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RESEARCH ARTICLE

RECONSTRUCTION OF OUTSOURCING WORK AGREEMENT AS PROTECTION FOR WORKER BASED ON JUSTICE VALUE

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Abstract

This Legal Reconstruction Research of the outsourcing work agreement is based on the still-differences of opinion and the rejection of the outsourcing work agreement both by workers / Laborers and by Trade Unions / Trade Unions in Indonesia. This shows that in the outsourcing work agreement there are still things that are not in accordance with what is expected, especially by outsourced workers or Employment unions. The problem formulation in this research are: (1) How is the construction of outsourcing work agreements when this is not yet fair, and How is the Reconstruction of outsourcing work agreements as protection of workers based on the value of justice. The research methods used are: (1) using a constructive theory paradigm, (2) the type of qualitative research. (3) socio-legal research approach method. The results shows that (1). The construction of an Outsourcing Work Agreement currently involves companies that use workers / Laborers services and companies providing workers / Laborers services even though the work agreement does not see workers / Laborers. Protection of outsourced workers includes: (a). The right to leave if it has fulfilled the terms of service; (b). The right to social security; (c). The right to holiday allowances; (d). Rest right for at least 1 (one) day in 1 (one) week; (e). The right to receive compensation in the event of an employment relationship is terminated by the employer / Employment service provider company before the work agreement for a certain time ends through no fault of the worker; (f). The right to wage adjustments calculated from the accumulated years of work that have been passed; and (g). Other rights that are regulated in legislation and / or previous work agreement. According to the author, this legal construction is not fair because workers are not involved in the preparation of work agreements between provider companies, user companies, and outsourcing workers, so there will be losses suffered by workers / Laborers in the form of coercion, fraud, deception, and reduction of rights. worker / Employment rights in carrying out work as an outsourced worker, (2). In regulations relating to outsourcing work agreements, it is necessary to regulate the necessity to involve outsourcing workers in making work agreements for the sake of outsourcing work agreements that are based on fairness values, namely

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Article 64 and Article 65 paragraph (1), paragraph (3) of Law Number: 13 of 2003 concerning employment.

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..... **Introduction:-**

The relationship between workers and employers is referred to as Industrial Relations and is regulated in Law Number 13 of 2003 concerning Employment which covers matters relating to rights and obligations for both Workers and Employers including regulating the Government's participation. An interesting thing to study is the industrial relations is the existence of an outsourcing work agreement.

The number of rejection of outsourcing work agreements by trade unions / Employment unions shows that in the outsourcing work agreement there are still things that are not in accordance with what is expected especially by outsourcing workers. This can also be seen from the complaints of outsourcing workers who are concerned about their normative rights as workers and other rights that are the obligations of employers.

The phenomenon that occurs in industrial relations related to outsourcing work agreements is as if from time to time always sticking out and crowded discussed by workers and trade unions / Employment unions, but within that period there is no end of the settlement either by the Government or the Legislative Institution as the maker The laws and implementing regulations. Even the Constitutional Court's ruling, which has not been able to answer the problem of the outsourcing work agreement.

Based on the results of the study there were more than 50% of companies in Indonesia using outsourcing, amounting to 73%. While as many as 27% of them do not use outsourcing personnel in operations in the company. This shows the development of outsourcing work agreements in Indonesia is so rapid, the development of outsourcing work agreements is encouraged by the existence of the Law on Employment Number 13 of 2003, in the Act, the need for workers to carry out production is supplied by Employment supply companies (outsourcing).

On the one hand, workers (workers) must submit to the distributor company, on the other hand they must also submit to the company where they work. The agreement on wages is determined by the supplier company and the worker cannot sue the company where he works.

Meanwhile, in the company where he works, must follow the provisions of working hours, production targets, work regulations, and others. After complying with the process, he can only get wages from distribution companies. The causal relationship between work and getting the results experienced by workers / Laborers no longer has a direct relationship. If without a channeling institution, the worker / Employer receives wages from the company where he works as an employer, now must wait for the company where he works to pay management fees to the channeling company as the second employer, then he gets a salary.

In addition to the above, in Law Number: 13 of 2003 concerning Employment clearly stipulates that there are companies that provide outsourcing workers, in the form of legal entities, and are responsible for Employment rights. In addition, it is also regulated that only supporting work can be outsourced.

