



Legal Protection for Outsourced Workers/Laborers Towards Diploma Detention Policy Committed by The Employer

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Abstract

The massive development in business and the economy has provided new opportunities for the people in Indonesia, especially with the dream of improving careers and wages. However, at the same time, the recruiting system aiming to get the best workers is so complex that even it creates a new system called outsourcing. Unfortunately, this system has a few disadvantages for workers, especially concerning diploma detention cases. This study aims to analyze the legal protection for outsourced workers/laborers in Indonesia. This research uses the normative legal research method. The legal material secondary to this study is literature dealing with research problems. For processing the data, a conceptual approach and a statutory approach are used, and then descriptive research is used to produce a descriptive analysis. Although the issue of diploma detention is not commonly discussed in Indonesia, it can be said that the core of this problem is the minimum knowledge of the law and regulations. Thus, legal protection based on Indonesian Law and Regulation for the outsourced workers/laborers should be openly socialized to all outsourced workers/laborers. To limit the scope of this study, the analysis concerns to analyze the legal protection for outsourced workers/laborers in Indonesia based on the applicable law. The novelty of this research study is to provide a better idea and understand the possibility of criminal sanction for employers as one Legal Protection form for outsourced workers/laborers.

Keywords: *Employment Agreement; Legal Protection; Outsourced Workers*

INTRODUCTION

Outsourcing Workers/Laborers in the globalization era are highly needed by all business segments to support their business flows. These changes occur not only in the sector of commodity demand but also in forming new business terms. Outsourcing is often discussed and disputed. Outsourcing is a term that combines the word "out" and "source" (Kunarti, 2009). Black's Law Dictionary defines an outsourcing agreement as "an agreement to handle substantially all of a party's business requirement, especially in the areas of data processing and information management" (Bryan A. Garner, 1999). Outsourcing is an alternative for many corporations, considering the increasingly competitive environment, especially with the market (customer's) demand for a quick and flexible response. These types of demands often overwhelm the companies due to the lacking competence of the staff and human resources. Therefore, outsourcing becomes a great solution for some people, especially business owners. Outsourcing is a business sector that assigns a job previously handled internally to another company (a company that provides outsourcing laborers), as a means to achieve results from the needed service/job.

Based on Muhaimin Iskandar, the Minister of Manpower and Transmigration, there are approximately 6.239 outsourcing companies with 338.505 workers in Indonesia (DetikFinance, 2012). Most of these companies are members of the Indonesian Outsourcing Association (known as Asosiasi Bisnis Alih Daya Indonesia or ABADI). These emerging numbers of outsourcing companies represent not only the huge demands for outsourcing manpower but also the positive outlook for business growth in Indonesia. This kind of practice is even reviewed by The Harvard Business Review as the most important idea and management practice in the last 75 years. Looking back, in Indonesia, this system was introduced by Megawati Soekarnoputri, the fifth President of Indonesia, through The Manpower Act Number 13, 2003 (Idris, 2020). The recent regulation that

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regulates this matter can now be seen in Government Regulation in Lieu of Law No. 2 of 2022, a law amended by President Jokowi, the former President of Indonesia.

In Indonesia, outsourcing manpower is widely known as outsourced workers/laborers (Hutabarat et al., 2021). However, the knowledge of outsourced manpower is only practical, mostly seen from the perspective of companies or businessmen who need it. On one side, establishing companies or factories in this era brings such profits for the government, especially in investments and the uptake of manpower. For the company itself, there are several benefits of hiring through outsourcing companies such as optimizing the budget for other sectors, setting the time-allocating for essential works, and reducing the risks in the recruiting process. It somehow needs to be done by the company because such establishment is not counterpoised by the ability to recruit the expected number of workers at once due to challenges in other sectors. Many companies also find it difficult to focus on employee recruitment since they also need to manage the sectors of production, permit, and so forth. Because of these incapacibilities, many companies need general service providers or agencies that can ensure the numbers of manpower needed. Regardless, organizations (companies in this context) are responsible for their personnel staffing decisions (Russell Cropanzano, 2003).

