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Alignment of Outsourcing Agreement on Protection Law and Justice

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ABSTRACT

One of these systems outsourcing, in practice often raises the pros and cons even cause problems. The problem is why research in the outsourcing agreement must have harmony with the principles of contract law? and how legal protection for workers/laborers and employers in the outsourcing agreement with the labor Law No. 13 Year 2003 on Employment associated with Court Decision No. 27/PUU-IX/2011?. This research methods using empirical juridical normative juridical supported/sociological and comparative law. Commonly used secondary data. Based on the results of analysis show that the employment agreement outsourcing based on the principle of freedom of contract and the principle of the deal. Each of these parties do not have equal bargaining power, so it does not provide legal protection for workers/laborers. Preparation and implementation of the outsourcing agreement is based on the alignment of the entire principle or principles that exist in the law of contract, is a unity, without prioritizing or separating principle that one with the other principles and serve as the frame of the treaty.

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Introduction

Protection of workers/laborers in labour law applied universally in all countries, even got a guarantee of protection of the United Nations (UN). This is because labor (employment) is a group of citizens/communities in life are in a very weak position in both the guarantee and legal protection and the right to live in looking for a job to be able to live decently. Labour (labor), is closely related to the right to work, which is one human right that must be guaranteed and legal protection from the government or state (Abdussalam, 2009).

One of the background to the Law No. 13 of 2003 on Concerning Manpower is due to some of the legislation prevailing during this time including some that is a product of the colonial placing workers/laborers at a disadvantage in the ministry of employment and industrial relations system highlight the differences in the position and interests that are considered no longer suitable to the needs of the present and future demands. With the issuance of Law No. 13 of 2003 on Concerning Manpower is expected to: Enforce the problem of protection and guarantees for the labor; Implement various international instruments on the rights of workers who have been ratified; As a member of the United Nations (UN) to uphold and implement the Universal Declaration of Human Rights.

The legal protection worker/laborer is one form of protection of human rights, it can be seen on: preamble of 1945 Constitution which is basis of Pancasila; Article 27 paragraph 2, Article 28 D, paragraph 1, paragraph 2, Article 33; Act No. 13 of 2003 on Concerning Manpower; The Constitutional Court Decision No. 27/PUU-IX/2011, followed by Circular Letter the Minister of Manpower and Transmigration No. B.31/PHI.JSK/I/2012 About Outsourcing and Working Agreement Specific Time (PKWT), Minister of Manpower and Transmigration No.19 of 2012 on Conditions of Work Implementation Delivery of a proportion of the Companies as a replacement for the Decree the Minister of Manpower and Transmigration of the Republic of Indonesia No.Kep.101/Men/VI/2004 on Procedures for Licensing Services Provider Company Workers/labor (Decree No. 101/2004)..

The era of globalization affecting various areas of life such as political, technological, economic, social, and culture by characteristics of the opening of world markets, intense competition, rapid changes on structure and technology, is believed to cause a dramatic impact on work (ILO, 2000). Various ways entrepreneurs to survive and make a profit middle of the business world competition is intense, one of the solutions taken the company that is doing outsourcing work agreement. Some experts and practitioners outsourcing in Indonesia, called the term outsourcing as outsourced. In other words, delegating the daily operation and management of a business process to outside parties (outsourcing services company) (Suwondo, 2008).

A similar opinion was stated by Tambusai (2005) which defines outsourcing (outsourced), namely: "contracting outside one part or several parts of the activities previously managed his own company to another company which was then called as the recipient of the job". In general, outsourcing is the transfer or delegation of several business processes to an agency service providers, service providers where the body is exactly what did the administration and management under the terms agreed by the parties. From the definition above, there are similarities in the view that contained outsourcing the delivery of some activities of the company to other parties. Transfer of some operations in this outsourcing system is based on outsourcing agreements. In the presence of work agreements cause engagement or legal relationship to the parties. In general, the agreement is: "It is an event where a promise to another person or where the two men promised each other to implement something from this event arises a legal relationship between the parties who called the engagement" (Sutarno, 2003).