The emergence of outsourcing work agreements is one result of work specialization. Working specialization will make it easier to use outsourcing work agreements because there are differences between the main business and supporting businesses. Work specialization involves the division of tasks or operations into small, highly specialized parts, each part being left to different workers. The reason capital owners apply work specialization is: increase management control. Work specialization makes it easy to regulate and control workers / Laborers to increase productivity while working specialization allows capital owners to pay the lowest wages for needed Employment.

After the owners of capital made the specialization of work came the policy of using outsourcing work agreements on the grounds of time, capital efficiency and increasing the quality and quantity of production. Meanwhile in the Republic of Indonesia's Minister of Employment Regulation Number: 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies becomes a reference in the implementation of outsourcing work agreements either through chartering or providing work services. However, there are still many gaps in implementation and not in accordance with the provisions of the legislation in force so that there are many

protests or rejections with the existence of this outsourcing work agreement. From the description above, the author will conduct further research on the need for the Reconstruction of Outsourcing Work Agreements as a Protection of Workers Based on Justice with the following issues :

1. Why is the construction of an outsourcing work agreement in Indonesia is currently not Just ?
2. How to Reconstruct outsourcing work agreements as protection of workers in Indonesia based on Justice value?

Method of Research:-

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion:-

Reason Why The Construction Of An Outsourcing Work Agreement In Indonesia Is Currently Not Just

The History of Outsourcing work agreement or what used to be known as sub-contract work in Indonesia has passed long enough since the issuance of Decree of the Minister of Trade of the Republic of Indonesia Number: 264 / KP / 1989 concerning the Work of Sub-Contracts of Processing Companies in Bonded Zone, which was later affirmed in Decree of the Minister of Trade No. : 135 / KP / VI1993 concerning Import and Export of Goods to and from Bonded Zone.

This decision is intended for garment companies in bonded zones, on the grounds that the nature of the industry on the export market is therefore permitted to surrender some of its processing to other companies. In addition, to cut production costs, production time in order to catch the deadline for export market demand. Thus, outsourcing work agreements in Indonesia were initially limited to certain production models that were only for the benefit of the export market. Policy Outsourcing work agreements are included in trade and industry policies.

The outsourcing work agreement began to become a Employment policy through a Circular Letter of the Minister of Employment of the Republic of Indonesia Number: SE / 08 / MEN / 1990 concerning Corporate Responsibilities of Contract Employees for the Protection and Welfare of Contracting Company Workers. The emergence of this circular is related to the striking difference regarding protection and welfare between workers / Laborers in the employer company and workers / Laborers in the contracting company.

This inequality is resolved by delegating responsibility for the protection and welfare of workers / Laborers on the contractor to the employer. However, this is considered too burdensome for employers who are generally foreign investors. This complaint was then responded to through the Republic of Indonesia's Minister of Employment Regulation No. Per-02 / Men / 1993 concerning Specific Time Work Agreements. This rule changes the legal

character of contracting workers from individuals into legal entities, especially foundations and cooperatives. This is intended to transfer responsibility towards workers / Laborers from the giver. In this Employment Act there is an obligation to form a Employment service provider company. This means there is a shift from what is called as a contracting company to a provider of Employment or Employment. So here it is seen that workers are used as commodities by Employment supply companies. In addition, the Employment Act states that outsourcing work agreements can apply to companies of any type, throughout Indonesia not limited to Bonded Zone.

In the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) it is stated that each citizen has the right to work and a decent living for humanity. Decent work is a work carried out of their own volition or choice, wages or provides sufficient income to pay a decent and worthy life, and is guaranteed from physical and psychological security and safety.

In order To be considered a decent job, it must fulfill the following 3 conditions namely:

1. Available to all people of productive age (not including the age of children) without exception, including those who have physical limitations, as well as without gender barriers.
2. All workers are socially protected, including those involved in informal economic activities.
3. All workers channeled their voices and aspirations through a system of social dialogue that has a humanitarian status.

Conditions are said to be ideal that should be the vision and commitment of all stakeholders interests , so it can be realized for the sake of humanity that is fair and civilized .

In Law No. 13 of 2003 concerning Employment which regulates the issues of outsourcing work agreement is contained in three articles namely article 64, Article 65, and Article 66. Article 64 reads The company may hand over part of the work implementation to other companies through work contracting agreements or the provision of services of workers / Laborers who made in writing in Article 65 which stated that :

Submission of partial execution of the work to companies other implemented through agreements chartering a job that was made in writing.

