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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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The 5th PROCEEDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Reconstruction Of Justice Law Protection Law Protection

Wamyani⁴⁶⁴

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Abstract

The rights of outsourced workers are the rights of outsourced workers Themselves, the rights of outsourced laborers are not left to PT Provider of outsourcing, but must be Returned to the outsourced workers Themselves, providers of outsourced workers must be Reconstructed to be only run by Cooperatives labor outsourcing itself, Because with the outsourcing of labor in companies there is evidence that outsourcing labor is still needed by both parties, with the transfer of outsourcing labor will be Able to organize itself wisely and wisely

Keywords: Reconstruction, Legal Protection, Labor, Outsourcing, Justice.

A. Preliminary

Manpower development is part of a national development that is based on Pancasila and the Constitution of 1945 (1945). Clause 27 (2) states that the government provides protection to every citizen to get a job and a decent living. This provision must not be separated from the philosophy contained in the 1945 Constitution which stipulates that one of the national goal is to improve the welfare for the people of Indonesia. Furthermore, according to Article 33 UUD 1945 stated that the economy is based on the kinship system.

The Law No. 13 of 2003 on Manpower (Labor Law) new things that set the settings on the Delegation of jobs through contracting agreements or the provision of worker / laborer to another company ‘ i⁴⁶⁵n everyday practice known as outsourcing (outsourcing). Provision of outsourced invites polemics and debates concerning the interests of workers and employers ⁴⁶⁶, Which

gave birth to The Constitutional Court (MK) No. 27 / PUU-IX / 2011 regarding the cancellation of the article 65 paragraph (7) and Article 66 paragraph (2) b of the main jobs is not allowed anymore to outsourcing.

Indonesian law state principles affirmed in 1945 a decisive explanation that, the Indonesian state based on law (rechtsstaat) is not based on power alone (machtsstaat).⁴⁶⁷ State laws derived from the term Dutch (Rechtsstaat) opposite of machtsstaat , The elements of the rule of law by AV Dicey consists of three (3) elements, namely⁴⁶⁸ :

1. The rule of law (supremacy of law)
2. Equation before the law (equality before the law)
3. Individual rights (individual rights) does not require the administration of justice, because justice is generally considered applicable to everyone for both citizens and government officials.

⁴⁶⁴ Authors are employees of PT. Patra Trading Jakarta, is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.

⁴⁶⁵ See Article 64 of Law No. 13 Year 2003 on Manpower.

⁴⁶⁶ Healthy Damanik 2006, *Outsourcing and Employment Agreement According to Law No. 13 of 2003 on Labor*, DSS Publishing, Jakarta, p. 1.

⁴⁶⁷ *Ibid*, p. 158.

⁴⁶⁸ *Ibid*

In Article 1 (3) of the 1945 Constitution stated Indonesia is a country of law. State laws were fought in this country is a country in terms of the substantive law, the rule of just law, which aims to organize the general physical and spiritual welfare. Based on the principles of law is right and just, so that the basic rights of citizens truly honored (to respect), protected (to protect) and filled (to fulfill)⁴⁶⁹, Legal protection as a description of the function of the law, namely the concept that the law can provide a justice, order, certainty, usefulness and peace⁴⁷⁰. Effective or not the law can be measured by how much the system in achieving its objectives. Based on the description above formulated problem:

1. Why legal protection against labor outsourcing has not been based on values of justice?
2. The inadequacies of the realization of legal protection against the outsourcing of labor prevailing in Indonesia at this time?
3. How is the reconstruction of the legal protection of labor outsourcing based on values of justice?

This study is a qualitative research approach that departs sociolegal of constructivism⁴⁷¹, Also through Empirical juridical approach is a method or procedure used to solve the problem by first examining the existing secondary data and then proceed with research on primary data in the field⁴⁷², This

approach aims to understand that the law is not solely as a statutory set of rules that are normative, but legal as *menejala* community behavior in public life, interact and relate to aspects of society, socio-cultural aspects.

