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## LEGAL PROTECTION OF PROJECT-BASED COMPANY CONTRACT WORKERS IN IT

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### ABSTRACT

Outsourcing is a job contracting agreement. In Article 64 of Law Number 13 of 2003 it is stated that the Company may hand over part of the execution of the work to other companies through a written agreement for contracting work or providing workers/labor services. The contract of work contracting is an agreement, where one party who is the contractor binds himself to make a certain work for the other party, who does the contracting by receiving a certain payment, and where the other party who is the contractor binds himself to buy the work to one party, the contractor, with certain payments. The legal theory used is the theory of legal protection and the theory of legal consequences.

The research method used in this study is a normative juridical approach which is supported by empirical juridical by detailing the description, namely a research that deductively begins with an analysis of the articles in the laws and regulations governing the problem of how the legal protection of contract workers in the IT sector is project-based and what are the legal consequences for project-based IT companies if they violate the provisions of the work agreement. In addition, primary data is also used to support secondary data legal materials. The power analysis is carried out using the normative juridical analysis method.

The results of the research on the legal protection of project-based corporate contract workers in the IT sector show that protection through the implementation and application of work agreements contains the rights and obligations of employers and workers, including working conditions, wages, and methods of payment. With the existence of a work agreement, it is hoped that the parties who agree to have a working relationship know better the rights and obligations of each party and know for themselves whether he has carried out the agreement properly or he has violated the agreement. The legal consequences for a project-based IT company if it violates the provisions in the work agreement that workers who violate in the form of sanctions will be imposed on workers who violate them are regulated in the work agreement, this has been confirmed in the Law of the Republic of Indonesia Number 13 of 2003 concerning Employment.

### KEYWORDS

Legal Protection, Contract Workers, IT Companies

### INTRODUCTION

Indonesia is an archipelagic country that has a very large population, so that it becomes a very large Human Resources (HR) power to carry out development. Very large human resources must also be balanced with adequate competence and character to be absorbed by the business world, not to mention the number of jobs or places of work needed must be very large. Because if there are more workers than jobs, unemployment will arise which will have a bad and burdensome impact on the country's economy.

One way of alleviating poverty is to encourage entrepreneurs and companies to absorb a large number of workers in Indonesia. However, it is undeniable that the existing labor laws in Indonesia have not been able to become a good partner, both for workers and companies, in this case as entrepreneurs themselves.

PP 35 of 2021, states that companies are required to provide workers with compensation when the PKWT ends. Compensation money is given to workers who have worked for at least 1 month, and in the PP, if the PKWT or work agreement is extended, the compensation money will be given when the extension period ends. This proves that Entrepreneurs are increasingly being charged with more expenses than before the Government Regulation was issued.

The government issued Law Number 11 of 2020 concerning Job Creation, better known as the Omnibuslaw Law as regulated in Article 15 and Article 16 of PP 35/2021. (1) Employers are obliged to provide compensation money to Workers/Labourers whose employment relationship is based on PKWT. (2) The payment of compensation is carried out at the end of the PKWT; and this is considered burdensome for the Entrepreneur or the Company.

In Chapter IV of the Employment Creation Law which regulates Manpower, there are several articles that do not support the company in running its business. Judging from the Constitutional Court Decision Number 27/PUU-IX/2011, it is in line with the Job Creation Law Chapter IV Article 59

paragraphs 1 (a) and 1 (b) which reads 1(a) work that is once completed or temporary in nature; 1(b) work which is estimated to be completed in a not too long time. Meanwhile, the IT world is on the rise and it is assumed that the work will always be there, so many Government people in this case the Ministry of Manpower feel that IT employees will always be permanent, when in fact IT companies are engaged in services and the maximum form of cooperation is only annually (once a year). .

Basically there is no legal prohibition for companies to apply a Specific Time Work Agreement (PKWT), because all of this has been clearly and firmly regulated by Law Number 13 of 2003 concerning Manpower. In Article 56 paragraph (1) of Law Number 13 of 2003 concerning Manpower, there are two forms of work agreements based on time, namely a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT). chartering a job. In Article 64 of Law Number 13 of 2003 it is stated that the Company may hand over part of the execution of the work to other companies through a written agreement for contracting work or providing workers/labor services.