1. Work that can be delivered to companies other as referred to in paragraph (1) shall meet the requirements as follows :
2. carried out separately from the main activities ;
3. performed by the command directly or not directly from the giver of work ;
4. is a supporting activity of the company as a whole ; and
5. not hamper the process of production is direct .
6. Another company as referred to in paragraph (1) shall form the body of law .
7. Protection of work and terms of employment for the workers / Laborers in companies other as referred to in paragraph (2) at least equal to the protection of work and terms of employment in the company giving the job or in accordance with the regulatory laws that apply .
8. changes and / or additional terms as referred to in paragraph (2) is set more advanced by the Minister.
9. The relationship of work in the execution of the work , as referred to in paragraph (1) is set in the agreement work is written among the company of others and workers / Laborers whose employment.
10. The relationship of work as referred to in paragraph (6) may be based on the agreement of work time is not specified or agreement work time certain if it meets the requirements as referred to in Article 59.
11. In case the provisions as referred to in paragraph (2) and paragraph (3) are not fulfilled , then for the sake of legal status for relationships work worker / Employer with a company receiver chartering switch into a relationship work worker / Employer with companies giving jobs .
12. In terms of the relationship of work to switch to companies giving jobs as referred to in paragraph (8), then the relationship work worker / Employer with the giver of work in accordance with the relationship work , as referred to in paragraph (7).

Article 66 of Law Number 13 Year 2003 on Employment states that :

Workers / Laborers of the company provider of services of workers / Laborers are not allowed to be used by the giver of work to carry out the activities of the principal or activities that relate directly to the process of production , except for the activities of services supporting or activities that do not relate directly to the process of production .

Providers of services worker / Employer for the activities of services supporting or activities that do not relate directly to the process of production must meet the requirements as follows :

1. there is a working relationship between the worker / Employer and the company providing the worker / Employment service ;
2. deal of work that is applicable in the relations of work as referred to in letter a is an agreement of work to time certain that meet the requirements as referred to in Article 59 and / or agreement of work time is not certain that is made in writing and signed by both sides of the parties ;
3. protection of wages and welfare , terms of employment , as well as disputes that arise be the sole responsibility of the company provider of services worker / Employer ; and
4. an agreement between a worker / Employment service user company and another company acting as a worker / Employment service provider company is made in writing and must contain articles as referred to in this law

Providers of services worker / Employer is a form of business that body of law and have the permission of the authorities who are responsible in the field of employment .

In case the provisions as referred to in paragraph (1), paragraph (2) letter a, letter b, and letter d and paragraph (3) are not fulfilled , then for the sake of the legal status of the relationship working between worker / Employer and company provider of services worker / workers switch into a relationship work between workers / Laborers and companies giving jobs .

Of the provisions of Article 64 of Law Number : 13 Year 2003 concerning Employment there are two kinds of systems work agreement work outsourced, the first is the chartering of work and the second is the provision of services of workers . Then the description of the article is arranged in chapters 65 and 66. If we go back looking at the relationship of work that exist in Indonesia is the relationship working with the system agreement Working Time Not Specified (PKWTT) that the relationship works are permanently or with systems Treaty Working Time Specific (PKWT) which is often called the system of contract.

System Contract is regulated in Law Number : 13 Year 2003 on Employment Article 59. In Article 59 is no requirement if people want to work or want to be recruited as Employment contract , differ with workers permanent. Which permanently has been protected by the Act if a currently disconnected relationship works the rights of it is assured, he has rights which is set in the Article 156 paragraph (2), (3) and (4) of Law Employment. Severance, if he is more than three years, and may award period of employment , if he disconnected period works unilaterally by the company he could severance and so on.

Associated with Employment Contract in accordance Law Number : 13 Year 2003 on Employment is obligatory only two years plus one year . If it has been two years, then another year of extension can not be contracted anymore, it must be permanent, that is what is common. But there is also a maximum contract of five years. Agreements work outsourced entered into the system of contracts that a maximum of three years. There are also conditions, which are not allowed to do the main work (core business).

The Reconstruction Of Outsourcing Work Agreements As Protection Of Workers In Indonesia Based On Justice Value

Basically, core business activities, for example in plantation companies, one must not be outsourced to work for tapping rubber trees or harvesting oil palm fruit. Rubber tree tenders or fruit harvesters must be permanent or contract workers.

