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LEGAL POSITION OF OUTSOURCED WORKERS AFTER THE ENACTMENT OF LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION

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ABSTRACT The unclear concept of outsourcing arrangements in the Labor Law has caused uncertainty in the working relationship between the parties associated with outsourcing work agreements. These, namely employers, contracting companies, service-providing companies, and outsourced workers, in turn have caused uncertainty in the protection of workers. In light of the Constitutional Court Decision Number 27/PUU-IX/2011, the Outsourcing Work Agreement in Articles 65 and 66 of the Labor Law is considered unconstitutional. Law Number 11 of 2020 on Job Creation, one of the articles highlighted, concerns outsourced workers. The Job Creation Law allows outsourcing companies to hire workers for various tasks, including casual and full-time workers. The purpose of this community service is to explain the legal certainty of work agreements for outsourced workers after the enactment of Law Number 11 of 2020 concerning Job Creation and the legal position towards the protection of outsourced workers in terms of Law Number 11 of 2020 concerning Job Creation. There are inconsistencies in the regulation of work agreements for outsourced workers that have caused uncertainty in the law after the enactment of Law Number 11 of 2020 concerning Job Creation through its derivative rules by issuing Government Regulation Number 35 of 2021, which contains disharmony in the provisions of the working relationship between outsourcing companies and outsourced workers they employ by requiring them to choose one type of work agreement in the form of a Fixed-Term Work Agreement and an Indefinite-Term Work Agreement that is contrary to the provisions stipulated in Law Number 13 of 2003 and the Decision of the Constitutional Court that has changed the provisions on Work Agreements in the outsourcing system. Law No. 13/2003 and the Decision of the Constitutional Court have changed the provisions on Work Agreements in the outsourcing system. There is no certainty as to the type of work categorized as outsourcing work.

KEYWORDS: *Outsourced Workers*

1. INTRODUCTION

Employment is all labor-related matters before, during, and after the working period. Employment is inseparable from several main problems related to unemployment, which increases the number of informal sector workers, issues of education and composition, wage systems, outsourcing labor practices, labor monitoring system problems, and labor social security problems.(Silaban, 2009)

Workers referred to in the regulations governing employment in Indonesia are defined as everyone who is able to do work in order to produce goods and/or services both to meet their own needs and for the community, while workers/laborers are defined as everyone who works by receiving wages and compensation in other forms.

Since the enactment of Law No. 13/2003 on Labor, several petitions for review by the Constitutional Court have been filed because many people think that the outsourcing arrangement has caused several problems in practice. (Khairani, 2014)

The provisions on outsourcing can be regarded as further distancing the hope for decent work that can guarantee the survival of workers. If there are no clear limits on work that can be outsourced, there will be more potential for irregularities that employers or capital owners can commit. (Retnaningsih, 2020)

Outsourcing according to Maurice Greaver is defined as the act of transferring some company activities and decision-making rights to other parties (outside providers), where this action is bound in a cooperation contract. (Puspita & Affandi, 2015)

The objectives to be achieved by companies by implementing an outsourcing system, in general, are (1) workforce effectiveness, (2) no need to develop human resources for jobs that are not the main ones, (3) empowering subsidiaries, and (4) dealing with unpredicted business conditions (Wahyuni, 2012). Entrepreneurs seem to compete to get maximum results and profits by minimizing expenses. Entrepreneurs forget the history that has proven this cost-cutting style has certain limits, both economic limits and ethical limits. (Suhardi, 2006)

The unclear concept of outsourcing arrangements in the Labor Law has caused uncertainty in the working relationship between the parties associated with outsourcing work agreements, namely employers, contracting companies, and/or service provider companies and outsourced workers, which has caused uncertainty in the protection of workers. (Khairani, 2014)

Judging from the two decisions of the Constitutional Court, namely Case No. 012/PUU-I/2003, in its decision the Constitutional Court strengthened the position of outsourcing in the Labor Law. Then with the issuance of Constitutional Court Decision Number 27/PUU-IX/2011, the

Outsourcing Work Agreement in Articles 65, 66 of the Labor Law is considered conditionally unconstitutional, especially Article 65 paragraph (7) and Article 66 paragraph (2) letter b..

The Constitutional Court's decision calls for establishing a protection clause for outsourced workers, namely by stipulating that outsourced work agreements must be tied to indefinite-term agreements and through the Transfer of Undertakings Protection of Employment (TUPE) if outsourced workers are tied to fixed-term work agreements.