In Indonesia, the relationship outsourcing agreement as part of an industrial relations as implied in the provisions of Articles 64, 65 and 66 Act No. 13 of 2003 on Concerning Manpower cause problems and prolonged controversy between the representatives of the workers/laborers and employers. On the one hand by entrepreneurs where outsourcing is now urgently needed. Outsourcing is an attempt to get experts as well as reduce the burden and cost of the company in improving the experts as well as reduce the burden and cost of the company in improving the performance of the company to continue competitive in the face of economic development and global technology by submitting the company's activities to other parties as stipulated in the contract (Tunggal, 2009). In terms of workers/laborers are very complex implications. This is because at the current era of globalization of industrial relations in the field of industrial relations practical applying the scheme based on a system of Labour Market Flexibility (LMF). At the same time, the implementation of flexible working system that can: Weakening

the power of bargaining and protection of the rights of the worker/laborer; Reducing (or even close) the possibility to fight for their rights through organizations or unions because instead of permanent workers; Cause problems due to the employment relationship is unclear; Violations occurred due to the absence of strict sanctions, lack of guidance, supervision and weak law enforcement in the field of employment.

Implementation of outsourcing agreements have often not based on the alignment of all the principles contained in the law of contract, causing a lot of problems, it can be seen among others: Decision of the Industrial Relations Court in the District Court of Semarang No. 16/G/20011/PN.PHISMG jo Supreme Court Decision No. 691 K/Pdt.Sus/2011, the Central Jakarta District Court Decision 246/PHI.G/2010/PN. JKT.PST. jo Supreme Court Decision No. 644 K/Pdt. Sus/2011, the Constitutional Court Decision No. 27/ PUU-IX/2011, About application for judicial review of Law No. 13 Year 2003 on Employment of the Constitution in 1945, and the Decision of the Industrial Relations Court in Jakarta No. 170/G/2007/PHI.Jkt. Pst jo Supreme Court Decision Number 114 K/Pdt. Sus-PHI/2013. From the problems described above can be formulated the problem as follows: 1) Why in the outsourcing agreement should have harmony with the principles of contract law?; and 2) How is legal protection for workers/laborers and employers in labor outsourcing agreement with the Act No. 13 Year 2003 on Concerning Manpower associated with the Constitutional Court No. 27/PUU-IX/2011?.

The labor law was born from the idea to provide protection for the parties, especially the workers/ laborers as the underdog and social justice in the working relationship between the parties that have similarities and differences are quite large. The similarity is that human beings are equally God's creation that has human dignity, while the difference is in terms of position or socio-economic status, where workers/laborers have worked on income with entrepreneurs/employers. The goal of social justice in the field of employment can be realized to protect workers/laborers to unlimited power of the employers/entrepreneurs, through the existing legal means.

Justice can only be understood if it is positioned as a state to be realized by the law. Huijbers (Kusumaatmadja, 2002) describe three legal purposes: First, maintaining public interest in the community. Second, maintaining human rights. Third, realizing justice in life together. Aquinas (Darmodiharjo and Shidarta 2009) suggested that the legal core of absolute justice is a product of reason. Meanwhile, justice can be divided into three categories: (a) Distributive justice (justitia distributiva) which refers to the same principle granted the same, the same were not granted the same not as well; (2) Justice commutative or exchange (justitia commutativa), which is adjusting to do in the event of acts that are not in accordance with the law; and (3) Legal justice (justitia legalis) which refers to the observance of the law, obey the same laws to be significantly better in all respects, legal justice is also known as common equity (justitia generalist)

In concrete terms of Friedman (1975) states that the legal system is not just contain provisions or rules of law, but also regarding other rules that affect humans. The legal system always contains 3 components: 1. Structure (structure) is a framework or the longest part that gives a certain shape and limit the overall legal system. The structure can be attributed to the law-making institutions or other institutions that are authorized to apply the law and law enforcement; 2. The substance of the law (legal substance), is a clear form produced by the legal system, whether it be the norm, and behavior patterns of the people, the known as law, as well as a requirement that must be met in a legal system; 3. Culture of law (legal culture), are the values of the society to the law, an important role to direct the development of the legal system with regard to the perception of the values, ideas and expectations of society for the law. Legal culture is the embodiment of people's minds and social forces that determine how the law is used, avoided or abused.