If the plantation company wants to recruit outsourced workers, it can be done at supporting work posts outside the core businesses such as security, cleanliness, catering, drivers, etc. as stipulated in Article 59 of the Employment Act which states that :

1. A work agreement for a certain time can only be made for certain jobs which according to the type and nature or activities of the work will be completed within a certain time , namely :
2. work that is completed once or is temporary in nature ;
3. jobs were estimated completion in a time which is not too long and not later than 3 (three) years;
4. jobs that are seasonal ; or
5. a job that is related to the product new , the activities of new , or products extra which is still in the experimental or exploratory .

6. The agreement of work to time certain not to be held to a job that is permanent.
7. The work agreement for a certain time can be extended or renewed.
8. The agreement working time certain which are based on period of time specified may be held for a maximum of 2 (two) years and only be extended 1 (one) time for a period of time longer than 1 (one) year.
9. Employers who intend to extend the agreement work when certain that , no later than 7 (seven) days prior to the agreement the working time of certain ends has been notifying intention in writing to the workers / Laborers are concerned.
10. Renewal agreement working time specified only be held after exceeding the period of grace period of 30 (three thirty) days the expiration of an agreement working time of certain long, renewal agreement working time specified is only allowed to do 1 (one) times and no more than 2 (two) year.
11. The agreement of work to time certain that does not meet the provisions as referred to in paragraph (1), paragraph (2), paragraph (4), subsection (5), and paragraph (6) the by- laws into the agreement work time is not specified.
12. matters thing else that has not been regulated in Article of this will be regulated more further with the Minister.

After the birth of the decision of the Constitutional Court Number : 27 in 2012, was born Permenakertrans RI Number : 19 Year 2012 concerning the Terms Delivery Most Implementation of Employment To Companies. There are a lot of odd things in the Minister of Employment. The irregularity is that the provisions in Permenaker Number : 19 of 2012 differ from the Constitutional Court Decision. The Court declared the protection of Tupe (Transfer of Undertaking Protection of Employment) or the principle of the transfer of measures of protection for workers who work at companies that outsourcing to PKWT that chartering work and PPJP (Corporate Provider Services Workers) but Minister of Employment regulations of Indonesia No : 19 Year 2012 states chartering jobs do not enter PPJP (Worker Service Provider Company) only.

Some of the records associated with the injunction and consideration of the law of the Constitutional Court in the above , among others are :

The Court stated Article 59, Article 64, Article 65 except paragraph (7) and Article 66 except paragraph (2) letter (b) of Law No. 13 year 2003 does not contradict with the Constitution, 1945. That is , provisions other than paragraph (7) in Article 65 and paragraph (2) letter (b) of Article 66 remain valid as a law positive . Article are declared contrary to the Indonesian Constitution of 1945 as follows :

Article 65 paragraph (7) which reads : Relationships work as referred to in paragraph (6) may be based on the agreement of work time is not specified or agreement work time certain if it meets the requirements as referred to in Article 59, and

Article 66 paragraph (2) letter b reads : deal of work that is applicable in the relations of work as referred to in letter a is an agreement of work to time certain that meet the requirements as referred to in Article 59 and / or agreement of work time is not certain that is made in writing and signed by both sides of the parties ;

With such , employers still must surrender or of contracting work to companies other so that the Treaty of work outsourcing still could be implemented. This is in accordance with the consideration of the Constitutional Court which states that "... the surrender of part of the implementation of work to other companies through work contracting agreements in writing or through service provider companies Workers (outsourcing companies) is a reasonable business policy of a company in the context of business efficiency ."

The Court did not declare the Agreement job outsourcing as sist e m forbidden in the relationship business and the relationship work between workers / Laborers with employers. In that position, Article 64 of Law Number : 13 of 2003 remains valid as a legal basis for companies to carry out outsourcing work agreements and Article 65 except for paragraph (7) and Article 66 except for paragraph (2) letter (b) as technical work relations in an outsourcing company .

