that every company must make a written employment agreement with workers

As for the legal obligations contained in the employment agreement between the employer against the outsourcing company (vendor) are:

- e) Give the job to the company receiving the job in this case the recipient of contract of work and labor services provider.
- f) Contains provisions which guarantee the fulfillment of rights and obligations in the employment agreement.
- g) Entered into an agreement in writing in the form of MoU
- h) In terms of placement of workers / laborers, the company the employer will pay a sum of money (fee) at the service provider company worker / laborer.
- i) Thus the right outsourcing company as the receiver of the job is
- j) Accepting the job of the employer company
- k) Accepting a job from an employer company in the form of employment relationship.

Outsourcing Corporate Legal Obligations to Employers:

- a) Had cooperation agreements between the company and the employer with the company's contract of work.

- b) Holding a working agreement between the company and the employer of the service providers of workers / laborers signed by both parties.
- c) Work agreement must be in writing
- d) Have permission from the responsible agency in the field of employment.
- e) Lists the main job (corebusiness) and supporting jobs (noncorebusiness) within the company as the basis for implementing the transfer of jobs.

Each employment agreement services provider of workers / laborers shall contain provisions that guarantee the rights of workers / laborers in the employment relationship as stipulated in the legislation.

Based on the regulation of the Minister of Labour and Transmigration No. 19 In 2012, Article 17 stipulates that the Services Delivery Terms employees / workers should be an auxiliary service activities or not directly related to the production process.

The type of auxiliary service activities in question are:

- a) Enterprises janitorial services (cleaning service);
- b) The business of providing food for workers (catering);
- c) Effort security personnel (security / security forces);
- d) Supporting service businesses in the mining and petroleum; and
- e) Transportation business for the workers / laborers.

Of efforts in this regard services provider company workers / laborers are prohibited from handing the implementation of part or all the work contracted to other parties.

Post the Minister of Labour and Transmigration No. 19 The year 2012 should have been obvious that the only job of supporting that can be in outsourced but from the results of the study authors still found that there are jobs that are directly related to the production process or core work is in outsourcing-kan, such as employment office administration, customer service bank, waiter / provider eating at restaurants, and others.

The research results for outsourced workers, according to the confession of outsourced employees in their work do not receive welfare benefits including the severance pay, health insurance, old age security (Social Security), and accident insurance at work because in this case the businessmen use PKWT (Employment Agreement Certain time), which is supposed to be workers who have worked are old and it could qualify to be a worker in PKWTT Agreement (work time Indefinite) but the company he works to lay before the taxable period of time PKWTT that held the reception as a new employee again so that the worker never considered working in the long term could make it as permanent workers.

2. The implementation of Law No. 13 of 2003 on Labour in the practice of outsourcing in Indonesia

Settings on the outsourcing contract contained in Article 64 of Law Number 13 Year 2003 on Labour, which expressly stated that the agreement contract of work or the provision of worker / laborer must be made in writing (contract) "in its development contract terms have been given a special meaning namely the written agreement, thus the term contract always implies the agreement and writing".

In the outsourcing contract remains in force the provisions of Article 1320 of the Civil Code, which states that a valid agreement if it meets the following requirements:

- a) The agreement of both parties;
- b) Their legal capacity to do / make engagements / agreements;
- c) The existence of a thing or object of the agreement; and
- d) The existence of a cause that allow and / or contrary to legislation, public order and etics.

The first condition and the second condition is referred to as the subjective condition, because it involves "people" or the parties, while the third condition and a fourth condition referred to as the objective conditions because it concerns the object of the agreement.

Although freedom of contract is one of the principles in the law of contract, but the contract should also have to meet the elements Esensialia (Essential Elements), Elements Naturalia (Natural Elements), and Element Aksidentalialia (accidental Elements) of an agreement.

a. Elements Esensialia (Essential Elements) Outsourcing Contract.

Esensialia element is essential and a condition that should not be overlooked by the parties to be valid and binding legal relations. In the outsourcing business, esensialianya element is the type of work and wages.