The implementation of Constitutional Court Decision No. 27/PUU-IX/2011 has proven not to be fully capable of providing an answer to resolve problems related to the regulation and protection of outsourced workers. The fact is that outsourcing companies still do not apply the TUPE principle in the implementation of outsourcing based on Specified Time Work Agreements because there are inhibiting factors amid various potentials that can be used to the TUPE principle in the world of Indonesian labor. (Agus Sudiarawan, 2015)

Based on data from the Communication Forum of the Indonesian Outsourcing Business Association (Fadi), the number of outsourced workers has reached 3 (three) million people under the auspices of 3,000 (three thousand) outsourcing companies. The number of outsourced workers is potentially higher because many are not recorded, and fake outsourcing practices are still often found. (Timorria, 2020)

Companies use the outsourcing system because it is considered convenient, while it is detrimental to workers. This condition clearly impacts outsourced workers in terms of contractual uncertainty because the working relationship is always in a non-permanent form, wages are lower, social security is only minimal, there is no job security, and there is no guarantee of career development. The practice of outsourcing will make workers miserable and blur industrial relations. Outsourcing arrangements in Law No. 13/2003 on Labor have not been able to answer all the problems of outsourcing, which are so extensive and complex.

Observing the enactment of Law Number 11 of 2020 on Job Creation, one of the articles highlighted concerns outsourced workers due to the revision of Article 66 of the Manpower Law, which was revised by the Job Creation Law. With this revision, the Job Creation Law opens the possibility for outsourcing companies to hire workers for various tasks, including casual workers and full-time workers. This will make outsourcing even freer if there is no derivative regulation from the Job Creation Law. (Idris, 2020)

What needs to be understood is that the Manpower Law related to Articles 64, 65, and 66 is a unity that must be seen as a whole. Deleting Article 64 and Article 65 but keeping Article 66 alivewill create legal uncertainty and confusion for business actors and workers, which will actually disrupt the business and investment climate in Indonesia. (Riyanto et al., 2020)

If traced, the explanation of Article 64 of the Labor Law states "quite clearly," which indirectly provides justification for transferring part of the implementation of work to other companies or companies providing worker services through piecework agreements/provision of worker services as outsourcing practices.

Article 66, paragraph (1) of the Manpower Law explicitly limits outsourcing to jobs that are central to the company. The revision of the provisions of this article in the Job Creation Law will have implications for outsourcing work relations, even though it has been proven that triangular forms of work relations (work relations involving third parties as intermediaries) such as outsourcing tend to be unfavorable for workers.

The deletion of Articles 64 and 65 of the Labor Law and the revision of Article 66 of the Labor Law by the Job Creation Law reflects a problem that focuses on the legal position of outsourced workers in the legal certainty of work agreements and the protection of outsourced workers after the enactment of the Job Creation Law.

2. METHOD

The method of implementation in Community Service activities was carried out using several methods; first using the counseling method using material exposure as a speaker to increase public understanding of the legal position of outsourced workers. Second, the video method was used as study material regarding the legal position of outsourced workers. The third method is question and answer; this method answers questions that arise so that the community understands more about the legal position of outsourced workers in Indonesia.

3. RESULT AND DISCUSSION

3.1 Legal Certainty of Outsourcing Work Agreements

According to Jan Michael Otto, legal certainty is determined by the availability of clear and consistent rules (Soeroso, 2011). Sudikno Mertokusumo argues that legal certainty requires legal, regulatory efforts with juridical aspects that can guarantee certainty that the law functions as a rule that must be obeyed. (Zainal, 2012)

Legal certainty associated with outsourcing work agreements is inseparable from the principle of legal certainty in the preventive protection of outsourced workers in labor relations, the certainty of the type of work of outsourced workers. As a result of the disharmony and unsynchronized arrangement of the legal norms that underlie the basis of labor law in Indonesia, referring to Law No. 13/2003 on Labor and its implementing rules, outsourcing is considered to make the working relationship between workers and companies that provide work unclear.