What is not binding in Article 65 paragraph (7) and Article 66 paragraph (2) letter (b) of Law No. 13 of 2003 only concerns the phrase "work agreement for a certain time" as long as it does not stipulate conditions for guaranteeing the transfer of rights protection to the next tender winner company . The Court did not mention what that meant to the transfer of protection of rights of workers but of things that can be understood include two things : (a) guarantee

the continuity of work when ending the agreement chartering ; (b) guarantee receipt of wages is not much lower than the company previously;

Employers can apply the Treaty of work outsourced by the status PKWT along PKWT contains clauses which give guarantees protection of rights of workers that relationship work Workers are concerned would be continued at the company's next , in case the object works still exist . When the object of work that remains there while the condition of the transfer of protection of rights are not regulated in the PKWT, relationship work Workers form PKWTT. In technical , terms PKWT can be arranged on a part of the closing agreement. In the end, the clause it serves as a means of measurement to assess the form of the relationship of work, whether in the form PKWT or PKWTT;

The Constitutional Court's ruling did not explicitly state the employment agreement Workers in the outsourcing company environment must be with a non- specified time work agreement (PKWTT). In the consideration of legal MK offers PKWTT as one of the outsourcing model. According the description in the above , the Court did not require companies to apply PKWTT. PKWTT status in the company only occurs when : (a) PKWT not require the transfer of protection of rights of workers who object works still exist ; or (b) the company has initially implemented PKWTT.

With regard to PKWT in outsourcing work agreements, the Constitutional Court's decision to maintain two forms of employment relations that are known in the Employment Act, namely PKWT and PKWTT. The assertion other than the decision of the Constitutional Court was introduced at the same time allow two kinds PKWT, namely PKWT conditional and PKWT not conditional. Which includes PKWT conditional is PKWT which requires companies outsourcing requires the transfer of protection of rights for workers when the object of his stay there even though the company contractor job or company provider of services Workers replaced . The PKWT without requirement is PKWT were implemented without requiring any transfer of rights for workers , as mentioned in the above.

In practice the agreement work outsourcing, workers / Laborers there who worked dozens to tens of years in one location working though companies outsourcing- its own switch . Sometimes the owners of these companies are the same , only the company name is different.

In practice , the results of the judicial review of the Act against the 1945 Constitution, the Constitutional Court not only stated that the contents of the Act were contrary to the 1945 Constitution. Several decisions of the Constitutional Court emphasized the interpretation of the provisions and gave a new norm . Related application for testing the material in the above , the Court gave the norm just as it decomposes in item 3 (three) amar decision.

When reading it carefully injunction and consideration of the decision of the Constitutional Court Number : 27 / PUU-IX / 2011, apparently considered more straightforward and emphatic than the injunction decision . To understand the purpose of the injunction decision that we are required to do the interpretation .

In the system of justice , part of the verdict which could be executed is the injunction decision . Matters of things that was stated in the judgment when it is not described as decisive in the injunction decision , then the description of the consideration was not a part that can be executed . Because of that , the injunction decision of the court shall be final and free of interpretation. All things related to the interpretation outlined in the consideration of the law . Here 's one of the deliberation the decision of the Constitutional Court are firm but not referred to as explicit in the injunction : "By implementing the transfer of protection pkerja / Employment , past work that has been passed by the worker / Employment outsourcing are still considered to exist and be taken into account , so that the worker / Employment outsourcing can enjoy rights as workers are feasible and proportionate ."

In connection with the ruling of the decision of the Court in the above , Indonesian Employment in Circular Letter No. B.31 / PHIJSK / I / 2012 interpret the injunction decision of the Court was as follows :

If the agreement work between companies recipient of chartering a job or a company provider of services Workers with Workers do not load their transfer of protection of rights for workers who object works still exist (the same), the company receiver chartering a job another or companies providers services Full other , then the relationship work between companies receivers employment contract or company provider of services worker / Employer with a worker / Employer should be based on the Treaty working time Specific (PKWT).

If the agreement work between companies recipient of chartering a job or a company provider of services worker / Employer with Workers load condition the transfer of protection of rights for workers who object works still exist (the same), the company receiver chartering a job or a company provider of services Workers else , then relationship working between companies receivers employment contract or company provider of services worker / Employer with workers can be based on the Treaty working time Not Specified (PKWTT).

In regard to PKWT in outsourcing work agreements, the Constitutional Court's decision to maintain two forms of employment relations that are known in the Employment Act, namely PKWT and PKWTT. Another affirmation of the Constitutional Court's decision is to introduce and allow two types of PKWT, namely conditional PKWT and unconditional PKWT. Conditional PKWT includes PKWT which requires that outsourcing companies require transfer of protection of workers' rights if the object of work remains, even if the contracting company or the company providing the Worker's service is replaced. The PKWT without conditions is PKWT that is implemented without requiring the transfer of rights for Workers as mentioned above. In the practice of outsourcing work agreements, some workers / Laborers work dozens of years at a work location even though the outsourcing company has changed. Sometimes the owners of these companies are the same, only the company name is different.