The type of work which is an essential elements on contracts of contract of work depending on the nature and type of main activities (core business) and the nature and type of supporting overall activity of the company the employer (principal), which must be unraveled in the implementation process work flow of activities. This provision can be found in Article 6 paragraph (2) and (3) Ministerial Decree No. Kep.220 / Men / X / 2004 regarding Requirements To Work Implementation Delivery Most Companies, which specifies that the employer company (principal) is will hand over part of its work to the company contractor jobs (vendors) must make the flow of activities execution of the work, based on the flow of the principal activities to determine the types of core work and support.

Esensialia element as the subject matter of the outsourcing contract also concerning all matters relating to employment, the responsibility for the fulfillment of the basic rights of workers / labor outsourcing. This means that there must be a statement that the vendor is willing to provide employment protection and working conditions for workers / laborers in accordance with the legislation applicable as well as statements about the willingness of the principal to be responsible for the fulfillment of the rights of workers / laborers and working relationships with the event violation of the terms and conditions of outsourcing.

In Article 5 of Ministerial Decree No. Kep.220 / Men / X / 2004 regarding Requirements To Work Implementation Delivery Most Companies, stated that:

Each contract of work agreement must include provisions that guarantee the rights of workers / laborers in the employment relationship as stipulated in the legislation.

b. Natural Elements Outsourcing Contract.

Natural elements is a general legal provisions that may be included or not included in the contract. Where the provisions should not be low nilanya of the legislation in force, such as payment of wages, the application of the Working Time Break time, the calculation of overtime wages, Social Security, labor kecalakaan Compensation, severance and others. Naturalia usual element included in the contract if the contract is no guarantee fulfillment of the rights of workers / laborers who exceeded the conditions set forth in the legislation. Examples Naturalia element in the outsourcing contract is a direct payment of wages given by the principal to workers / laborers (without going through the vendor), it is intended to avoid any reduction in the wages of workers / laborers by the vendor.

Because in the outsourcing business there is a tendency vendors take advantage of the cut of the revenue that should have been received by the worker / laborer. It was once said by Karl Marx, that the capitalist running hoax rather simple by paying workers less than they should receive.

c. Accidental Elements Outsourcing Contract.

Accidental element is a specific provision (particular) were declared and approved by the parties to be included or not included in the outsourcing contract. Aksidentalia is a condition that should not be there, because it is not required in the legislation. Such as joint and several responsibility between the vendor and the principal to pay accident compensation for workers / labor outsourcing, or the principal's willingness to pay compensation for workplace accidents as a result of negligence in maintaining the safety and occupational health (K3) in the workplace / company.

The risk of work accidents can happen anywhere and anytime, and that risk is even greater if the company does not provide a means K3, and does not maintain a working environment well.

Regulation Legislation does not regulate the principal responsibility on the worker / laborer outsourcing experiencing Accidents or Occupational Diseases that occur in the enterprise environment. However, it is another when workplace accidents and / or occupational diseases arise and occur because of negligence in providing the means K3 principal or due to the poor working conditions at the company's principal. Therefore morally principal should also be held responsible for any consequences of workplace accidents and occupational diseases suffered by the worker / labor outsourcing is happening in the company as a result of negligence.

Outsourcing contracts should contain a clause regarding the principal responsibility of the plight of workers / laborers as a result of negligence. The existence of such a clause so that the principal feels burdened to maintain a working environment and ensure the safety and health in any working environment. In Management Theory, creating a sense of security and good working conditions can increase the motivation, so that with it will benefit the company. "All things should be done regarding the management of monetary incentive plans, security, and setting a good working conditions, morale and productivity will increase the maximum will be achieved".

Before the principal determines the outsourced business partners, they must read pinansial ability and qualification of the company's associates, "must be considered in choosing a business partner in outsourcing is the qualifying companies must meet minimum standards set by the company according to their needs". These qualifications may include requirements ability to produce goods or services with guaranteed quality, institutional requirements, the requirements of the company's financial ability to meet the basic rights of workers / laborers before, during and after the employment relationship and the operational requirements of the vendor (Reksohadiprojo, 1998).