Many prospective workers who get a job from an outsourcing company are obliged to pay a sum even by deducting their monthly wages during the contract. In addition, workers from outsourcing companies do not generally receive the normative rights that outsourced workers should receive. (Budhiarta, 2016)

According to Budiartha, an outsourcing agreement is defined as an agreement for the transfer of part of the implementation of work from a company that gives work to another company as the recipient of the work, which is made in writing through a work contracting agreement or an agreement for the provision of worker/labor services. This definition can ensure that juridically, the form of an outsourcing agreement must be written, and the type of outsourcing agreement only takes the form of a work contracting agreement and an agreement for the provision of worker services. (Budhiarta, 2016)

In the case of the transfer of work from one company to another company in the form of outsourcing, it must be done through a written agreement. This is in accordance with the provisions of Article 65, paragraph (1) of Law Number 13 Year 2003. From this provision, it can be understood that a work contractor agreement as a form of outsourcing agreement is an agreement for the transfer of part of the implementation of work from a company that gives work to a company that carries out work that is made in writing.

The work contracting agreement referred to in Article 65 paragraph (1) of Law Number 13 Year 2003 is slightly different from the contracting agreement stipulated in Article 1601b of the Civil Code, which is an agreement by which one party (the contractor), binds himself to carry out a work for the other party (the contracting party, at a specified price). (Djumialdji, 1995)

The difference between the work contracting agreement referred to in Article 64 and Article 65 paragraph (1) of Law Number 13 Year 2003 and Article 1601b of the Civil Code can be understood that what is regulated in the Civil Code applies generally, meaning that it can be made between individuals or individuals and companies. Moreover, a written form is not required. Meanwhile, Law No. 13/2003 applies specifically to work-contracting companies as a form of outsourcing agreement. So that it applies between the company that gives work (the company that is contracting out) and the company that receives the work (the company that is contracting out), the form of the agreement must also be in writing.

This kind of difference in arrangement can still be justified because it is in accordance with the principle of lex specialis derogate legi generalis, that is, a special legal provision, in this case, Article 65 paragraph (1) of Law Number 13 Year 2003, which regulates a special work contracting agreement (outsourcing) can override the legal provisions of the general contracting agreement regulated in Article 1601b of the Civil Code.

Based on Constitutional Court Decision Number 27/PUU-IX/2011, which regulates the balance of rights and obligations for workers, it can be concluded that the Constitutional Court permits the practice of an outsourcing system in employment. Thus, from "Decision of the Constitutional Court No. 27/PUUIX/2011, there are 2 (two) models that must be implemented in the labor market.

However, in 2020 a new law has been issued, namely Law Number 11 of 2020 concerning Cipta, where the law was passed on October 5, 2020 by the Indonesian Parliament and promulgated on November 2, 2020 with the aim of creating jobs and to increase foreign and domestic.

The Job Creation Law after being passed and promulgated resulted in changes to several existing laws in Indonesia, one of which is Law Number 13 of 2003 concerning manpower, there are several articles that were deleted and several provisions were added, for the regulation of outsourcing there were changes including the deletion of Articles 64 and 65 of Law Number 13 of 2003 with Articles 81 numbers 18 and 19 of the Job Creation Law, so that currently outsourcing or outsourcing is only regulated in Article 81 number 20 of the Job Creation Law which amends Article 66 of Law Number 13 of 2003, which among other things regulates the working relationship between outsourcing companies and workers.

Article 81 number 20 of the Job Creation Law has amended the provisions of Article 66 of Law No. 13/2003, showing several changes, namely the removal of provisions regarding the types of work that can be transferred to outsourcing or outsourcing companies, the addition of protection in the event of a change of outsourcing company, and additional arrangements regarding licensing for outsourcing or outsourcing companies.

In 2011, the Constitutional Court partially granted a judicial review of Law No. 13/2003 on Labor filed by Didik Suprijadi, a worker from the Indonesian Electricity Meter Readers Association (AP2ML).

The Constitutional Court's decision also touched on Article 66 paragraph 2, which reads, "Service providers of workers/laborers for supporting service activities or activities that are not directly related to the production process must meet the following conditions: 1. There is a working relationship between the worker/laborer and the company providing the worker/labor services; 2. The work agreement that applies in the working relationship as referred to in letter a is a work agreement for a certain time that meets the requirements as referred to in Article 59 and/or an indefinite time work agreement made in writing and signed by both parties."

After the issuance of Constitutional Court Decision No. 27/PUU-IX/2011, the term "specific time work agreement" can no longer be contained in Article 65 paragraph 7 and Article 66 paragraph 2b. In other words, the concept of outsourcing does not apply to any work unless it meets

the criteria of Article 59. Accounting work, admin assistants, or secretaries can no longer use outsourcing. These are all non-permanent jobs because they are not seasonal, nor are they temporary.