B.Results and Discussion

Article 1 (3) jo. Article 28 UUD 1945 shows Indonesian Legal State recognize, protect and respect the existence of human rights is one of the characteristics of a state of law is the protection of human rights⁴⁷³, The human rights protection also includes legal protection against employers and labor, because both have a relationship that can not be separated to produce a product or service. No companies produce if it is not supported by the existence of labor, and vice versa no labor income if there is no company that hired him. Thus in providing protection to the working world should *berkeseimbangan*, there should be no parties must be seeded or attenuated.

Likewise with the problem of labor outsourcing. New outsourcing arrangements regarding the outsourcing of times set in the regulation of labor in Indonesia. The term outsourcing understanding can be taken of the provisions contained in Article 64 of the Labor Law⁴⁷⁴ who called it a work Works Agreement and the Agreement Provision of Services workers. In the Labor Law itself does not mention the term outsourcing or outsourcing that is not also found understanding about it⁴⁷⁵, The term is then in everyday prac-

469 Abdul Muktie Fajar, 2013, *the State of Law Building Dignity, Cet. I, Equivalent Press, Malang*, p. 5.

470 Rahayu, 2009, *Freight One, etd.eprints.ums.ac.id. Government Regulation, No. 2 of 2002 on the Procedure for Victim and Witness Protection Violations of Human Rights In The Weight of Law of Republic of Indonesia, No. 23 of 2004 on the Elimination of Domestic Violence*.

471 See Sudarwan Danim, 2002. *Being a qualitative researcher, Faithful Reader, Bandung*. See also in Lexy J. Maleong 2005, *Qualitative Research Methodology, Rosda paper, Revised Edition, Bandung*, p. 165. Also in Anas Saidi, 2005 "Qualitative Research Methods", *Papers Research Proposal Preparation Workshop, LIPI, Jakarta*. p. 6. And also in S. Nasution, *Naturalistik Qualitative Research Methods, Transito, Bandung*, hlm.12. see also Esmi Warassih 2006, "Socio-Legal Studies: History and Progress Dynamics", *Paper Workshop, Dynamics Research Forum of Justice and the Ombudsman Magazine, Bandung*, p. 5. Also in Bambang Sunggono 2003, *Methods of Legal Research, King Grafindo Persada, Jakarta*, p. 103.

472 Soerjono Soekanto, 1986, *Introduction to Legal Research, UI Press, Jakarta*, p. 52.

473 Bahder Johan Nasution, 2011, *Law and Human Rights, Cet. I, Mandar Madju, Bandung*, p. 10.

474 According to Article 64 of the Labor Law, that: "The Company may subcontract part of the work to another company through an agreement contract of work or the provision of worker / laborer made in writing".

475 In the rules of legislation usually terms in a given *defenisinya* Law in the General Provisions contained in Article 1.

tice interpreted as outsourcing⁴⁷⁶, According to Article 64, there are two forms of outsourcing which the Employment Agreement employment agreement contract of work and labor agreement provision of worker.

The right to a job and a decent living for humanity, is the right of every citizen as stipulated in the Constitution of 1945, Article 27 paragraph (2) which states that “every citizen has the right to work and a decent living for humanity”. Since its inception the Indonesian state, it is already established as the human rights of citizens. This is a reflection of the enforcement of ESC rights (economic, social, cultural) for every citizen, especially for labor.

Outsourcing or outsourcing is a solution for employers to face the competition in the business world. Sourcing derived from economic theory which aims to achieve work efficiency compared to when using in-house manufacturing. In terms of legal theory review, outsourcing is a form of contract of work. Article 64-66 Labor Law has been one imposes limits outsourcing which extends the terms of outsourcing into shape outsourcing workers (not outsourcing profession).

PT. Pertamina Balongan Cirebon before the birth of the Labor Law have used labor outsourcing, legal entities which provide labor outsourcing is a legal entity cooperatives, during which up to not run into problems with labor outsourcing for cooperative labor as a legal entity owned by the members themselves but after the enactment of Ketenagakerjaa and particularly after the issuance of the Minister of Manpower and Transmigration No. 19 Year 2012 regarding the Terms of Submission Part of work Implementation to Companies (Candy P3KPL) prohibits cooperatives to provide manpower outsourcing and manpower outsourcing should form a Limited Liability Company (PT), thus placing the out-

sourcing of labor that memorandum benenya in a weak position increasingly attenuated,

