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LEGAL ASSURANCE OF LABOR TRANSFER OF POWER POST APPLICATION OF LAW NO 11 OF 2020 CONCERNING WORK CREATION

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ABSTRACT Legal certainty of outsourcing is very much needed after the enactment of Law no. 11 of 2020 concerning Job Creation because there is a lack of synchronization of the material article by article and in the article. Employment Copyright Act which changes the term Outsourcing from handing over part of the execution of work to other companies to outsourcing. Regarding outsourcing, it is regulated by Government Regulation No. 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, in which Outsourcing workers must be bound by work agreements with service providers as well as worker/labor service provision agreements. The enactment of the job creation law changes the provisions on the type of work of outsourced workers in the form of supporting activities or not related to production activities. However, the job creation law removes this limitation. So that the things that become obstacles to the work of Outsourcing (Outsourcing) with the existence of article 16 paragraph (1) letter a PP 35/2021 which requires a Specific Time Work Agreement for 12 months continuously given 1 month's wages. And a Specific Time Work Agreement can only be made for certain jobs which according to the type and nature or work activities will be completed within a certain time and cannot be held for permanent work (seasonal work).

KEYWORDS : Job Creation Act, Legal Certainty, Outsourcing,

INTRODUCTION

Law No. 13 of 2003 Chapter I Article 1 paragraph 2 states that the workforce is everyone who is able to do work to produce goods or services both to meet their own needs and for the community.(Maryanti et al., 2017) This labor is an important element in the factors of production and development. Labor can be a determinant of the success or failure of development or production, and whether or not the output produced is realized.(Laili & Putra, 2015) While outsourcing is the delivery of certain work of a company to a third party which is carried out with the aim of sharing the risk and reducing the burden on the company(Lumingas, 2013). The handover of the work is carried out on the basis of an operational

cooperation agreement between the employer (principal) and the recipient company (the Outsourcing Company). (Budiartha, 2016)

In practice, the employer determines the qualifications and terms of employment, and on that basis the outsourcing company (employee company) recruits prospective workers. The legal relationship of workers is not with the company providing the job but with the company accepting the job. In this regard, there are three parties to the outsourcing system, namely: the principal company (the employer), the outsourcing service company (the labor provider), and the workforce.

Outsourcing is an outsourced workforce provided by a service provider company and distributed to other companies that need outsourced workforce. This outsourced workforce is contracted by a company that requires outsourced workers through a work agreement with a company providing outsourced labor. The work agreement in outsourcing is carried out in two stages, namely the agreement between the outsourcing service user company and the outsourcing company as the provider of labor services, and the agreement between the outsourcing company and the workers/laborers. An employment agreement is an agreement between an entrepreneur or employer and a worker that contains the working conditions, rights, and obligations of the parties.

Law No. 11 of 2020 concerning Job Creation removes the provisions on the types of work that the outsourcing system may apply as regulated in Law no. 13 of 2003 concerning Manpower. The abolition can be seen in Article 81 of the Job Creation Law which states to change the old provisions in Article 66 of the Manpower Law. Initially, Article 66 Paragraph 1 of the Manpower Law states that workers or laborers from companies providing worker or labor services may not be used by employers to carry out main activities or activities that are directly related to the production process, except for supporting service activities or activities not directly related to the production process. production process.

Furthermore, it is related to the problem of Outsourcing originating from the Job Creation Act. Outsourcing is a form of working relationship in

which the worker/labourer is not under the responsibility of the company that has a direct interest as the first party but is obtained through a contract from a service provider company for workers/labourers who are legal entities and have permits from the agency responsible for manpower affairs.

The Job Creation Act, in fact, seems to want to present a form of outsourcing employment relationship as a type of work that is increasingly legal to carry out in Indonesia, which was initiated by the elimination of the material provisions of Articles 64 and 65 of the Job Creation Law, whereas in this article it specifically and in detail regulates the outsourcing.

