

Legal Protection For Outsourced Workers Who Are Dismissed Due To Disability Due To Work Accidents

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Abstract

Workers / laborers can get work accident insurance if the employer or company has registered themselves and their workers as participants in the BPJS Ketenagakerjaan program. Based on the results of the study, the conclusion in this study is that the legal relationship between companies and workers based on Labor Law is the relationship between employers and workers/workers based on labor agreements, which have elements of work, wages, and orders and are regulated in Law Number 11 of 2020 concerning job creation. Based on Law Number 11 of 2020 concerning job creation Article 116, Article 117, Article 123 Article 124 and Article 151. One of the obligations of employers is to provide protection and safety for outsourced labor, especially for workers who have had work accidents who perform one job related to employment relations, in accordance with Article 151 Number 1 of the job creation Law Number 11 of 2020 stating employers or workers, unions/trade unions, and the government, with all efforts must try to avoid layoffs. Work accident that occurred in Sujatmiko resulting in defects in the hand, but as a result of the incident Sujatmiko laid off from his workplace, namely PT. PT. BIA without severance pay. Dinasker party gave a summons to PT. BIA. Then there was a bipartite meeting between Sujatmiko and PT. BIA accompanied by PT. KMP running Time 2 weeks finally PT. BIA issued severance pay of Rp.60,000,000 to Sujatmiko provided that the money given to PT. KMP to be channeled to Sujatmiko.

Keywords: Legal Protection, Labor, Outsourcing, Work Accident

1. INTRODUCTION

In the implementation of national development, the workforce has a very important role and position as actors and Development Goals. In accordance with the role and position of the workforce, it is necessary to develop job creation to improve the quality of the workforce and its

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participation in development and increase the protection of workers and their families in accordance with human dignity. Protection of Labor is intended to ensure the basic rights of workers/laborers and ensure equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while paying attention to the development of the progress of the business world. Job creation which is closely related to the problems of prosperity, welfare, and human survival, which is domiciled as a citizen and entitled to a decent job and livelihood guaranteed by the Constitution of the Republic of Indonesia as one of the developing countries as usual has strengthened development in all fields and the most prominent is the development in the field of industry.

Technical, namely labor protection in the form of security and safety. This protection is intended to provide certainty of workers' rights related to work norms that include working time, memaso, rest, . Labor is the main capital and implementation of Community Development pancasila. The most important goal of community development is the welfare of the people including labor.

Workers as implementers of development must be guaranteed their rights, regulated their obligations and developed their useful power. One of the rights of workers/laborers is the right to obtain protection of Occupational Safety and health. In the work environment it is possible the occurrence of events experienced by workers / workers, namely work accidents. One of the risks that can occur to workers/laborers as a result of work accidents is experiencing disability.

However, not a few employers or companies are negligent by not carrying out their obligations to protect workers/workers so that the rights of workers/workers who experience work accidents are often neglected. The fulfillment of the rights of workers / workers who experience disabilities due to work accidents, namely workers/workers are entitled to work accident insurance as one of the programs of the Employment Social Security organizing Agency. Workers / laborers can get work accident insurance if the employer or company has registered themselves and their workers as participants in the BPJS Ketenagakerjaan program. Other rights obtained by the worker / laborer is that the employer or company is prohibited from terminating the employment relationship on the grounds that the worker/laborer concerned is in a permanent disability due to a work accident.

In 2021 there has been a work accident at the company PT. After the accident, workers came to the Office of PT. KMP said that the responsibility in the event of a work accident is borne by the employer not the work supplier contained in regulation of the Minister of manpower number 5 of 2021 concerning the procedures for implementing the work accident Guarantee Program, death guarantee, and Old Age guarantee. Based on the

description above, the author is interested to analyze the problem and prepared in the form of a scientific paper with the title "legal protection for outsourced labor dismissed due to disability due to work accidents.