In connection with the equity in the agreement, a few scholars put forward the idea of justice based agreements, such Locke, Rousseau, Kant and Rawls. Thinkers are aware that the business community will not work without the treaty that created rights and obligations. Without the agreement would not be willing to be bound and rely on statements of other parties. With the expected agreement of each individual will keep their promises and implement (Wacks, 1995).

Another justice theory is the Rawls's theory of justice (Faiz, 2009), argues that justice is the main virtue of the presence of social institutions (social institutions). However, the virtues for the whole community cannot be ruled out or sue the sense of justice of any person who has acquired a sense of justice, especially the weak seeking justice. Specifically, Rawls (Faiz, 2009) developed the idea of the principles of justice to use fully the concept of his creation,

known as the "original position" and the "veil of ignorance". Rawls considers that the situation is the same and equal between each individual in society. There are no distinctions of status, position or has a higher position among one another, so that one party to the another can do a deal that is balanced, that's the view of Rawls as an "original position", which is based on an understanding of equilibrium reflective with based on the characteristics of rationality, freedom, and equality in order to set the basic structure of society (basic structure of society).

When an agreement from the viewpoint of substance or intent and purpose was contrary to the laws, public order and decency, then the agreement is null and void. In the context of the balance is meant here is not merely assert facts and circumstances, but more than that affect the binding power of the agreement in question. In the agreement, the imbalance can occur due to several things, among others: As a result of the conduct of the parties to the agreement, resulting from substance (contents charge) the agreement or its implementation. Therefore, it is necessary to have a rule about the terms that contain the legal consequences arising from the discovery of an imbalance in an agreement. From the standpoint of measuring an imbalance in all circumstances, also required the standard rules concerning the limits or scope of imbalance.

In Article 50 of Law No. 13 of 2003 on Concerning Manpower explained that employment relation exists because of the existence of a work agreement between the entrepreneur and the worker/labourer. Outsourcing agreement involves three parties which is: Users Company services workers/laborers, service providers, and workers/laborers which each sought to keep the rights and interests protected by law. Essentially workers' status can be viewed from two aspects, namely in terms of juridical and social and economic terms. In terms of socioeconomic, workers need protection laws of the countries on the possibility of arbitrary actions of the employers. Protection of workers/laborers can be done both by providing guidance, assistance, and by improving the recognition of human rights, socio-economic and physical protection through the norms prevailing in the company (Asyhadie, 2007).

Juridically based on article 27 of the Constitution 45 position of workers/laborers together with employer/entrepreneurs, but in social and economic position of the two are not the same, where the higher the position of employer of the workers/laborers. According Supriyanto, labor law that has a public element that stands out will because the labor laws contain provisions coercive. Because of its, must be monitored and enforced labor in order to provide protection and justice for workers/laborers and employers and the public. The law enforcement in the present given a broader meaning, is not only concerning the implementation of the law (law enforcement), but also include preventive measures, in terms of legislation (Jaya, 2008). Protection of workers/laborers can be done both by providing guidance, assistance, and by improving the recognition of human rights, socio-economic and physical protection through the norms prevailing in the company (Asyhadie, 2007). There are 3 kinds of protection to workers/laborers, respectively: protection of economic, social protection, technical protection (Khakim, 2007).

In practice, the protection of workers/labor outsourcing is often not implemented due to various factors, including the regulation is not adequate, it could result in: The emergence of differences in understanding terms of outsourcing, problems in determining the classification which is the main business and supporting business, and others. Besides inadequate regulation is also a lack of supervision of the labor department is also greatly affected. All of this is very likely led to labor disputes. This can be seen by the number of a dispute caused the outsourcing system that continues to the courts and generally the workers/laborers are most disadvantaged or as losers.