In practice, the results of the judicial review of the Act against the 1945 Constitution, the Court not only stated that the contents of the Act were contrary to the 1945 Constitution. Several decisions of the Constitutional Court emphasized the interpretation of the provisions and gave a new norm. Related to the request for judicial review above, the Constitutional Court gave a new norm as described in item 3 (three) of the verdict.

If you read carefully the judgment and consideration of the Constitutional Court's decision Number: 27 / PUU-IX / 2011, it seems that the consideration is more straightforward and strict than the decision of the decision. To understand the purpose of the verdict we are required to interpret.

In the judicial system, the portion of decisions that can be executed is the verdict. The things stated in the consideration if not explicitly described in the ruling, then the description of the consideration is not an executable part. Therefore, the court decision must be final and free from interpretation. Everything related to interpretation is outlined in legal considerations. The following is one of the considerations of the Constitutional Court's decision which is firm but not explicitly mentioned in the ARM: "By implementing the transfer of protection of workers / Laborers, the years of work that have been passed by the outsourcing workers / Laborers are still considered to exist and are taken into account, so that the outsourcing workers can enjoy the rights as workers in a decent and proportional manner."

In connection with the Court's decision above, the Republic of Indonesia Ministry of Employment and Transmigration in Circular Letter No. B.31 / PHIJSK / I / 2012 interprets the ruling of the Constitutional Court ruling as follows:

If in the work agreement between the employer receiving the job or the company providing the services of the Worker and the Worker does not contain any transfer of protection of rights for the Worker whose work object remains (the same), to the company receiving the employment of another job or the company providing another Worker, work between companies that accept work for part-time jobs or service providers of workers / Laborers and workers / Laborers must be based on a Specific Time Work Agreement (PKWT).

If in a work agreement between the employer receiving the job or the company providing the services of the worker / Employer and the worker contains the requirement for the transfer of the protection of the rights of the Worker whose work object remains (the same), the company receiving the job contracting or the company providing other Worker's services, the employment relationship between a company that receives a wholesale job or a company providing workers / Laborers services and its workers can be based on an Indefinite Time Work Agreement (PKWTT).

Although the Constitutional Court gave a new norm for the interests of outsourcing worker protection, the Court did not explain when the decision No. 27 / PUU-IX2011 came into force. So, it is not wrong to declare the decision binding since it was pronounced. Means that, the Court's decision is not retroactive. Consequently, legal actions regarding PKWT in outsourcing that have been made before the Constitutional Court's decision is read cannot be qualified as invalid based on the Constitutional Court's decision.

If the Constitutional Court's decision is declared retroactive it will cause unrest especially among employers because the ongoing PKWT correlates with the value of the work tender. Therefore, the Constitutional Court's decision can be applied to outsourcing work agreements made after the Constitutional Court's decision has gone public.

The executive and legislative branches of law should have a moral burden to respond immediately to the Constitutional Court's decision that provides new norms for a law. The granting of new norms by the Constitutional Court was related to the testing of the Employment Act, not this time it was done. In decision No. 115 / PUU-VII / 2009, the Constitutional Court gave new norms related to the representation of trade unions / Employment unions in collective Employment agreement (PKB) negotiations within the company. The norm in the ruling is as crucial as the norm in ruling No. : 27 / PUU-IX / 2011.

Follow-up like this is in line with Article 10 paragraph (1) letter (d) of Law No. 12 of 2011 concerning Formation of Legislation. The provision mandates that one of the contents of the law is a follow-up to the Constitutional Court's decision. That is, the implementation of the Constitutional Court's decision can only be contained in the law. The government may not regulate the follow-up of the Constitutional Court's decision in Government Regulation (PP), Ministerial Regulation (Permen) or Circular Letter (SE). Therefore, the Indonesian Ministry of Employment and Transmigration actions that have adopted the contents of the Constitutional Court's decision Number: 115 / PUU-VII / 2009 into the Republic of Indonesia Regulation of Employment and Transmigration Number: 16 / Men / XI / 2011 and the issuance of Circular Number: B.31 / PHIJSK / I / 2012 to follow up on the Constitutional Court's decision Number: 27 / PUU-IX / 2011 is out of harmony and is in conflict with Law No. 12 of 2011. In addition, the contents of the third item SE which is shaped like a regulation that regulates (regeling) also becomes its own problem. Because basically, the circulars are not part of the legislative hierarchy. Circular is not legally binding (wetmatigheid) so that its position is often called non-law. Therefore, the follow-up of the Constitutional Court's decision in the SE is irrelevant as executive compliance implementing the Constitutional Court's decision. Since the object decided by the Constitutional Court is a law, the Government and the Parliament must make a joint stance because the Constitutional Court's decision has implications for the political products of both institutions.