After the enactment of the Job Creation Law, the government issued a derivative regulation related to outsourcing, Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. The regulation was inaugurated on February 2, 2021, and it amended the provisions governing outsourcing in Law Number 13 of 2003 concerning Manpower.

Based on Article 1 Point 10 of Government Regulation Number 35 of 2021, a Fixed-Term Work Agreement (PKWT) is a work agreement between workers/laborers and employers to establish a working relationship within a certain time or for a certain job.

Specified Time Work Agreements (PKWT) are based on a period or the completion of a specific job and cannot be made for permanent employment. Specified Time Work Agreements (PKWT) made based on a period are used for specific jobs, namely jobs that are expected to be completed in a short period (implemented for a maximum of 5 years, while Law Number 13 Year 2003 on Manpower previously stipulated a maximum of 3 years), seasonal work (implementation depends on the season or weather and meeting targets), or work related to new products, new activities, or additional products that are still being tested or explored. Meanwhile, the Specified Time Work Agreement (PKWT), which is made based on the completion of a job, is used for work that is completed once or work that is temporary in nature.

By the provisions in Article 8 of Government Regulation Number 35 of 2021, it is stated that a Fixed-Term Work Agreement (PKWT) based on a period can be made for a maximum of 5 years. If the period of the Fixed-Term Employment Agreement (PKWT) expires and the work carried out has not been completed, an extension of the Fixed-Term Employment Agreement (PKWT) can be made with a period according to the agreement between the employer and the worker/laborer, but the entire Fixed-Term Employment Agreement (PKWT) and its extension cannot exceed 5 years. It is important to note that the Government Regulation does not mention that fixed-term employment agreements can be renewed. Thus, Government Regulation Number 35 of 2021 only recognizes 2 terms, namely made and extended.

Meanwhile, in Law Number 13 of 2003 concerning Manpower, Government Regulation Number 35 of 2021 can be made for a maximum of 2 years and can only be extended 1 time for a maximum period of 1 year or renewed 1 time and a maximum of 2 years. Thus, the total of Government Regulation Number 35 of 2021 and its extension is a maximum of 3 years. If

Government Regulation Number 35 of 2021 is renewed, the period of Government Regulation Number 35 of 2021 and its renewal is 4 years.

Furthermore, it has been emphasized in the Decree of the Minister of Manpower and Transmigration No. KEP 100/MEN/VI/2004 concerning Provisions on the Implementation of Specified Time Work Agreements (Kepmenakertrans 100/2004) that for seasonal work and work related to new products, the implementation of Specified Time Work Agreements cannot be renewed. This type of work cannot be implemented based on the employment relationship of a Fixed-Term Employment Agreement with a period of more than 3 years. If a deviation is made, the Specified Time Work Agreement changes to the Implementation of an Indefinite Time Work Agreement. However, this is no longer valid, along with the enactment of the Job Creation Law and Government Regulation Number 35 of 2021, where there is no explicit prohibition on this.

The provisions on outsourcing in Articles 64, 65, 66 of Law Number 13 Year 2003 on Manpower have been removed and amended in the Job Creation Law. Instead, the provisions regarding outsourcing are regulated in Government Regulation Number 35 of 2021.

In Article 18 of Government Regulation Number 35 of 2021, the working relationship between an outsourcing company and the workers/laborers employed is based on a written Specified Time Work Agreement (PKWT) or Indefinite Time Work Agreement (PKWTT). The protection of workers/laborers, wages, welfare, working conditions, and disputes that arise are carried out by the provisions of laws and regulations and become the responsibility of the outsourcing or outsourcing company and are regulated in the Work Agreement, Company Regulation, or Collective Labor Agreement.

Suppose an outsourcing company employs workers/laborers based on a fixed-term employment agreement (PKWT). In that case, the employment agreement must require the transfer of protection of rights for workers/laborers in the event of a change of outsourcing company and as long as the object of work remains. This is intended to ensure continuity of work for workers/laborers. If this is not obtained, the outsourcing company is responsible for fulfilling the rights of workers/laborers.

Outsourcing or outsourcing companies must be legal entities and must fulfill business licenses. The requirements and procedures for obtaining business licenses are carried out by the provisions of laws and regulations concerning norms, standards, procedures, and criteria for business licenses stipulated by the Central Government, namely through the Online Single Submission Institution. In the work relationship between an outsourcing company and outsourced workers employed from the provisions of Article 18 paragraph (1) of Government Regulation

Number 35 of 2021, it is based on a fixed-term work agreement (PKWT) or an indefinite-term work agreement (PKWTT).