To answer this demand described above, a new business sector arises specializing in providing competent manpower (Elok Hikmawati, 2018). Budiarta states that this phenomenon leads to new problems because of indefinite norms or unclear regulations that regulate outsourcing. As a result, there are many opinions and self-formulated understanding about outsourcing, which eventually causes misunderstanding in the employment system while also worsening the relations between the company and workers regarding the mode of outsourcing labor relations (Putu, 2016). There are two parties within the mode of outsourcing labor relations: outsourced workers/laborers and the outsourcing agency (staffing agency). There are regulations in this area, as can be seen in Act Number 13 of 2003 (which was later amended with Act Number 11 of 2010 concerning Job Creation related to Fixed Term Employment Agreement (PKWT) and/or Indefinite Term Work Agreement (PKWTT) as in Articles 56, 58, and 59). Yet it contains a lot of obscurities.

In the employment agreement regulation in an outsourcing agency, there are many types of labor agreements concerning the contract's length. In short, PKWT (*Perjanjian Kerja Waktu Tertentu* - Fixed Term Work Agreement) is an agreement that establishes a labor relationship within the length as agreed (signed) by both parties (Satria, 2020). Meanwhile, PKWTT (*Perjanjian Kerja Waktu Tidak Tertentu* - Indefinite Term Work Agreement) is an agreement that establishes a labor relationship within an indefinite period (permanent employment). There are many discrepancies between the rights received by PKWT and PKWTT employees. Surely, it creates a huge gap and dissatisfaction because of the outsourcing system, which from the two perspectives, is profitable for the employers but not as much for the workers.

The lack of productivity, motivation, commitment and loyalty of the workers are some of the negative impacts arising from the stigma of outsourcing practices. Moreover, a study suggests that pay status matters (outsourced status in this context), and plays a significant role in the design of work, satisfaction and career development (Rogers et al., 2021). These practices also increase industrial disputes, often leading to labor strikes and demonstrations. According to Adrian Sutedi, it is undeniable that development in the business world is highly influenced by the situation and condition of industrial relations, especially the involvement of parties of interest in that business field (stakeholders). The better the industrial relations, the better the business development (Yuanitasari, 2020). Cicero even states the phrase "ubi societas ibi ius" which means "wherever there is society, there is law" (Sebastian, 2018). In society, the law has the power to ensure the orderliness of relationships between people. The relationship between workers and business

owners is a relationship of dependence, yet this relationship of dependence is always imbalanced. In the employment context that unequally weighs the offering and demand for manpower, the discrepancy is tremendous. With such illustrations, it can be understood that current industrial relations are prone to conflicts. The arising conflict can actually be avoided if the human resource management really pays attention to the training, performance appraisal and commitment given by the workers (Shiferaw, 2022). However, this is not an easy task as the conflicts between the workers and employers can be triggered by many causes, such as the delay of normative right fulfilment, the frequent unfulfillment of management commitment, and the lack of communication between the management and the labor union (Sunarto, 2021).

One conflict that creates such tension is the practice of diploma detention. To fulfil company requirements due to standardization, the recruitment process is often identified with a diploma. To be seen as 'qualified' to work at a company, a person needs to undergo a certain educational process and achieve a diploma as 'proof' that they have completed the study. The diploma itself includes the evidence that someone has completed their study. In its practice, when someone applies for a job at a company, the person is asked to attach a copy of a legalized diploma. The legalized diploma proves that the submitted copy is legitimate and the same as the original. In some companies, legalized copies of diplomas are not sufficient. Some companies apply a system in which workers should submit their original diplomas, which the company will hold. This system is implemented differently in different companies: some determine the original diploma's return time, and some do not.