Article 1601b of the Civil Code states that outsourcing is an agreement in which one party, the contractor, binds himself to carry out a certain job for another party, namely the party who is contracting, by receiving a predetermined price. Because the nature of IT companies is in the service sector and is similar to job chartering, can it be categorized as outsourcing? The principle of work that always exists may apply to companies engaged in production, but it is somewhat different from service businesses in the IT sector that "rely on" Cooperation (agreements) or extensions of Cooperation (agreements) with companies that use their services.

Therefore, it is interesting to conduct a juridical study related to the legal protection of workers in the project-based IT sector.

In order to ensure the authenticity of this research, the researchers included several studies in the form of those that have similarities in this study, namely as follows:

1. Marlen Tunru Title "Legal Aspects of Management Development Program Agreements in the Perspective of Law Number 13 of 2003 concerning Employment", Master of Law at Jayabaya University, 2020. Research results Legal polemics arise because currently the MDP Agreement is categorized as an ordinary civil agreement and is not employment agreement. Management Development Program (MDP) agreement which contains elements of a work agreement whose dispute resolution should follow labor law with an industrial relations dispute settlement mechanism. So that the problems that arise between the parties are not accommodated by the provisions of Law Number 13 of 2003 concerning Manpower.
2. Ricardo Osmar Sonata entitled "Determining the Minimum Wage in the Special Capital Region of Jakarta as an Implementation of Workers/Labourers Welfare Associated with a Decent Living Wage in Law Number 13 of 2003 concerning Employment" Master of Law, Jayabaya University, 2016 the minimum wage in the Special Capital Region Jakarta is the result of the Wage Council's efforts to conduct a survey to produce a decent living wage by considering the consumer price index. An assessment of the wages of workers/laborers in the Special Capital Region of Jakarta is at least due to the following reasons. First, so that workers can earn a decent living, second, the Regional Government of the Special Capital City Region of Jakarta must intervene in cross subsidies (in the short term) between private foreign capital companies and private companies, especially in the Special Capital Region of Jakarta, third, workers are never directly involved to determine wages in a company, Fourth, overcoming strikes can harm workers and companies in the Special Capital Region of Jakarta.

## **METHOD**

The research method used in this study is a normative juridical approach or normative law which is a research method based on library law research methods. The first stage of normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The second stage of normative legal research is research aimed at obtaining subjective law (rights and obligations). which is supported by empirical juridical by detailing the description, namely a deductive study that begins with an analysis of the articles in the laws and regulations governing the problem of how the legal protection of company contract labor in the IT sector is project-based and what are the legal consequences for project-based IT companies. in violation of the provisions of the employment agreement. In addition, primary data is also used to support secondary data legal materials. The power analysis is carried out using the normative juridical analysis method.

The main source of legal materials used in normative research is library research with primary, secondary, and tertiary legal materials. The technique of collecting legal materials in this research is done by collecting, reviewing and systematically processing library materials and related documents. Secondary data, both concerning primary, secondary and tertiary legal materials, are obtained from library materials, taking into account the principles of updating and relevance.

## RESULTS

In the provisions of the Manpower Act, there are two types of work agreements regulated, namely PKWTT and PKWT. PKWT is regulated in Article 57 of the Manpower Act, namely an agreement made in writing and made using Indonesian and Latin letters. This PKWT experiences irregularities in its implementation and it is undeniable that there are still many companies that do not or have not made written work agreements due to the inability of human resources or because of the prevalence so that on the basis of trust in making verbal work agreements, deviations in work agreements cause anxiety to employees. contract with the PKWT system, because this can have an impact on temporary work status and without clear legal protection for those who work in companies using PKWT that are made orally or not recorded.