This means that the government requires outsourcing companies to recruit outsourced workers through one of two work agreements, namely a Fixed-Term Work Agreement (PKWT) or an Indefinite-Term Work Agreement (PKWTT). This arrangement is different from Law No. 13/2003 where work agreements only use PKWT, and must be made in writing. Compared with Law No. 13/2003 on Manpower, Law No. 11/2020 on Job Creation and Government Regulation No. 35/2021 do not specify the types or limits of work that can be outsourced. There are also no provisions on what conditions can change the working relationship between a worker/laborer and an outsourcing company to a worker/laborer and an employer.

3.2 Legal Position on the Protection of Outsourced Workers According to the Job Creation Law

Legal protection means protection by using legal means or protection provided by law aimed at protecting certain interests, namely by making the interests that need to be protected into legal rights. In legal science, "rights," also called subjective law, are an active aspect of the legal relationship provided by objective law (norms, rules, recht).

One of the objectives of manpower development is to protect workers/laborers in realizing welfare, as stipulated in Article 4 letter c of the Manpower Law. The scope of protection for workers/laborers provided and regulated in the Manpower Law is:

a. Protection of workers' basic rights. The objects of this protection are as follows:
   1) Protection of women workers/laborers Protection of women workers/laborers relates to the limitation of working time for those less than 18 (eighteen) years old, as stipulated in Article 76 paragraph (1) of the Labor Law; Prohibition of working for pregnant women for specific hours, as stipulated in Article 76 paragraph (2) of the Labor Law; Terms and conditions that must be met by employers when employing women between 23. 00 until 07.00, as stipulated in Article 76 paragraph (3) of the Manpower Law; Obligation for employers to provide shuttle transportation for those who work between 23.00 and 07.00, as stipulated in Article 76 paragraph (4) of the Manpower Law.
   2) Protection of child workers/laborers. Child workers/laborers are those or any working person under 18 (eighteen) years, as stipulated in Article 1 point 26 of the Manpower Law. Protection of child workers/laborers includes matters or provisions regarding the procedures for employing children, as specified in Articles 68, 69 paragraphs (1) and (2), Article 72, Article 73, and Article 74 paragraph (1) of the Manpower Law.

3) Perlindungan bagi penyandang cacat. Pengusaha yang mempekerjakan tenaga kerja penyandang cacat wajib memberikan perlindungan sesuai dengan jenis dan derajat kecacatan, sebagaimana diatur dalam Pasal 76 ayat (1) UU Ketenagakerjaan. Bentuk perlindungan tersebut adalah seperti penyediaan aksesibilitas, pemberian alat kerja dan pelindung diri.

b. Protection for persons with disabilities. Employers who employ workers with disabilities are obliged to protect in accordance with the type and degree of disability, as stipulated in Article 76, paragraph (1) of the Manpower Law. The form of protection such as providing accessibility, providing work tools, and personal safety.

c. Protection of Occupational Safety and Health. Protection of occupational safety and health is one of the rights of workers or laborers as regulated in the provisions of Article 86 paragraph (1) letter of the Manpower Law. For this reason, employers must implement it systematically and integrate it with the company's management system. This protection aims to protect the safety of workers/laborers to realize optimal work productivity by preventing accidents and occupational diseases, controlling light in the workplace, health promotion, treatment, and rehabilitation.

d. Protection of Labor Social Security. The definition of Workers' Social Security, as stipulated in Article 1 paragraph (1) of Law Number 3 of 1992 concerning Workers' Social Security, is a protection for workers/laborers in the form of compensation in the form of money as a substitute for part of lost or reduced income and services as a result of events or circumstances experienced by workers/laborers in the form of work accidents, illness, pregnancy, maternity, old age, and death. This protection is a form of.

e. Protection of Wages. Wages are a very important aspect of worker/labor protection. This is expressly mandated in Article 88 paragraph (1) of the Manpower Law that every worker/laborer has the right to obtain an income that meets a decent living for humanity. Furthermore, in the elucidation of Article 88 paragraph (1) of the Manpower Law, it is explained that what is meant by an income that meets a decent livelihood is the amount of revenue or income of workers/laborers from their work so as to be able to meet the reasonable living needs of workers/laborers and their families which include food and drink, clothing, housing, education, health, recreation and old age security. Wages paid to workers/laborers must meet the provisions of the minimum wage, in accordance with Article 1 paragraph (1) of the Minister of Manpower Regulation No. Per01/Men/1999 concerning Minimum Wage, what is meant by minimum wage is the lowest monthly wage, consisting of basic wages and fixed allowances.