The diploma detention is implemented by business owners because of several reasons, one of which is to stop workers seeing the company as a stepping stone in their career. There are several cases in which workers suddenly stopped working without any reason, causing a manpower loss on the company's side. It certainly results in a drastic decline performance of a company. From the workers' perspective, diploma detention indirectly hinders their opportunities to work at other workplaces. It can also mean that business owners only prioritize their own interests and hold someone from searching for and getting a more satisfying job. There are also many violations of workers' normative rights, such as salary, severance, and one-sided layoffs (Sjaiful, 2021). For the salary violations themselves, the unfulfilling income contributes to the "poverty mentality", a perspective that the laborers will never have enough money, food and wealth, which also makes bad financial decisions (Henry, 2022). Thus, the workers deservedly search for a working environment that serves their rights fairly. A system must be developed by the government, non-governmental institutions and private citizens to ensure economic output, protecting laborers from such violations (Musa et al., 2022).

There are many conflicts that are caused by the practice of diploma detention, but only a few reported to the responsible institution. Two of those happened in Central Java and East Java. In a case that happened in Central Java, specifically in Semarang city, a worker reported this practice to the Ministry of Law and Human Rights, which later became one reason for the making of The Governor Handbill No. 560/00/9350 circulated on November 23rd, 2016 (Kanwil Jateng, 2021). In the same way, the Department of Labor in Tulung Agung (East Java) received eight reports by workers whose rights are violated caused of diploma detention. One of the reports stated that the company did not give the diploma back even after this worker had resigned, according to the regulation. Local Government Regulation No. 8 of 2016, concerning employment, clearly writes that diploma detention is strictly prohibited (Hidayah, 2023). However, since this practice has somehow become a custom for several companies, many workers are willing to do that to get the job. Despite the diploma detention, workers also have to face different problems such as one-sided dismissal, no clarity for the continued contracts, let alone the proper salary that many outsourcing companies often promise.

A previous discussion has mentioned several types of research conducted regarding issues in employment, especially in the context of the outsourcing act. This research is conducted to determine its originality by comparing itself to the previous research concerning outsourcing labor relationships from the perspective of civil code. The protection of the law for parties in outsourcing labor relationships, especially to outsourced workers/laborers, can be seen as adequate and is stated in an Employment Act as a concrete manifestation to measure justice according to the criminal code of the Employment Act.

Based on the above-mentioned issues, several questions arise: How can a labor agreement protect outsourced workers/laborers in Indonesia? Moreover, can criminal sanctions be implemented in the law concerning the practice of diploma detention?

RESEARCH METHOD

This research uses the normative legal research method, where the published material becomes a reference in legal research. This method is used to find the basis, principles and doctrines of law as an effort to bring legal issues to light. The data collected and processed is secondary data from existing literature. In this research method, data is processed to find information as well as theoretical and legal foundations.

The legal material that is secondary to this study is literature that deals with research problems. Additional materials (tertiary) come from newspapers, legal dictionaries, the Internet and the KBBI (Bahasa Indonesia Dictionary). A conceptual approach and a statutory approach are used to process the above data. Furthermore, the data is also processed to provide descriptive research results so that the descriptive analysis method is used to observe the legal protection for outsourced workers in Indonesia and the sanction for diploma detention policy practiced by the employer.

FINDINGS AND DISCUSSION

Labor protection through legal acts is needed to protect employees' legitimate rights and interests. A case in China shows that after the government (through the National People's Congress) adopted the Labor Contract Law of the People's Republic of China, there was an increase in employee's cohesion, sense of responsibility and passion for work which positively contributes to the firm's value of workforce (Zheng et al., 2022). Moreover, study shows that emotional supports from their surroundings are significant to better manage their stressors (Melika Shirmohammadi, 2023). These then raise a question: how can a labor agreement protect outsourced workers/laborers in Indonesia?

Outsourced Worker/Laborer

The definition of an outsourced worker/laborer, from an operational perspective, refers to a form of a labor agreement between two parties: Company A as a service user and Company B as a service provider. In this case, Company A expects Company B to provide the necessary human resources (workers) to work at Company A. Company A agrees to provide an amount of money or salary later paid by Company B. This process involves 3 (three) parties: the company that provides the human resources, the company that uses the outsourcing service, and the outsourced workers.