Perhaps this is the problem in the drafting of legislation, especially those relating to follow-up on the Constitutional Court's decision. Forming a law requires a process that is not short because it must go through stages of the National Legislation Program. However, the President and the House of Representatives for certain reasons as described in Article 23 paragraph (2) of Law no. 12 of 2012 has the right to submit a bill outside the National Legislation Program.

To perfect the positive law, there is now sufficient reason for the government and the Parliament to make amendments to the Employment Act. The legal opinion contained in several decisions of the Constitutional Court related to the Employment Act needs to be immediately translated into law so that the implementation of the decision is more optimal. Therefore, changes to the Employment law are an urgent need to tighten rules on outsourcing so that outsourcing practices run better.

Work relations occur because of an employment agreement between the employer and the Worker. This is regulated in Article 50 of Law Number 13 of 2003 concerning Employment. Meanwhile what is meant by an employment agreement in accordance with Article 51, namely (1) A work agreement is made in writing or verbally. (2) The work agreement required in writing is carried out in accordance with the applicable laws and regulations.

The employment agreement in accordance with Article 52 of Law Number 13 Year 2003 concerning Employment is regulated as follows:

Work agreements are made on the basis of :

1. agreement of both parties;
2. the ability or ability to carry out legal actions;
3. the promised work exists ; and
4. jobs that agreement is not contrary to the public order, decency, and regulatory law regulations that applies .

Agreement work are made by the parties are at odds with the provisions as referred to in paragraph (1) letter a and b can be canceled.

The agreement of work were made by the parties are at odds with the provisions as referred to in paragraph (1) letter c and d canceled for the sake of the law.

Submission of part of the work (outsourcing) is regulated in Article 64 of Law Number 13 of 2003 concerning Employment which reads : "The company can submit a part of the work implementation to other companies through an agreement of employment contract or the provision of workers / Laborers services which are made in writing".

Meanwhile in the Republic of Indonesia's Minister of Manpower Regulation Number: 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies becomes a reference in the implementation of outsourcing work agreements either through chartering or providing work services. However, in practice there are still many gaps and are not in accordance with the provisions of the applicable laws and regulations so that there are many protests or rejection of the existence of this outsourcing work agreement so that there is a need to involve outsourcing workers in making work agreements for the occurrence of outsourcing work agreements the value of justice, namely Article 64 and Article 65 paragraph (1), paragraph (3) of Law Number: 13 of 2003 concerning Employment.

Conclusion:-

The construction of the Outsourcing Work Agreement currently involves the companies that use the services of workers / Laborers and the company providing the services of workers / Laborers even though the work agreement does not see workers / Laborers. Protection of outsourced workers includes: (a). The right to leave if it has fulfilled the terms of service; (b). The right to social security; (c). The right to holiday allowances; (d). Rest right for at least 1 (one) day in 1 (one) week; (e). The right to receive compensation in the event of an employment relationship is terminated by the employer / Employment service provider company before the work agreement for a certain time ends through no fault of the worker; (f). The right to wage adjustments calculated from the accumulated years of work that have been passed; and (g). Other rights that are regulated in legislation and / or previous work agreement. According to the author, this legal construction is not fair because workers are not involved in the preparation of work agreements between provider companies, user companies, and outsourcing workers, so there will be losses suffered by workers / Laborers in the form of coercion, fraud, deception, and reduction of rights. worker / Employment rights in carrying out work as an outsourced worker.

In regulations relating to outsourcing work agreements, it is necessary to regulate the necessity to involve outsourcing workers in making employment agreements for the sake of outsourcing work agreements based on fair values, namely Article 64 and Article 65 paragraph (1), paragraph (3) of the Law Number: 13 of 2003 concerning Employment.

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