The theory of the law according to Anthony Allott⁴⁷⁷ effectiveness in his book “The Limits of Lawl. according to Anthony Allott⁴⁷⁸, That the existence of legal limitations and effectiveness (degree of compliance). Mencernati it comes the phenomenon of a general trend in many countries to draft laws do not predict assess whether products legislation that can achieve its objectives or not. Based on the assumption that there is difficulty in measuring the effectiveness of the law. According to Anthony Allott, That the law will be effective if the purpose of his existence and enforcement actions to prevent unwanted (eliminate clutter). Effective law in general can make what they were designed to achieve. If a failure occurs then the possibility of rectification easily, in case of necessity to carry out or implement the new law in a different atmosphere, the law will be able to finish it.

Satjipto Rahardjo say that progressive laws are a series of radical action, by changing the legal system (including changing the legal regulations if necessary) so that the law is more useful, especially in self-esteem and ensure the happiness and well-being. Law aims to create justice and prosperity for all people⁴⁷⁹. Satjipto Rahardjo attempts to highlight the condition of the above into a situation of social sciences, including law, basically phenomenal changes regarding laws formulated by the sentence from simple to complex and from fragmented into a single unit. This is what is called a holistic view of science (law). The holistic perspective provides visionary awareness that something in a certain order has good inter-related parts with other parts or the whole. For example, to understand the whole man is not enough just to understand, eyes, ears, hands, legs or brain

⁴⁷⁶ Khairani, *Analysis of outsourcing in terms of concept and Implementation Law, Kanun, 2012, FH Unisyah*

⁴⁷⁷ Anthony Allott, *The Effectiveness of Law in Valparaiso University Law Review. Vol. 15 Winter 1981.*

⁴⁷⁸ *ibid*,

⁴⁷⁹ *Ibid*

alone, but must be understood thoroughly.⁴⁸⁰

Progressive law is one of the most interesting ideas in the legal literature Indonesia at this time. Said to be interesting, because the Progressive Law has sued the existence of modern laws which have been considered to be established in our arbitrate during this time⁴⁸¹. The basic assumption of progressive law is the view of the relationship between law and human. There affirmation principle that “the law is for man” and not vice versa.⁴⁸²

The terms and principles outsourcing either through agreement or contract of work with the company providing worker / labor, can result in the loss guarantee legal certainty for workers and the loss of the right of everyone to work and to receive remuneration and fair and proper treatment in the employment relationship. It happens, because with the end of contracting work or the expiry of the contract the supply of workers / laborers can then ended the relationship so that workers / laborers lose their jobs as well as other rights that should be obtained. This means that the outsourcing of labor to the law rather than the reverse. in line with the terms of labor law needs to be reconstructed.

C. Conclusions and suggestions

1. knot

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⁴⁸⁰ Satjipto Rahardjo, 2004, *the Legal Studies; Search, Liberation and Enlightenment*, Muhammadiyah University Press, Surakarta. h. 18

⁴⁸¹ Satjipto Rahardjo, 2009, *Progressive Law A Synthesis of Indonesian law*, Genta Publishing, Yogyakarta, hv

⁴⁸² Satjipto Rahardjo, *Progressive Law, Law That Frees, Progressive Law Journal, PDIH Semarang, Volume I No. 1, April, 2005, p. 5.*

- a. Legal protection of labor outsourcing has not been based on values of justice because the law has not in fact provide the protection of labor outsourcing.
- b. The inadequacies of the realization of legal protection against the outsourcing of labor force in Indonesia today is the closing of access to manpower outsourcing to gather themselves in cooperatives and had cooperation agreements in the provision of outsourcing by companies that need.
- c. Reconstruction of the legal protection of labor outsourcing based on values of justice needs to be realized.

2. Suggestion

- a. Should legal protection between employers and skilled manpower is balanced and equitable power.
- b. Should the weaknesses in the labor laws diminimalisis with reference to that law to men (manpower outsourcing) not vice versa.
- c. Reconstruction of employment law stipulates that permitted do perajajjian that use labor hasa outsourcing can only be done by the Legal Entity cooperative labor outsourcing provider consisting of labor outsourcing.

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