Nevertheless, not all work in the service user company can be assigned to an outsourcing service provider. Based on the Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 Article 3, several regulations exist for a job to be transferred to outsourced staffing agencies. Those regulations are as follows:

1. The employer company may assign partial work to the contractor company.
2. The work that may be assigned to the contractor company, as referred to in section (1), must

meet the following requirements:

- a. The work is carried out separately from the core activities of both management and work implementation;
- b. The work is carried out by direct or indirect orders from the employer company to provide an explanation of how to perform the work to be in line with the standards set by the employer company;
- c. The work constitutes supporting activities of the company as a whole, meaning that the work constitutes activities that support and accommodate the implementation of core activities in accordance with the flow of the work implementation process established by business sector associations that are formed in accordance with legislation; and
- d. The work does not impede the production process directly, meaning that the work is an additional activity, that if it is not carried out by the employer company, the work process continues as it should.

Civil Law Article 1313 states that an agreement is an act that involves one, several, or more parties who bind themselves with other parties. This type of bond creates obligations and rights that can be enforced through law (Jurist., 2002). Several laws can be used to define 'labor agreement.' Article 1601a of the Civil Law states the first one, "A labor agreement is an agreement in which one party, the laborer, agrees to bind himself/herself to be under the direction of another person, the employer, for a specific term, performing work in return for remuneration." A labor agreement is "the agreement between the laborer and employer which states the work requirements of rights and obligations between the two parties." Lastly, Law No. 11 of 2020 enforces labor agreement as "the agreement between the laborers/workers with the employer which includes requirements of rights and obligations between the parties."

The labor agreement determines several articles, especially those that are based on Article 1320 of the Civil Law. Besides referring to Article 1320 of the Civil Law, there are also other elements that regulate labor agreements that need to be noticed and complied with. Meanwhile, a more general definition of labor agreement can also be found in Law No. 13 of 2003 concerning employment. It is considered general as it contains the rights and obligations as well as work conditions for the parties involved. The labor agreement includes the following elements:

1. The relations between the workers and employers
2. The work requirements
3. The rights and obligations of the parties.

A labor agreement must also fulfill the conditions of a legitimate agreement as regulated under Civil Law Article 1320. This regulation is also written in Article 52 Section (1) of Law No. 13 of 2003 concerning Employment, which states that a labor agreement must be made under:

1. The agreement of both parties;
2. The capability or competence to take legal actions;
3. The availability/existence of the job which the parties have agreed about;
4. The notion that the parties have agreed about the job is not against public order, morality, and provisions of the prevailing laws and regulations.

The ability and eligibility of each party who agrees and makes the agreement shows that both parties can comply. The work discussed in the agreement is the object of law in the labor agreement between the workers and employer, of which the legal consequences cover the rights and obligations of the parties. The object of the agreement, or the work, must not violate the prevailing

laws and regulations' public order, morality, and provisions.

The labor agreement for outsourced workers/laborers is a bond between the outsourcing service provider and the workers due to an agreement between the two parties. A written agreement is mandatory, made in a minimum of two copies. Both are equally legitimate and protected by law. Each party (worker and employer) holds one copy of that agreement. That agreement must include several points as follows:

1. Company name, address, business sector
2. Name, sex, age, and address of the worker
3. Position or job description
4. Place of work
5. The nominal remuneration and the methods of payment
6. Work conditions, containing the rights and obligations of the employer and worker
7. The date when the work starts and the validity period of the labor agreement
8. The place and date where the labor agreement is made
9. The signatures of both parties in the labor agreement

The labor agreement for the outsourced workers/laborers can be in the form of an Indefinite Term Work Agreement (PKWTT) and a Fixed Term Work Agreement (PKWT) with different definitions and requirements.

The Practice of Detaining Diplomas of Workers/Laborers In Outsourcing Service Providers

A diploma certificate is an object owned by a person that states that the person has completed their education. In everyday context, when a company recruits someone, they submit a legitimate copy of the diploma as a statement of his/her educational qualification. However, some cases show that many outsourcing agencies/companies withhold the original diplomas of their workers, with or without stating when the original diploma will be returned to its owner.