Then the rules regarding Outsourcing are only regulated in one article, namely Article 66. In the a quo article, more general rules are applied so that they are more flexible. The Job Creation Act also does not mention the type of work and the time so that the use of workers from these labor service providers can cover all types of work and their time. Looking at the material contained in the Job Creation Law, it raises concerns because the restrictions on what kind of outsourcing is becoming unclear and it becomes a problem if this form of outsourcing work relationship reaches the main job. Through this form of the Omnibus Law, there are indications that the government provides concessions for business actors to be more flexible in recruiting employees, especially through outsourcing mechanisms.

RESEARCH METHODS

This type of research is normative empirical, namely research that examines the implementation or implementation of positive legal provisions (laws) and written documents in action (factual) in every particular legal event that occurs in society. The type of this research is descriptive qualitative. Qualitative descriptive is research that describes a number of variables relating to the problem and unit under study.

RESULTS AND DISCUSSION

A. Legal Certainty Against Outsourced Manpower After the Enactment of Law Number 11 of 2020

Employment issues in the Omnibus law of the Job Creation Law continue to be a problem that is disputed by workers. One of them is about labor outsourcing. The Outsourcing system arrangement has become a provision that has been amended in Law no. 11 of 2020 concerning Job Creation. The regulation in this law also requires government regulations to regulate the protection of workers who are the responsibility of outsourcing companies. The government regulation in question has been completed and ratified, namely Government Regulation no. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Rest Time, and Termination of Employment.

Outsourced workers are workers who come from outside the company or third parties to do certain jobs/specific jobs in other companies. By outsourcing, it is hoped that companies can focus on their core business. This can be done by updating the strategy and restructuring existing resources. When compared to the Manpower Law, the Job Creation Law and Government Regulation 35/2021 do not specify the types or limits on what jobs can be outsourced. Then, it is also not possible to find provisions regarding what conditions can change the working relationship between workers/labor and the outsourcing company to become workers/laborers and the company providing the job.

For convenience, it can be seen in the following table regarding the comparison of Outsourcing arrangements in the Manpower Act before and after the Job Creation Law and Government Regulation number 35 of 2021.

Table 4.1 Comparison of Manpower Law Arrangements after the enactment of the Job Creation Law

Before the Job Creation Law and Government Regulation Number 35 of 2021	After the Job Creation Law and Government Regulation Number 35 of 2021
<p>Terms of work submitted/outsourced</p> <ol style="list-style-type: none"> 1. Job chartering: <ol style="list-style-type: none"> a. Done separately from the main activity; b. Done by direct or indirect order from the employer; c. It is a supporting activity for the company as a whole; and d. Does not hinder the production process directly; 2. Workers/labor service providers: <ol style="list-style-type: none"> a. It is forbidden to carry out main activities or activities that are directly related to the production process b. The existence of a working relationship between the worker/ laborer and the service provider company for the worker/ laborer; c. Employment agreement is a Specific Time Work Agreement that meets the requirements of the Manpower Act (before it is changed in the Job Creation Act) or a Specific Time Work Agreement made in writing; d. Terms of protection of wages, welfare, working conditions, as well as responsibility for disputes that arise in the service provider company for workers/laborers; and e. The agreement between the company providing the job and the company providing the worker/labor service is made in writing 	<p>Terms of outsourcing (burden is on the outsourcing company):</p> <ol style="list-style-type: none"> a. The working relationship between the outsourcing company and the employed workers/labourers is based on a written work agreement for a certain time or an indefinite work agreement; b. Protection of workers/labor, wages, welfare, working conditions, and disputes that arise are carried out in accordance with the provisions of laws and regulations and become the responsibility of the outsourcing company (regulated in the Work Agreement, Company Regulation, or Collective Labor Agreement); and c. If the work agreement is for a certain period of time, the outsourcing company in its agreement with the workers/labor is required to include the conditions for the transfer of protection of rights for workers when the outsourcing company is replaced as long as the object of the work still exists.
<p>Permits are given by the agency responsible for the field of manpower</p>	<p>Business licenses are issued by the Central Government</p>

Regarding the legal aspects of the working relationship between workers/labor and outsourcing companies, it is regulated in Article 66 paragraph (1) of Law 13/2003 in conjunction with Law 11/2020, namely that the working relationship between the outsourcing company and the workers/laborers it employs is based on a work agreement made in writing, either a work agreement for a certain time or a work agreement for an indefinite period.