Research methods

This study uses normative juridical (legal research) are supported by empirical research methods and methods of comparative law. Normative juridical approach used in an attempt to analyze the data with reference to legal norms as outlined in legislation and court rulings. This study used a qualitative analysis means that the results do not depend on the data in terms of quantity (quantitative), but the available data were analyzed from various angles in depth (holistic) (Podhisita, 1999). This is important because it changes the law does not depend on the number of events, an agreement or a court decision, but the symptoms as a result of acts of human behavioral patterns. The research data was collected through the research literature (mostly legal document) and field research.

Normative legal research methods using a secondary data sources by collecting legal materials obtained from: primary legal materials, which is materials that are authoritative the law and binding form of legislation; Secondary law, which is legal materi-

als that explain the primary legal materials, which are relevant to the issues to be discussed: textbooks or literature, journal or scientific article, research report, essay, thesis and dissertations, papers or paper delivered in various scientific meetings, newspaper, magazine, some examples of cases of outsourcing; tertiary legal materials: material that can be provide further information or explanation meaningful to primary legal materials and secondary legal materials, such as: dictionaries, encyclopedias, black law dictionary and material from the internet. While the research carried out on the practice field that occurs among companies that use outsourcing through interviews using interview guides. Interview results are then processed and interpreted by the author. The primary data analysis connected as supporting secondary data.

Results and Discussion

The principle role of balance and Protection Principles for the Achieve Outsourcing Fair Employment Agreement for Parties in Indonesia

Fairness issues related to mutual business activities. On the one hand, the realization of justice in society will bear good condition and conducive for business continuity is good and healthy. On the other hand, good business practices, ethical, and fair or unfair, will come to realize justice in society (Keraf, 1996). In practice, although the principle of freedom of contract in prioritizing to reach an agreement forming an agreement outsourcing, it still raises many legal issues, especially those related to the implementation of the employment agreement of outsourcing itself, is still not able to accommodate the balance and protection among the parties, so that the result cannot guarantee fairness in the agreement. This can be seen in the cases that occurred in global outsourcing, among others:

The decision of the Industrial Relations Court in the District Court of Semarang 16/G/20011/PN.PHI SMG jo Supreme Court ruling No. 691 K/Pdt .Sus/2011 concerning the unilateral termination by reason of outsourcing between Nyayu Nurkomalasari SAP., MM, residing in Kertanegara Road South, 5, RT 06, RW II, Ex. Smelting, district. South Semarang as plaintiffs, against the Central Java Regional Development Bank, located at Jalan Pemuda 142 Semarang as a defendant;

The Central Jakarta District Court Decision 246/PHI.G/2010/PN. JKT.PST. jo. Supreme Court Decision No. 644 K/Pdt .Sus/2011, between EntahTahma, Yasin Dani, Heru Hermawan, Wiwit Mulyanto, Bayu Adi Sulistio, Muhdi, Avian Martyano, Acmad Djainuri, Pupu Saefulloh, Meurlandika, as the Plaintiff, Against: (1) PT. Kereta Api (Persero), located at the headquarters in Perintis Kemerdekaaan No. 1 B, Bandung as First Defendant; (2) Koperasi Wahana Usaha Jabotabek (KOWASJAB), located on Srikaya No. 1, Gondangdia railway station Lt. 2 Jakarta, Defendant II; (3) PT. Five golden domiciled in Kranggan Raya No. 24 Teak Raden, Jati Sampurna, Bekasi, West Java, Defendant III; (4) PT. KAI Commuter Jabodetabek, located on Ir. H. Juanda 1 B No. 8- 10 Central Jakarta, Defendant I.

Moving on from freedom of contract in the Civil Code system, particularly for the workers/laborers started on the process of formation and implementation of the agreement will not guarantee workers/laborers are in a balanced position so that the necessary norms to guide the parties prohibition. Thus the principle of balance of power work has meaning imperative that compels the parties to submit for the purpose of balance of rights and obligations of the parties can be achieved. This is consistent with the idea that the reciprocal agreement, the position of the parties (the right will, wilsrecht) pursued balanced in determining the rights and obligations of the parties (Nasution, 2009). If there is a position that is unbalanced between the parties, then it must be rejected because it would affect the substance and intent of the purpose of implementing the agreement. Impression in principle use the balance to appear in the first place is more directed to the balance of the position of the parties, the similarities division regardless of the division process that took place in the balance as merely the end result of a process (Marzuki, 2009).