There are many reasons stated to explain diploma detention practice; one of them is to prevent workers who see the company as stepping stones for their careers. In many cases, employers lose their workers if there is no collateral. Losing manpower means declining company performance, considering how a worker is the core element that drives the company. Without manpower, it is impossible for a company to operate its business. The employment discussed in The Law of the Republic of Indonesia No. 13 of 2003 Article 1 section 1601a regulates labor relations, stating that "Labor relation is a relation between employer and labor based on a labor agreement, with the notions of work, remuneration, and order" (Law No. 13 of 2003).

Meanwhile, the diploma detention practices of the workers are usually agreed upon by the parties both orally and on paper. The time to return a diploma is regulated in this agreement. The law or company's convention (policy) becomes the base of law, and the Civil Law becomes the legal base that regulates the agreement.

The Protection for Outsourced Workers/Laborers

Ideally, the employee protection should be reinforced in staged layers within the social, organizational and political forces to ensure their rights (Andrew et al., 2022). Protection for outsourced workers or laborers departs from the normative regulations that discuss the type of work that can be assigned to outsourcing service providers. Therefore, the outsourcing service provider must be lawfully registered as a legal entity. The Labor Agreement between the business owners and labors that complies with the regulations and the prevailing laws and provisions is also expected to provide security for parties bound by the agreement. Unfortunately, there is a status

change from the work relationship between the laborers and the outsourcing service provider (outsourcing agency) to a work relationship between the laborers and the company if several requirements stated in the law are not fulfilled. The type of labor agreement tends to be a Fixed Time Work Agreement (PKWT); thus, it is easy for the company to lay the workers off when they are not needed anymore (Putu, 2016).

There are many consequences in these types of agreement, especially in the case of non-compliance with the laws and regulations or labor agreements by the company. In this case, it is difficult for the workers to take legal action. It is due to Article 66 section (2), which assumes the absence of a labor relationship between the company and the outsourced workers (Law No. 13 of 2003).

In the case of workers' diploma detention by the outsourcing agency, it is difficult for workers to apply to other companies that may provide better income. The diploma is notably one of the main requirements in accommodating the applicant selection process. Concerning that, the diploma detention by the agency is not in line with Article 27 section (2) in the law as it hinders and takes away better opportunities for the workers in the future. The law does not state any regulations of diploma detention, which practices are often found in outsourcing contexts. The general conventions in the professional world and the custom of detaining the diploma itself become the basis of this practice. This practice indirectly regulates the work requirements in a company.

In the case of imposing sanction (criminal) in law as a policy to legally protect outsourced workers/laborers, Edwin H. Sutherland, Henderson, Edward Alsworth Ross, and other experts suggest that one of the violations of law committed by a corporation is the violations to laborers' rights. Corporate crime has now become a massively developing issue, even in Indonesia. Corporate crime is regulated by articles of Indonesian laws and regulations (Chamdani, 2022). The violations of law or crime committed by corporations are not in line with the characteristics and idealism of law and bring great losses to the laborers, society, and the state. There must be an urgency that pushes the effort to make these laws and regulations a legal protection that shields all parties' interests (rights and obligations) without any discrimination.

The diploma detention practice by the agency robs one's right to earn the maximum salary. It can also be said that the stakeholders in the company strip the laborers' right to get working experience as well as better severance and salaries. Based on the Employment Law (Law of the Republic of Indonesia No. 13 of 2003) and its implementation, no law regulates the practice of diploma detention. The absence of regulations creates obscurity in determining whether diploma detention is legally valid. For this reason, the practice of original diploma detention as a requirement for work is based on conventions occurring in the professional world and the freedom to create contracts.