Instead vendor must also have read the conditions of the working environment as well as the infrastructure / facilities Health and Safety as well as other hazards involving keselamatan and health of workers / laborers in the company's principal. Thus before making and determining the outsourcing contract clauses. Vendor is entitled to include certain conditions and accountability of principal on the risks of employment that occurred in the work environment as a result of the negligence of principal and / or poor working conditions earlier.

3. Legal Protection of Human Rights and Labor Against Outsourcing

The concept of legal protection of the workers / laborers employed is the protection of the rights of workers /

laborers by using legal means. Or the protection granted by law to workers / laborers for the actions of businessmen at the time before work (pre-employment), during work (during employment) and the time after work (employment Post). Economic life with the hegemony of financial capitalism, has been operating through a "dis-solution subject" who do not see the workers / laborers as subject of production that should be protected, but rather as an object that can be exploited.

According to Senjun H. Manulang, as cited by Day Supriyanto (2004), labor law purposes are:

- a) To achieve or implement social justice in the field of employment;
- b) To protect workers against the unlimited power of the entrepreneur, for example, by making an agreement or create regulations that are forcing the employer did not act arbitrarily to labor as the weak side.

Legal protection for workers / laborers are given in view of the relationship *diperatas* (*dienstverhoeding*) between workers / laborers with employers, *dienstverhoeding* make workers / laborers as the weak and marginalized in employment relations. "Marginalized groups are mostly identifiable from the parameters of their economic life is very low, although the overall marginalization of the economic implications" (Harjono, 1997).

Differences in economic and social position of workers / laborers and employers raises subordinate relationships framed in the employment relationship causing *semitrikal* position between the two. In this context the law used as a means to provide protection to workers / laborers, because as a consequence of the employment relationship comes the rights and obligations which by law must be maintained and protected.

Essentially workers' status can be viewed from two aspects, namely in terms of juridical and social and economic terms. In terms of socioeconomic, workers need legal protection from the state for possible arbitrary actions of the employers (Wijyantim, 2009). A form of protection given by the government is to create rules that bind workers / laborers and employers, held coaching, as well as carrying out the process of industrial relations. "Industrial relations is basically the process *terbinanya* communication, consultation and negotiation and deliberation supported by the ability and commitment of all the elements that exist in the company" (Sutedi, 2009).

Legally under Article 27 UUD 1945 the position of the workers / laborers together with the employer / entrepreneur, but in social and economic position of the two are not the same, where the employer notch higher than workers / laborers.

Low high position in this working relationship resulted in their relationship *diperatas* (*dienstverhoeding*), giving rise to the tendency of employers / employers to act arbitrarily to the workers / laborers.

In contrast to other civil law relations, in labor relations are not equals position of the parties, the workers / laborers are not free to determine his will in the agreement. No way equivalent position is given the workers / laborers only relying on power to carry out the work, while the employer / entrepreneur is a party that is socially economically more capable so any activity whatsoever dependent on his will.

Speaking on the rights of workers / laborers meant we talk about rights, and the rights that are not human. Human rights are rights inherent to the worker / laborer's own innate and if these rights apart / separated from the workers themselves will be down the degree and dignity as human beings. While human rights are not a form of rights of workers / laborers who had been stipulated in the legislation that are non-human.

Efforts legal protection of the workers / labor outsourcing should be implemented optimally and more specifically, given the practice of outsourcing occurs triangular employment relationships involving the company employer (principal) employment recipient company (vendor) and workers / laborers. Under conditions of workers / labor outsourcing is very vulnerable to exploitation and inhumane acts, either because of its status as a worker / temporary workers (contract) as well as entrepreneurs who tend *bertidak* treatment as befits capitalists who seek to profit from the results of their labor.