Based on the description above, the author is interested to analyze the problem and prepared in the form of a scientific paper with the title "legal protection for outsourced workers who are dismissed due to disability due to work accidents".

2. RESEARCH METHOD

The research method used is normative juridical research. This research is descriptive research. Sources of data in this study are primary data and secondary data. The tools used in the data collection of this study is the study of documentation and interviews. Data analysis can be classified into 2 (two) kinds, which include quantitative analysis and qualitative analysis.

3. RESULT AND ANALYSIS

3.1. The Legal Relationship Between The Company And The Employee In The Regulation Of Applicable Laws

Labor relations are relations between workers and employers that occur after an employment agreement, which is an agreement in which the worker declares his ability to hire workers by paying wages. The provisions of the employment agreement or the content of the employment agreement should reflect the content of the labor agreement/collective bargaining agreement . These two agreements underlie the birth of the employment relationship in other words the things and obligations of workers and employers as described in the employment relationship section must be outlined in the CLA and labor agreements.

Well-being of Labor and his family. Job creation law also regulates the relationship between Labor and employers. The employment relationship occurs because of the employment agreement between employers and workers/laborers. The employment relationship consists of two types, namely the employment relationship based on a certain time work Agreement and the employment relationship based on an indefinite time work Agreement . The employment agreement made can be done in writing or orally. The work agreement required in writing must be implemented in accordance with applicable laws and regulations. Regarding the employment relationship, it is regulated in Chapter IX article 50-66 of Law Number 11 of 2020 concerning job creation. The employment agreement established between employers and workers/laborers must be based on and in accordance with the substance of Law Number 11 of 2020 concerning job creation and other related legal regulations.

Other related legal regulations as stipulated in civil law related to the principle of an agreement, namely the principle of personnel. A fixed-term employment agreement can only be held thirty days after the expiration of the old agreement. Renewal may only be made once at most for the same period of time and not exceeding two years. Termination of employment for workers and employers in a fixed-term employment agreement the provisions are as follows: the worker may terminate the fixed-term employment agreement due to gross misconduct committed by the employer. because halal.

Researchers provide various definitions of labor agreements, but according to Article 1 letter 14 Number 11 of 2020, a labor agreement is an agreement between workers/laborers and employers or employers that contains working conditions, rights and obligations of the parties. With the fulfillment of the four conditions of validity of the agreement, an agreement becomes valid and legally binding for the parties that make it. Article 1330 of the Criminal Code stipulates that an immature person, a person placed in custody, a lunatic cannot make a consent. A new worker / laborer is allowed to make a kerja agreement if he / she is 18 years old. While workers / workers with the following provisions: in suatu company there is only one union/ trade union, the Union / Trade Union must be able to represent workers/ workers, to make a collective bargaining agreement if it has a number of members more than 50% of the number of workers/ workers in the company..

3.1.1. Responsibility Of The Company If The Outsourced Workforce Has A Work Accident

Outsourcing in the field of Labor, is defined as the use of Labor to produce or carry out a job by a company, through a provider or employing labor. In the field of management, outsourcing is understood as the delegation of daily operations and management of a business process to an outside party or outsourcing service provider company.

Law Number 11 of 2020 on Job Creation does not explicitly mention the definition of outsourcing. The outsourcing arrangement can be seen in the provisions of Law Number 11 of 2020 Article 64 concerning manpower which states about a work agreement made between employers and workers, where the company can hand over part of the work implementation to other companies through a work chartering agreement made in writing . According to Article 1601 b of the Civil Code, outsourcing is equated with a chartering agreement so that the definition of outsourcing is an agreement in which the contractor commits himself to make a certain work for another party who hires the work to the chartering party for a certain fee. Outsourcing as the transfer of part or all of the work and or authority to

other parties in order to support the strategy of outsourcing service users either personal, company, division or a unit in a company.