The position of workers can essentially be viewed from two aspects, namely from a juridical perspective and from a socio-economic perspective. From a socio-economic perspective, workers need legal protection from the state against the possibility of arbitrary actions from employers.108 The form of protection provided by the government is by making regulations that bind workers/laborers and employers, providing guidance, and implementing industrial relations processes. Industrial relations is basically a process of fostering communication, consultation, deliberation and negotiation, supported by the ability and high commitment of all elements in the company. (Wijayanti, 2009)

Referring to the Constitutional Court Decision Number 27/PUU-IX/2011 it states that there is a model that must be fulfilled in an outsourcing work agreement, namely:

a. By requiring that work agreements between workers and companies that carry out outsourcing work not take the form of a fixed-term work agreement (PKWT), but take the form of an indefinite-term work agreement (PKWTT).
b. Apply the principle of transfer of protective measures for workers who work for companies that carry out outsourced work. This decision of the Constitutional Court implies that every outsourced worker is guaranteed a position in the user company because the work agreement is in the form of an indefinite-term employment agreement (PKWTT).

The biggest cause of the weak balance of rights and obligations of outsourced workers is due to :

a. Lacklack of jobs has led to a large number of unemployed workers who are willing to work without knowing clearly what their rights and obligations are.
b. The jobs that are expected are generally available in institutions or companies where strict rationing and selection of workers is carried out in accordance with the skills required.
c. The difficulty of getting a job is thought to be related to the limited skills and experience of those who have just completed their education, while corporate institutions demand certain skills.
d. Workers lack knowledge of the Labor Law so that they do not understand their rights, what is contained in a fixed-term employment agreement, namely the period of time allowed and the nature of work for which a fixed-term employment agreement can be made.
e. The factor of low education and Lacklack of skills possessed by workers. In manufacturing production, which always uses technological tools, workers do not work by relying on their education and skills or it can be said that the quality of workers is very low so that they are willing to be paid cheaper without paying attention to their rights as workers..

In the outsourcing system, the legal construction is that a company providing employee services will recruit workers to be placed in the user company. It begins with a legal relationship or an agreement between the company providing worker services and the company using the workers. Companies providing worker services bind themselves to place workers in user companies, and user companies bind themselves to use these workers.

Based on the labor placement agreement, the company providing worker services will get a certain amount from the user. For example, if there are 10 outsourced workers with a work contract of Rp 10,000,000.00 per month, then the company providing worker services will take their rights or share or deduct a percentage; the rest is paid to the workers in the user company. So, this kind of legal construction is slavery because these workers are sold to users for a sum of money, and this is modern slavery.

On the other hand, outsourcing also uses a fixed-term employment agreement. A fixed-term employment agreement clearly does not guarantee welfare, because a worker with a fixed-term employment agreement knows that at some point the employment relationship will break or end and will no longer work. As a result, the worker will look for another job, so continuity of work becomes a problem for workers who are outsourced under a fixed-term employment agreement. If welfare is not guaranteed, it clearly contradicts Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely the right to work and a decent livelihood for humanity.

However, the Constitutional Court's decision on outsourcing was vague, not granted or rejected because it was deemed to lack sufficient grounds. Based on the Constitutional Court's considerations, Articles 64 - 66 of Law No. 13 of 2003 concerning Labor, work protection and conditions are the same as those in the company that provides the work or in accordance with the prevailing laws and regulations.

Therefore, regardless of the specific period of time that may be a condition of such a work agreement in the available opportunities, the protection of workers' rights in accordance with the rule of law in Law No. 13 of 2003 concerning Manpower, does not prove that it causes the outsourcing system to constitute modern slavery in the production process. Not all Constitutional Court judges agreed with the decision, there were dissenting opinions from constitutional judges Prof. H. Abdul Mukthie Fadjar, S.H., M.S. and Prof. Dr. H. M. Laica Marzuki, S.H.Prof. H. Abdul Mukthie Fadjar, S.H., M.S. dan Prof. Dr. H. M. Laica Marzuki, S.H.