Based on the provisions of the Manpower Act, there is legal protection for employees for those working in companies with a PKWT system. The protection provided to contract employees aims to protect the rights of employees and be free from all forms of discrimination in order to create the welfare of the employee and his family. The process of applying PKWT is one of the obstacles in the application of work agreements, this is caused by the non-enforcement of all the provisions stipulated in the Prevailing Laws. The objectives of the establishment of the Manpower Act are to empower and use the workforce optimally and humanely, to realize equal distribution of employment opportunities and to provide manpower in accordance with the needs of national and regional development, to provide protection to workers in realizing prosperity, and to improve the welfare of the workforce and his family. Of course, entrepreneurs who run the economy are obliged to follow and participate in carrying out all provisions of the legislation in order to ensure legal protection for contract employees with work agreements for a certain time.

The implementation applies a contract system (PKWT) to all new employees. If viewed from the perspective of the Manpower Act, that in the provisions of Article 57 paragraphs (1) and (2) PKWT must be made in writing. This provision is intended to better guarantee or safeguard things that are not desirable in connection with the expiration of the employment contract. Normatively, the written form guarantees the certainty of the rights and obligations of the parties, so that if a dispute occurs, it will greatly assist in the evidentiary process.

In practice, the agreement is not made in writing but verbally or not recorded, then the work agreement automatically turns into a PKWTT. The Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: KEP.100/MEN/VI/2004 concerning Provisions for the Implementation of PKWT, hereinafter referred to as KEPMEN, in Article 15 paragraph (1) states that: A Specific Time Work Agreement (PKWT) which is not made in the Indonesian language Indonesian and Latin letters changed to an Indefinite Time Work Agreement (PKWTT) since the employment relationship was established. In a contrario it can be interpreted that when the work agreement is verbal (not made in Indonesian and Latin letters), then the Work Agreement is a PKWTT because the two Work Agreements have different specifications of rights and obligations. So that employees who initially have contract or PKWT status have the right to claim their rights as employees with PKWTT employment status or permanent employees in accordance with the provisions of the applicable laws and regulations.

The protection of contract employees mandated by the Manpower Act related to PKWT is not recorded, it can be said to have protected contract employees with the PKWT system, which is if the employee works for a company with a PKWT system but is not made in writing but verbally based on Article 57 paragraph (2) of the Law - The Manpower Act, where PKWT is made unwritten, is declared as PKWTT or the status of those who were originally contract employees changed to permanent employees.

## DISCUSSION

### 1. Legal Protection for Project-Based Company Contract Workers in IT

Legal protection for contract workers is contained in Law Number 13 of 2003 concerning Manpower which states that labor law is a collection of regulations on all matters relating to labor before, during and after the work period. Juridically, workers are indeed free because the principle of our country states that no one is enslaved or inhibited.

In Law Number 3 of 1992 concerning Jamsostek, it is stated in Article 1 point (2) that, "Labor is any person who is able to do work both inside and outside the employment relationship to produce certain services or goods to meet the needs of the community"

According to Article 1 paragraph (2) of Law Number 13 of 2013 states that "Labor is everyone who is able to do work to produce goods and / or services both to meet their own needs and for the community"

Labor law protection is an obligation of the government as the controller of power, especially in the labor sector. The form of labor law protection is categorized into 3 (three) types, namely:

1. Technical Protection, which is a type of protection related to efforts to protect work from the danger of accidents caused by aircraft or work tools or by materials processed or worked in the company. This type of protection is called Occupational Safety and Health (K3).
2. Social Protection, namely a type of protection related to the community whose purpose is to enable the worker to enjoy and develop his life as a human being in general, as a member of the community and as an occupational health.
3. Economic Protection, which is a type of protection related to efforts to provide workers with an income sufficient to meet the daily needs of the worker and the worker's family, including in the event that the worker is unable to work due to something against his will.

There are 2 systems of work agreements in Indonesia, namely a certain time work agreement (PKWT), or commonly known as outsourcing, and an unspecified time work agreement (PKWTT), or commonly called permanent workers. Law Number 13 of 2003 concerning Manpower regulates workers/labourers and employers/employers. A work agreement for a certain time is regulated in Article 56 paragraph (2) of Law Number 13 of 2003 concerning Manpower, it is stated in the article that a work agreement for a certain time is based on a period of time or the completion of a certain job.