The third is done with the aim to reduce the burden on the company. So outsourcing is a form of labor agreement between the employer company and the labor provider company, where the employer company asks the labor provider company to provide the necessary labor to work in the employer company. Law Number 11 of 2020 Article 1 number on employment, defines a worker as "any person who works by receiving wages or rewards in other forms.

Decree of the Minister of manpower and Transmigration number KEP. 220/ MEN/2007 Article 1 paragraph on the terms of delivery of part of the implementation of the work to other companies, defines the worker / labor as "any person who works at the recipient company chartering the work by receiving wages or rewards in other forms". From the definition of workers and outsourcing above, it can be interpreted that an outsourced worker is any person who works at an outsourcing company by receiving wages or rewards which are then transferred by the outsourcing company to the employer company with a written agreement.

For supervision, the entrepreneur must pay a levy according to the provisions that will be regulated by legislation. The management is required to check the health of the body, mental condition and physical ability of the workforce to be received or to be transferred in accordance with the nature of the work assigned to it. The board is obliged to check all workers under its leadership, periodically at the doctor appointed by the employer and justified by the director. The norms regarding health testing are established by legislative regulation.

Compensation according to the Big Indonesian dictionary is money that is given compensation for losses due to accidents, deaths, and so on. In Article 60 paragraph of Law Number 11 of 2020 concerning job creation, it is stated that the company may require a probationary period of at least 3 months, the probationary period is a grace period of time required to obtain the company's worker standard. In the probationary period, workers do not receive compensation money as stipulated in Article 154 of Law Number 11 of 2020 concerning job creation only applies to termination of employment relations with permanent workers. The employee is entitled to the lowest wage equivalent to the value of the applicable minimum wage. Work accidents are unplanned, unexpected, unexpected events and there is no intentional element, these events are physical and detrimental.

Management in occupational accident insurance is a Social Security Agency that replaces Labor Social Security. If the company has become a participant BPJS then all the risks of work accidents turn to BPJS. Where in this case the employer must report officially in accordance with applicable regulations, if the workforce has an accident to the Social Security Agency

for companies that do not register their workers to be participants in the Social Security Agency program then all risks arising from work accidents are the responsibility of the company/employer, where the employer must guarantee the, to be able to become a member of BPJS employers must register their workers, because when working in a company does not automatically become a member of BPJS must go through the procedure.

A person or worker before entering as a workforce who joins a company or joins an entrepreneur, then between the employer and the workforce to be employed will be bound to an employment relationship called an employment agreement.

The implementation of the work in addition must be in accordance with the contents of the employment agreement and must also be in accordance with the regulations of the employer or the employer. In other words, in the framework of the implementation of its work, workers should not work in a time that is arbitrary or indiscriminate, but must be done in accordance with applicable rules and regulations as agreed/determined in the work agreement or company regulations and also the implementation of workers should not conflict with the provisions of laws and regulations, local customs and public order. In terms of Occupational protection and safety for workers, employers have the responsibility/obligation to provide full protection to their workers if they experience work accidents in doing work.

The importance of paying attention to the health of workers is also the responsibility of the company regarding the work environment. Occupational health is one of the requirements that must be met by business owners. This is in order to provide comfort and safety for everyone who is in the work environment. By creating a healthy environment, it is expected that it will be able to affect the performance of workers in the company's environment. Abroad, the issue of Occupational Health is a very vital issue. A company can even be deprived of its operating license if they do not meet the occupational health standards for its employees. In addition, employers will be subject to fines that are not small. this is a clear example of the role of government in providing protection for workers.

In Indonesia, this has not been fully implemented. It is still common to encounter companies that ignore occupational health problems for their workers. Especially this can be found in medium and small scale industries. Starting from trivial things like the obligation to provide masks or eye protection devices, to providing health insurance for workers. This is still often violated by some people.

Occupational health problems are still considered a trivial problem and not a part that should be prioritized in the industrial world of the country. Some employers consider that the obligation to pay attention to this occupational health problem as counterproductive in the company's profit-

seeking process. Steps must be taken synergistically to create this issue of Occupational Health Awareness.