Regarding the principle of freedom of contract let be based on the principle of trust, consensualism principle and the principle of good faith, the principle of balance and the principle of protection. Agreed upon agreement of the parties must implement the substance of the agreement based on the principles of trust firm and goodwill of the parties. Trust and good faith is essential that the agreed objectives can be achieved as well as minimize the potential that can cause problems in the implementation of the agreement in the future. Economic life with the hegemony of financial capitalism which did not look at the workers/laborers as the subject of production that should be protected, but as objects that can be exploited; Labor protection and working conditions for workers/labor outsourcing is not given by the employer to the maximum it is constrained because of the weaknesses in the system of employment law

both the substance, structure and its culture; Uncertainty in the employment relationship and continuity of employment; Enforcement and supervision in the field of employment are not optimal.

It can be seen with the rise of demonstrations to demand the elimination of outsourcing. The reform era which was originally expected to be able to build a state of law, social, political, economic and cultural more transparent and democratic turns until now the benefits have not been felt by the workers/laborers. In the creation and execution of outsourcing agreements, government intervention is needed not only to protect workers/laborers but also for employers. Government through regulation, supervision and enforcement can be a counterweight to the interests of the different parties. Thus all parties can live with good labor relations.

Legal Obstacles to Implementation of Labor Agreements Outsourcing in Indonesia

The basis of outsourcing agreements is the Civil Code, Act No. 13 of 2003 on concerning manpower and other regulations relating to outsourcing. Article 1320 paragraph (1) Civil Code affirms an agreement would not valid without a consensus or an agreement of the parties. The Article requires that the principle of "konsensualisme" as a party the freedom to determine the content of agreements with other parties. According to Article 1321 of the Civil Code states three reasons for the cancellation of the agreement, namely: (1) The mistake/misleading (dwaling) jo. Article 1322 of the Civil Code; (2) Force (dwang) in conjunction with Article 1323, 1324, 1325, 1326, and 1327 of the Civil Code; (3) Fraud (bedrog) jo. Article 1328 of the Civil Code.

Associated with outsourcing the labor agreement known basic relationship of the parties in outsourcing activities between the parties due to the contractual relationship between the parties. Outsourcing agreement cannot be separated from the law of treaties and economically valuable relationship between the parties. The principle of freedom of contract is also the basis of outsourcing agreements. In fact although the predetermined terms in the employment agreement outsourcing however, the formation of labor agreement outsourcing still raises many legal issues, related to the implementation of the employment agreement of outsourcing itself, because not accommodate the overall principles of contract law in proportion, especially the principle of balance and principles so the agreed protection agreements always raise questions about the fairness of the parties.

From the cases of that were analyzed showed that outsourcing rights disputes are always caused by the lack of balance and protection of the rights of workers/laborers in the implementation of the outsourcing agreement. Explicitly, the employer can be said to be in a strong position, while the workers/laborers as a party that desperately needs jobs are in a weak position and therefore in practice tends to follow any requirements that the proposed employer.

According to Boediono (2006) "When a factual condition, the position one of the parties in the agreement are stronger than the other party or unequal, then the charge will affect the content and scope intent and purpose of the treaty. Due to inequality of achievement in the agreement, the agreement will lead to an imbalance in principle. With the bases basic principles of contract law and the principle of balance, the factors that determine the fairness of a treaty not only the achievement of equality, but equality of the parties ".

From the description above, it can be concluded that the parties to implement the agreement on outsourcing work given the freedom to hold an agreement. But in the process of forming outsourcing agreements need a balance and protection of the parties. When bargaining position cannot be achieved then it gives a sense of justice aspired by law.