Although the legislation does not regulate this practice, from the perspective of Human Rights, this practice violates human rights, as regulated and stated in the State Constitution Article 27 section (2). This law indirectly states that the practice of detaining original diplomas hinders the laborers' rights to earn good things that are rightly theirs due to work. Because of this practice, the business owners stripped the workers' right to actualize themselves through work as they believe. Ideally, the company considers complying with Article 62 of the Law of the Republic of Indonesia No. 13 of 2003, which states that outsourced laborers who violate the labor agreement before their contract expires must pay the penalty to the company.

Satjipto Rahardjo argues that there are two weaknesses in the legislation. The first one is its rigidity which arises from the hope that the laws and regulations ensure certainty. If certainty becomes the ideal hope that must be fulfilled, it must be followed, at least, with firm, detailed, and clear standards, with the risk that they become unchangeable norms. Secondly, there should be an

expectation that the legislation can form general standards, despite the risk of ignoring and stripping specific differences and characteristics that cannot be generalized. Mainly, in the recent time of complexity and distinction, it is not easy for us to generalize (Soesilo, 1996).

CONCLUSIONS

As stated in previous chapters, it can be concluded that the regulation in Law No. 13 of 2003 concerning employment as amended by Law No. 11 of 2020 concerning Job Creation as well as the Regulation of the Ministry of Manpower and Transmigration No. 19 of 2012 concerning the requirements of assigning partial work implementation to other companies, is normatively sufficient to protect outsourced workers. However, to protect the laborers fully in an outsourcing system, there must be firm supervision by the government to minimize the violations of the provisions mentioned above.

The diploma detention practice that has been implemented is a part of the agreement between the parties, namely the laborers or workers and the company, both orally and on paper, stating the details on the submission of the original diploma by the worker and the time for the original diploma to be returned. The legislation in Civil Law and Corporate Customs becomes the basis of the labor agreement. However, this kind of practice shows a weakness in the legislation that potentially creates negative impacts if not being improved immediately, such as the concern of unfair verdicts that fail to meet the expectation of involved parties. A verdict made in a court ideally considers the legal, social, and moral aspects. Simultaneously, these three aspects or perspectives become factors in making a lawful verdict. If the judge comprehends law theories well, including law establishment theories, the combination of the three perspectives of justice can be manifested in a verdict.

In terms of the sources of law, whether it is a convention or an agreement, diploma detention that is practiced by a company is feasible. However, from the perspective of the State Constitution of the Republic of Indonesia concerning human rights for proper jobs and livelihood, this practice is unacceptable. This action directly impedes a human's right to work and get experiences and better remuneration. Thus, a legal regulation that regulates diploma detention is urgently needed to clarify whether business owners or companies' practices are fair. Furthermore, suppose a dispute concerning the detention of a worker's original diploma arises and leads to a lawsuit. In that case, the court verdict with a legal force can be used as a basis (source of law) on whether it is acceptable for a company to withhold a worker's original diploma in the existing labor relations.

In the same way, there is an absence of law in the employment legislation regarding the practices of detaining a worker's original diploma. Because of the obscurity of legal standards, the agency chooses to detain the diploma under conventions and agreements as its source of law. From the perspective of the freedom of contract, this practice is doable. However, this kind of freedom does not refer to an unregulated state. The laws and regulations have not completely discussed the issue of original diploma detention. Still, the principles of human rights emphasize that the practice is considered hindering a person to get a better job and right fulfillment.

LIMITATION & FURTHER RESEARCH

This research uses the normative legal research method, where the published material becomes a reference in legal research. The limitation of this research is only to analyze the data gathered from literature reviews of Indonesian applicable laws and regulations. By using the conceptual approach, this research focuses on the issues related to Fixed Term Work Agreement and Indefinite Term Work Agreement and the policy of diploma detention.

Due to the limitation of this research, there are topics that can be discussed based on this research, such as 'how the Legal Protection for workers/laborers based on the Manpower Law No.

13 of 2003 (Labor Law, 2003) and Job Creation Law No. 11 of 2020 can help to protect the outsourced workers/laborers?' and 'Can Criminal Sanction be considered as one of the ways to uphold the legal protection towards the outsourced workers/laborers?'

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