3.1.2. Legal Protection Of The Rights Of Outsourced Workers Who Are Dismissed Due To Disability Due To Work Accidents

Workers were originally someone who wanted social needs, safety, protection, and occupational health because here workers are the lowest role of a company therefore workers need protection from the government, the government issued the law of the Republic of Indonesia number 11 of 2020 Article 86 Number (1) which reads "Every worker has the right to obtain protection for the safety and health of workers, morals, and decency, treatment in accordance with human dignity and religious values". Point (2) "to protect occupational safety or workers in order to realize optimal work productivity, Occupational Safety and health efforts are held". Point (3) "protection as meant in Point (1) and Point (2) shall be implemented in accordance with the prevailing laws and regulations".

Basically, the laws in Indonesia regulate matters that are the company's obligations to the safety and health of its employees. Among the obligations that the company must fulfill are: a. Companies must comply with health standards set by the government by creating a healthy work environment. b. The company must also be responsible in the event of a work accident, especially those that occur in the company's environment. And make every effort, both in the form of prevention and Prevention of health recovery of its employees. c. The company must also bear the costs of care and treatment of its employees, especially if the illness suffered by the employee is a result of work performed on the orders of the company.

Regarding disabled workers, it is regulated as follows: 1. Law Number 11 of 2020 concerning job creation Article 153 paragraph (1) letter (j) which contains, "employers are prohibited from terminating employment relationships on the grounds that workers/laborers are permanently disabled, sick due to work accidents, or sick due to work relationships according to a doctor's certificate whose healing period has not been ascertained." In addition, employers are also obliged to rehire the workers concerned. 2. Law No. 4 of 1997 on Persons With Disabilities Chapter IV Article 14 which contains, "state and private companies provide equal opportunities and treatment to persons with disabilities by employing persons with disabilities in their companies according to the type and degree of disability, education, and ability, the number of which is adjusted to the number of employees and/or qualifications of the company."

4. CONCLUSION

Delays occur in almost every implementation and have different problems, factors that cause delays in the implementation of contracts that occur at PT. Indo Hutama Jaya includes force majeure, unavailability of construction equipment at the project site, lack of expert labor, and finance. This is because the time of execution of the contract coincides with the corona virus disease pandemic which hinders the execution of the contract. Based on Article 15 points in the contract agreement between PT. Indo Hutama Jaya and PT. Dharma Agung Wijaya explained that both the First party and the second party are exempted from liability for failure or delay in carrying out their obligations under this contract, caused by things beyond the reasonable ability of the parties and not caused by negligence of the parties, hereinafter referred to in the contract as force majeure, except for the obligation to carry out payments arising before the occurrence of such force majeure. From the points of the agreement, it can be seen that the legal protection obtained from PT. Indo Hutama Jaya due to the involvement in the completion of the work is not solely due to negligence on the part of PT. Indo Hutama Jaya except from the covid 19 pandemic. Responsibility of the board of directors for the contractual relationship with the second party where the board of Directors is responsible for controlling and supervising the implementation of the contract in accordance with the scope of work, cost, term and other provisions agreed. The board of Directors is responsible for resolving obstacles that occur by conducting mediation and/or renegotiation efforts to reach new agreements in an effort to achieve achievements. The responsibility of the board of directors to maintain contractual relations with the users of goods and services and maintain the good name of the company in the future. Based on the contract clause that in the event of a dispute the parties agree to resolve it by deliberation, by upholding business ethics, but if it cannot be resolved by deliberation it will be taken through the district court (litigation). The position of the parties to the contract is also unbalanced because the type of contract for the procurement of goods and services is a standard contract that is unilaterally designed by the service user and must be approved by the service provider. Based on the addendum of Procurement Agreement between PT Indo Hutama Jaya and PT. Dharma Agung Wijaya contained in Article 1 points 3, 4 and 5.

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