Outsourced workers are workers who are not recruited directly, but are provided by a third party or labor provider company (outsourcing). Employment agreements are made by the entrepreneur with the outsourcing company based on the need for the use of labor for a certain time. Reytman Aruan as the Head of Sub-Directorate for Settlement of Industrial Relations Disputes at the Ministry of Manpower, explained that the Job Creation Law regulates the rights and obligations of outsourcing companies and their workers. The point is, the outsourcing company is fully responsible for everything that arises as a result of the employment relationship.

Fahrul S Yusuf as Partner of SSEK Legal Consultans believes that the laws and regulations which still contain these provisions should not apply. The Employment Creation Law also removes the provisions in the Manpower Act that allow Outsourcing workers to switch their employment relationship to the company providing the job (to become permanent workers) if the requirements for Outsourcing are not met. So that there are no more restrictions on the main and supporting business activities. Outsourced workers can be involved for core (main) work or company production.

In Article 65 paragraph 7 and Article 66 paragraph 4, it is explained that if there is a violation of the terms of the Work Agreement for a Certain Time, then the employment relationship changes to a working relationship between the worker/laborer and the employer company. So in this case the legal relationship becomes a worker/labourer to the company that provides the employer. This is based on the fact that the

working relationship between the worker and the outsourcing company is null and void, so the agreement never existed.

If outsourcing workers are employed in the core part of the company, they will switch to the employer company, but also if the specified time employment contract does not meet the requirements, as a result, the employment relationship will also shift to the employer company. In the outsourcing agreement, there are no provisions that specifically regulate the working period because this is an agreement between the worker/labor service provider company and the company providing the job as well as an agreement between the service provider company and the outsourcing employee.

After the enactment of the Job Creation Law, there were no restrictions on the types of outsourcing work, as regulated in Law Number 13 of 2003, only 5 types of work support, namely: security services; catering; transportation for workers/laborers; cleaning services; and supporting service activities in the oil and mining sector. However, after the enactment of the Employment Copyright Law, the type of work for outsourcing workers is free (all jobs can be done), this benefits both service user companies and service providers, because it can cover all types of work, but this makes it more difficult for outsourced workers and for adding work.

In the life of the state, it is certain that there will be a good relationship between fellow citizens and between the state and its citizens. This relationship which can then give rise to rights and obligations, legal protection is the right of citizens and providing legal protection is an obligation of the state. Article 39 of Law Number 39 of 1999 states that everyone has the right to establish a trade union and must not be prevented from becoming a member in order to protect and fight for interests and in accordance with the provisions of the legislation.

Legal protection is to provide protection to parties whose position is on the weak side from the arbitrary actions of other parties whose

position is stronger. Based on the theory of Phillipus M. Hadjon, legal protection for the people is a preventive and repressive government action. The form of legal protection itself is carried out preventively, namely through regulations in legislation, repressively through the courts in the decisions of the judges.

Efforts to obtain the legal protection desired by humans are order and regularity between the basic values of the law, namely the existence of legal certainty, the usefulness of law and legal justice.

CONCLUSION

Based on the analysis of the discussion carried out by the author, it can be concluded that after the enactment of Law Number 11 of 2020 concerning Job Creation, it changed several things, such as the types of work for outsourcing workers were no longer limited, resulting in companies being more flexible in providing jobs. This is very beneficial for service user companies and service provider companies, because it can cover all types of work, but this makes it more difficult for outsourced workers because they add more work.

The Job Creation Law does not answer the question of protecting workers from violations of outsourcing practices that have occurred so far, such as violations of wage provisions, working hours, and the type of work outsourced. Because there is no legal umbrella that guarantees the rights of outsourced workers

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