Business vendors are employing workers / laborers in the interests of the principal, while the vendors themselves have benefited from the difference between the wage / services supplied by the principal to the vendor with the wages paid by the vendor to workers / laborers. Practices such is never analyzed by Marx, who said that the workers *dialienasi* (exiled) from work, because so workers / laborers are in an atmosphere of outsourcing, then it will work based on the objectives vendors who hire and reward, and they (the workers / laborers) it will be exploited for the benefit of the vendor and the principal.

Citing what has been said by Chainur Arrasjid that the law is the will and the creation of man in the form of norms containing instructions in behavior, about what they can do and what not to do. Therefore, the law must have the sanction and contain the values of justice, usability, and value certainty in a society where the law was created, to realize the values of justice, usability, and value the certainty it needs the efforts of law (legal remedies) to defend ,

Associated with legal remedies to protect workers / labor outsourcing, the Government of Indonesia basically has the authority to take measures such as:

- a) Intervene in labor relations in order to minimize industrial disputes.
- b) Supervise and to take firm action against all forms of exploitation of workers / labor outsourcing.

- c) Oversee implementation of labor norms and norms K3 in outsourcing practices, so there is no guarantee of entrepreneurs to always provide employment protection and working conditions for workers / laborers
- d) Create order in the outsourcing business, by forcing employers to comply with the terms and conditions of outsourcing as stipulated in Article 65 paragraph (2), paragraph (3), (4), (6) and (7) of Law Number 13 Year 2003 on Labour.

Law enforcement in the field of employment based on the theory of the system as proposed by Lawrence M.Friedman, then to enforce labor laws should also be seen as a system consisting of components of the structure, substance and culture of employment law, namely:

- a. Components of the structure of the labor law system that is institutional support of the workings of the labor law system, such as the Industrial Relations Court, the Ministry in charge of labor issues, the Office Agencies in the area associated with labor issues, employee labor inspectors, clerks Broker / mediator industrial relations, PPNS Employment and others.
- b. The substance component of the labor law system, ie some of the Act, the Convention of the ILO, the Government Regulation, Presidential Decree, the Minister of Manpower and Transmigration, Ministry of Manpower and Transmigrasi and others are used by law enforcement nor the parties arranged.
- c. Cultural component of the system of employment law, namely the ideas, attitudes, expectations and opinions of society, including the views of workers / laborers and businessmen and related parties as well as employment law issues that matter itself.
- d. These three components must be able to work and support each other. Employment law as a modern legal concept has the function of the change of social conduct are used to distribute political decisions as the aspirations of working people based on the desired objectives, namely creating patterns of harmonious industrial relations and capable of protecting the interests of the parties in the employment relationship.

In carrying out its functions, employment law is now constantly confronted with the values and behavior patterns masyarakatan world of business and the advancement of technology and information as the impact of globalization, so it is not surprising that there is a discrepancy between what was supposed to be (*das sollen*) with what is happening in the field (*das sein*).

Enforcement of employment as difficult as other law enforcement, although it has held actions for violations of labor norms and norms K3, but violations still occur, so that labor law enforcement is very difficult. Related to this issue, as edited Mahfud Fajar Laksono (2007), said "It is an irony because during the process of reform of the reformers have been given ample opportunity to put forward the concepts and theory that can be used so that the law can be enforced.

But, still, the law can not be enforced, whereas all the theories in the warehouse (library) has been issued ". Constraints in labor law enforcement is indeed stems from the weakness in the labor law system, all the components experiencing lameness that did not materialize as an integral whole legal system.

Labor law system is fragile, resulting in the abandonment of the most vulnerable in the employment relationship, namely "worker / laborer". Even in the practice of outsourcing the majority of workers / laborers are contract workers, will guarantee the continuity of the work and the fulfillment of their rights as workers / laborers are not protected at all. Deviations and violations of labor norms and norms K3 in the practice of outsourcing would lead to a negative impression on the practice of outsourcing rather than people see the benefits of outsourcing itself.