The outsourcing policy in Articles 64 - 66 of Law No. 13/2003 on Manpower has disturbed the peace of mind of laborers/workers who can be threatened with termination of employment (PHK) at any time. This means that Law No. 13/2003 on Labor is not in accordance with the paradigm of humanitarian protection set out in the Preamble to the 1945 Constitution of the

Republic of Indonesia and is contrary to Article 27(2) of the 1945 Constitution of the Republic of Indonesia.

After the enactment of Law No. 11 of 2020 on Job Creation which has abolished the provisions of Articles 64 - 66 of Law No. 13 of 2003 on Manpower and issued Government Regulation No. 35 of 2021, the position of outsourced workers has no legal protection due to the vagueness of the norms stipulated in the Job Creation Law and its derivative rules which contradict the provisions stipulated in Law No. 13 of 2003 on Manpower and are not in line with the Constitutional Court Decision No. 27/PUU-IX/2011, reflecting the absence of certainty that can place the legal position of outsourced workers to be protected in accordance with the constitutional mandate of the 1945 Constitution of the Republic of Indonesia.

The Job Creation Law changes the term outsourcing from partially handing over the performance of work to another company to outsourcing.In the Job Creation Law, there are no longer restrictions on the types of work that can be outsourced.

Law Number 11 of 2020 on Job Creation amends some of the provisions of Law Number 13 of 2003 on Manpower, one of which is related to outsourcing provisions. So far, outsourcing in the Labor Law is defined as the transfer of part of the work to another company. The transfer of part of the work is carried out through 2 mechanisms, namely a work contracting agreement or the provision of worker / labor services. However, the Job Creation Law changes the outsourcing provisions by deleting Article 64 and Article 65 and amending Article 66 of the Manpower Law. Outsourcing in the Job Creation Law is known as outsourcing. Government Regulation No. 35 of 2021 on Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP PKWT-PHK) states that an outsourcing company is a business entity in the form of a legal entity that meets the requirements to carry out certain work based on an agreement concluded with the company providing the work. So the outsourcing company is fully responsible for everything that arises from the employment relationship.

The responsibilities of outsourcing companies include labor protection, wages, welfare, working conditions, and disputes that arise in accordance with regulations. These matters are regulated in work agreements, company regulations, or collective labor agreements. In addition, the working relationship between the outsourcing company and the hired workers is based on PKWT (Specified Time Work Agreement) or PKWTT (Indefinite Time Work Agreement), which is made in writing and may not be oral.

If the outsourcing company employs workers based on PKWT, the work agreement must include a condition for the transfer of protection of rights for workers when there is a change of outsourcing company as long as the object of work remains. This is in accordance with the mandate

of Constitutional Court Decision No.27/PUU-IX/2011 related to the judicial review of Article 59, Article 64, Article 65, and Article 66 of the Labor Law.

4. CONCLUSION

There are inconsistencies in the regulation of work agreements for outsourced workers that have caused uncertainty in the law after the enactment of Law Number 11 of 2020 concerning Job Creation through its derivative rules by issuing Government Regulation Number 35 of 2021, which contains disharmony with the provisions of the working relationship between outsourcing companies and outsourced workers they employ by requiring them to choose one type of work agreement in the form of a Fixed-Term Work Agreement and an Indefinite-Term Work Agreement that contradicts the provisions stipulated in Law Number 13 of 2003 and the Constitutional Court Decision that has changed the provisions on Work Agreements in the outsourcing system. There is no certainty about the type of work categorized as outsourcing work. Law No. 13/2003 and the Decision of the Constitutional Court have changed the provisions on Work Agreements in thae outsourcing system and there is no certainty as to the type of work that is categorized as outsourced work.

The legal position towards the protection of outsourced workers in terms of Law Number 11 of 2020 on Job Creation, which has abolished and amended several provisions of articles related to outsourcing arrangements in Law Number 13 of 2003 on Manpower and the issuance of derivative rules from the Job Creation Law, namely Government Regulation Number 35 of 2021, has placed the legal position of outsourced workers without legal protection from uncertainty in the arrangement of work agreements and the type of work designated as outsourced work and is not in line with the Constitutional Court Decision Number 27/PUU-IX/2011, reflecting the absence of certainty that can place the legal position of outsourced workers to be protected in accordance with the constitutional mandate of the 1945 Constitution of the Republic of Indonesia.

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