By seeing the reality is needed revision of labor legislation better direction; Policies in the field of employment (employment policy) which leads to the efforts of protection (social protection), Clarity employment status of workers/labor outsourcing led to no job security, supervision of the department of labor in the work environment, the proper functioning properly Union/Labor Union in fighting for the rights of workers/laborers. Lameness employment law system includes the components of the substance, the component structures and cultural components. The lives of most business actors do not look at the workers/laborers as the subject of production that should be protected, but as objects that can be exploited, which often occurs in the practice of outsourcing in Indonesia. Causing controversy for those who disagree argue useful in the outsourcing business development and create new jobs. For those who refused to believe the practice of outsourcing was also a feature of modern capitalism that brought misery to workers/laborers. The result showed that the legality many violations of the terms of employment (Damanik, 2006).

Outsourcing Labor Agreements the alignment of with Principles of Contract Law in the Framework of the Protection of Workers/Laborers and Employers.

The principles of contract law which should be applied in harmony in the employment agreement in order to realize outsourcing legal protection for workers/employees are: First, the principle concensualism. In general, agreements can be made "free form" and made is not formally but consensual (Ibrahim and Sewu, 2007). In the agreement, the main thing that should be highlighted is that we adhere to the principle concensualism, which is absolutely necessary for modern contract law and the creation of legal certainty. In other words, the agreement is valid if the things that points have been agreed and is not necessary formality (Subekti, 1992). To the occurrence of an agreement in general correspondence that will meet the specific requirements of a contract is legally valid (Ibrahim and Sewu, 2007). Concensualism principle can be summed up in Article 1320 paragraph (1) Civil Code. In the aforementioned article determined that one of the conditions the validity of the agreement is the word of agreement between the two sides. In the employment agreement outsourcing this deal also an element of validity of outsourcing agreements. Concensualism principle contained in Article 1320 of the Civil Code implies the willingness of the parties to bind themselves to each other and this willingness to generate confidence that the agreement will be fulfilled (Ibrahim and Sewu, 2007).

Second, the principle of freedom of contract (freedom of contract). In the freedom of the will assumed the existence of a minimal equality, and if equality between the parties is not exist, it does not appear there as well the freedom to enter into contracts (Ibrahim and Sewu, 2007). The principle of freedom of contract is referred to as part of human rights (Hartkamp, 1998). Freedom of contract listed in Article 1338 paragraph (1) Civil Code reads: "All valid agreements apply to the individuals who have concluded them as law."

Third, the principle of balance. According Supomo fourth goal of an agreement is reached equilibrium, appropriateness, or certain social attitudes. It is intended to reflect the gratitude or satisfaction and a conscious effort to achieve immaterial existence opportunities (*immateriele zijnsmogelijkheid*) "(Hasibuan, 2009). The achievement of a balanced state implies in the context of future expectations that objective, efforts to prevent any loss of one of the parties in the agreement (Hasibuan, 2009). Throughout the achievement of equality rely on alternate sides agreement, then if there is an imbalance, attention will be given to equity related to the way the agreement is formed and not on the final result of the performance offered on alternate sides (Boediono, 2006).

In the problems that arise in the agreement, decision making and a court decision must be based on: decency good (*de goede zeden*), construction of good faith (*goede-trouw Constructie*), fairness and propriety (*redelijke en billijkheid*), abuse of circumstances (*misbruk van omstandigheden*) and *justum Pretium*, as the foundation containing the spirit or soul of equilibrium. If the judge know that too much deviation when testing the agreement to the public interest or to the interests of one party who wishes maintaining the agreement, the consequences of the judge's decision should be acceptable to all parties (Hasibuan, 2009).