CONCLUSION

Based on the research and discussion above, it can be drawn some conclusions as follows:

1. The practice of outsourcing the delivery of some of its work to other companies through the agreement of contract of work in Indonesia in general does not implement the terms and conditions of outsourcing as stipulated in Law No. 13 Year 2003 on Manpower, because: First, the work submitted by the company (principal) to another company (vendor) are the principal forms of work (core business) is not the job of supporting the company throughout. Such a practice is contrary to Article 65 paragraph (2); Second, the Company (principal) has handed over part of its work through chartering agreements work to other companies (vendor) that is not incorporated as CV, which legally does not have the skills to act as legal subjects in the practice of outsourcing. Such a practice is contrary to Article 65 paragraph (3).
2. That the implementation of the implementation of the employment protection and working conditions such as conditions of employment, terms of wages, working time requirements of breaks and overtime wages, social security requirements, accident compensation, as well as safety and health requirements for workers / labor outsourcing in Indonesia did not granted in accordance with the legislation in force, so that workers / laborers feel disadvantaged economically and socially, was treated unfairly and inhumane before, during and after their work.
3. The escalating demands of the workers / laborers who are exploited and outsourcing their welfare level is low indicates that the role of government in providing legal protection for workers / labor outsourcing less

than the maximum. This is because there is an imbalance in the components of the substance, structure and cultural employment law as a whole legal system.

Based on the conclusion, then there are five (5) suggestions that will be presented in this dissertation, namely:

1. The Government through the relevant work units need to inventory the nature and type of the main activities of each company, and ordered the employer to specify the flow of activities in the company's production company regulations or the Collective Labour Regulation and report them to the relevant work units, so that there is legal certainty and classification regarding the nature and type of main activities (core business) and supporting activities of the company as a whole. That the Government through the relevant work units to take legal actions in order to curb the practice of outsourcing as opposed to labor legislation, both with non-judicial repressive measures as well as with judicial repressive measures.
2. Seeing the many cracks that are inequalities in the labor law system, it is recommended that the government immediately held a labor law reform by revising various labor legislations are inconsistencies and contradictions, and that is no longer relevant with the changing times.
3. Outsourcing System, which was authorized by Act No. 13 of 2003 on Manpower does not need to be eliminated, as the economic, political and sociological presence outsourcing system instead opened forms new business field for national entrepreneurs amid the global economic competition. Outsourcing system has also created new job opportunities for job seekers, reduce unemployment and increase purchasing power. It just needed a new outsourcing regulations to protect and favor the workers / laborers, so that their welfare level and protected in accordance with the objectives of development in the field of employment.

REFERENCES

- Arrasjid C, *Op.Cit.* hlm.112.
Harian Jawa Pos, Opini Publik, Selasa 2 Juni 2009, hlm. 7.
Hapuskan Sistem Kontrak dan Outsourcing' Mayday 2008: <http://www.google.co.id/> diakses tanggal 5 Juni 2009.
Harjono, *Op.Cit.* Hlm. 270
Laksono F, 2007., *Tebaran Gagasan Otentik Prof. Dr. Moh. Mahfud MD, Hukum Tak Kunjung Tegak*, Citra Aditya Bakti, Bandung, hlm. 75.
Raharjo S, 1983., *Permasalahan Hukum di Indonesia*, Alumni, Bandun, hlm. 121.
Reksohadiprodjo S, *Op.Cit.* hlm. 257.
Ritzer G dan. Goodman DJ. 2009. *Teori Sosiologi, Dari Teori Sosiologi Klasik Sampai Perkembangan Mutakhir Teori Sosial Postmodern*, Penerjemah: Nurhadi, Cetakan Kedua, 2009, hlm.23
Sutedi A, 2009., *Hukum Perburuhan*, Sinar Grafika, Jakarta, hlm. 23.
Supriyanto H, 2004., *Perubahan Hukum Privat ke Hukum Publik, Studi Hukum Perburuhan di Indonesia*, Universitas Atma Jaya Yogyakarta, hlm. 19.
Triyanto D, 2008., *Hubungan Kerja Pada Perusahaan Jasa Konstruksi*, Edisi Revisi, hlm. 56.
Wijayanti A, 2009., *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2009, hlm. 8.