According to the author's opinion in accordance with the theory of legal protection according to Setiono, legal protection is an action or effort to protect the community from arbitrary actions by authorities who are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

Legal protection for outsourcing companies in the IT sector based on projects is a company that already has clear legal rules regulated in the Company Law No. 40 of 2007 concerning the Company.

## **2. Legal Consequences for Project-Based IT Companies When Violating the Provisions in the Employment Agreement**

Laws without firmness often hinder justice. In relation to the implementation of outsourcing in Indonesia, the provisions regarding outsourcing must be perfected with clear and firm arrangements regarding to whom the worker/ laborer has a working relationship. In principle, companies that accept jobs that have a working relationship with workers/labor. Likewise, the rights and obligations of the company providing the job and the company receiving the job must be clearly and firmly regulated in a "written agreement" between the company providing the job and the company accepting the job.

In terms of workers' interests, the existence of contract work or labor service providers requires a clear firmness of employment relations so that the fulfillment of workers' rights based on labor laws and regulations is clearly responsible for the person in charge. For this reason, workers must be bound by a work agreement with the company that employs them.

From the entrepreneur's point of view, the existence of job chartering or labor service providers is advantageous because the entrepreneur can concentrate his thoughts on dealing with his core business while supporting work can be left to the contractor. Thus employers do not need to have a large organization with a large number of workers. Likewise, employment problems can be eliminated by the presence of other companies that handle supporting work, where the employment relationship of workers is directly handled by contractors or labor service providers.

According to the author's opinion, in accordance with the theory of legal consequences according to R. Soeroso, a legal action is any act of a legal subject (human or legal entity) whose consequences are regulated by law and because of this consequence can be considered as the will of the person carrying out the law. Where is an act carried out by a legal subject (human or legal entity), which action can cause a desired result by the person who did it. If the action is not desired by the person who did it or one of the people who did it, then the act is not a legal act. Therefore, the will of the legal subject (human or legal entity) who commits the act becomes the main element of the act.

In this case the legal consequences for workers who commit violations in the form of sanctions that will be imposed on workers who violate are regulated in the work agreement, this has been confirmed in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, that the letter of employment agreement for a certain time If the entrepreneur or worker terminates the work agreement for a certain period of time before the expiration date, then the party terminating the work agreement is obliged to pay compensation to the other party in the amount of the remaining wages of the worker until the time or the worker should have finished, except if the termination of the employment relationship is due to compelling reasons. worker error. As a consequence, the work agreement becomes null and void and can be canceled.

## **CONCLUSION**

1. Legal protection of project-based company contract workers in the IT sector that protection through the implementation and application of work agreements contains the rights and obligations of employers and workers, including working conditions, wages, and payment methods. With the employment agreement, it is hoped that the parties who agree to have a working relationship will

- know more about the rights and obligations of each party and know for themselves whether they have implemented the agreement properly or if they violate the agreement.
2. The legal consequences for a project-based IT company if it violates the provisions in the work agreement that workers who violate in the form of sanctions will be imposed on workers who violate the provisions of the work agreement, this has been confirmed in the Law of the Republic of Indonesia Number 13 Year 2003 concerning Manpower, if the party who terminates the employment agreement is obliged to pay compensation to the other party in the amount of the remaining wages of the worker until the time or the worker should have finished, except if the termination of the employment relationship is due to coercive reasons/the worker's serious error.

### SUGGESTION

1. For the Government in carrying out regulatory arrangements, it is necessary to pay attention to the rights and obligations of workers, in structuring these regulations it is necessary to have written arrangements for their application in the law and must be in accordance with the Pancasila ideology adopted by the Indonesian state. The state has an important role in providing protection for its citizens, so that the formation of these regulations can create harmony and legal certainty for workers and the rights and obligations of workers are fulfilled.
2. Workers in this case need to pay attention to new policies issued by the government, workers are expected to have knowledge and be able to follow any developments regarding applicable labor regulations. So that in carrying out work agreements, the fulfillment of the rights and obligations of workers does not occur inequality. As well as for entrepreneurs as employers who have a higher position than workers must comply with applicable labor regulations to create a healthy climate of cooperation, in making work agreements the entrepreneur should refer to the existing laws and regulations to avoid regulations that can harm one one party, namely the workers.

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