Referring to the three aspects of the agreement that formed the basis for the equilibrium, it can be broadly grouped in three phases, namely (Badrulzaman, 1991): (1) Phase pre-contract/deed the parties to the agreement; (2) Phase counter or agreement that is in the form of the content of the contract agreed by the parties; and (3) post-contract phase/implementation of the agreements that have been agreed upon. The balance is not absolutely must be based on profit and loss in the material sense, but the principle of balance must be understood in the sense of "achievement or fulfillment of" all the objectives of the contract (Kamilah, 2013). Associated with the principle of balance, the characteristics of the relationship created by the agreement is the outsourcing of work in which the employer and the worker/laborer is as associates (partners), in carrying out its activities. However, the law relationship is created between the parties to the agreement outsourcing work in Indonesia is still using a rules of Book III of Civil Code, especially based on the principle of freedom of contract and agreement. This opens up opportunities occur implementation of freedom of contract that does not pay attention to equilibrium, protection and do not reflect justice. That requires the principle of contract contains major differences (gross disparity) as a concrete manifestation of the principle of the balance in outsourcing agreements.

Conclusion

1. Realizing outsourcing labor agreement that is fair to the parties in Indonesia is the main objective in the formation of a fair deal. Talking about justice means balance and the equal rights and

obligations. Using Rawls' theory of justice that is emphasizes the importance of government intervention to restrict the freedom of the market in order to create equilibrium between economic actors in order to provide protection to the weaker party. This is in accordance with Characteristic labor law in Indonesia, which is a mixture that is private by using the rules of Book III of the Civil Code, especially based on the principle of freedom of contract and agreements, as well as public character with government intervention in order to maintain a balance, because there is no bargaining position of workers/labor in the manufacture of the agreement. Implications of balance the parties to provide protection and justice. To that end, the principles contained in the employment agreement outsourcing must have harmony with all the principles contained in the law of treaties, among others: The principle of freedom of contract, the principle consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith, the principle of personality, principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, moral principle, the principle of decency and the principle of protection. Overall these principles are interrelated with each other, cannot be separated, are applied simultaneously, lasted proportionally and fairly, and serve as a frame work agreement binding the content of such outsourcing.

2. The use of outsourcing in all countries, generally have the same goal of efficiency and focus on core business. The difference, in other countries grow, develop and be accepted by all parties as equally feel the benefits are so great. In Indonesia has not run properly due to various factors, including inadequate legislation, lack of supervision and law enforcement. However, the use of outsourcing is needed and does not need to be removed. So that all parties can accept its existence necessary revisions to existing regulations, tightened supervision, and law enforcement is really done in order to provide legal protection for the parties. Legal protection of the parties must be guaranteed its implementation and is based on: the 1945 Constitution which in Article 27 paragraph (2), Article 28, paragraph D (1, 2) and Article 33 paragraph (1); Articles 64, 65 and 66 Act No. 13 of 2003 on Concerning Manpower; Constitutional Court decision No. 27/PUU-IX/2011, followed by the minister Circular Letter No. B.31/PHIJSK/2012 About Outsourcing and Labor Agreements Specific Time (PKWT) and the Regulation the Minister of labor and Transmigration No. 19 Year 2012 About Conditions of Delivery of a proportion of the Implementation of work to other companies as a Substitute Decision of the Minister of Manpower and Transmigration Republic of Indonesia No. Kep.101/Men/VI/2004 on Procedures for Licensing Services Provider Company Workers/Labor (Decree No. 101/2004).

Recommendations

1. For the existence outsourcing can be acceptable to all parties well, then there must be legal certainty, protection and justice, for it takes the role or government intervention, namely: (a) Make-oriented regulation to protect the parties, especially the weaker party; (b) Increase awareness through education for all those involved. For workers/laborers, for example through the provision of apprenticeship, so it has a stock of knowledge/expertise, intelligent and independent. For service providers and enterprise users more responsible for complying with all the conditions set; and (c) Intensifying guidance, supervision, and enforcement of the implementation of outsourcing. Event of a dispute about outsourcing is expected to judges handling can produce fair decision to not only look at the agreement that was made based on freedom of contract and agreement, but must pay attention to whether the employment agreement of outsourcing has been created based on the harmony of the whole principle of contract law that exists as a unity inseparable.
2. Outsourcing employment agreement in order to be able to provide protection and fairness, then the employer must consider workers/laborers as a partner, every problem solved through win-win approach with attention to balance, protection and fairness that raises the confidence of workers/laborers to such use of outsourcing.

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