

The Government's Role in Cases of Termination of Employment for Outsourced Workers

Adinda Intan Puteri A'an¹, Ratna Herawati²

^{1,2} Universitas Diponegoro, Jalan Imam Bardjo No. 5, Pleburan, Kota Semarang, Indonesia

ABSTRACT: This study aims to investigate the application of positivist theory in law enforcement cases involving the termination of employment for Outsourced Workers. Disputes between Workers and Employers are inevitable in the world of work. In this case, workers, including outsourced workers, cannot be treated arbitrarily or terminated without due process of law. However, in the field, termination of employment occurs before the contract period expires by offering to become a "partner." The outsourcing company obscures its obligation to pay the remaining salary for the contract period and the rights that workers should receive due to the termination of employment by the service user company. Therefore, law enforcement against workers is necessary to protect their rights, as stipulated in labor laws and regulations. The research method employed in this paper is normative legal research, which involves collecting legal sources through literature to address the problems raised in this study. It includes research on Court Decision Number 15/Pdt.Sus-PHI/2022/PN.Smg jo. Decision Number 1427K/Pdt.Sus/2022, which is an example of legal remedies for justice seekers in cases of unlawful acts committed by outsourcing service providers.

KEYWORDS: Positivism Theory, Employment Relations, Termination of Employment, Outsourcing Workers, Company.

I. INTRODUCTION

Indonesia is a country based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which predominantly adheres to the civil law system. The civil law system views law as developing based on the theory of legal positivism. This legal positivism assumes that there is no law other than the written and stated orders of the ruler.¹ Based on this, the laws that develop in society are formed by the government, both central and regional governments, and society must know and obey the regulations that are formed; otherwise, it will result in sanctions for violators. The creation of legislation by the government/authorities is the result of political interference. As in Indonesian legislation, it is created by the President in collaboration with members of the Indonesian House of Representatives or regional leaders in collaboration with their Regional House of Representatives. The guidelines for creating legislation must be based on Pancasila and must not contravene any other regulations that supersede it. The goal of the Indonesian state is to guarantee the welfare and justice for all Indonesian people, including the right to work and receive compensation (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia). Therefore, the government, as the party authorized to make laws and regulations, has issued several regulations regarding employment or labor relations, as has been issued Law Number 13 of 2003 concerning Manpower, and most recently regulated in Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law. Regulations related to employment, including the granting of rights and obligations within the cooperative relationship between workers and employers (companies), are stipulated in Article 1, number 14 of the Manpower Law. Based on this, two types of employment relationships in Indonesia are distinguished: those based on fixed-term employment agreements (contracts) and those based on indefinite-term employment agreements (permanent). The development of the business world today has an impact on the expansion of employment relationships, namely that employment relationships are not only limited to relationships between workers and employers, but also between one employer and another employer, which involves the workforce.² This is known as outsourcing. This expansion is intended to reduce operational costs, focus on core business, increase efficiency within the company, or obtain competent workers according to the needs of the recipient company. The implementation of expert power or outsourcing also receives special attention in the development of Indonesian law.³ This includes the development of laws governing outsourcing, including agreements, the rights and obligations of employers and employees. These legal products are based on the political outcomes of the President, along with the election of several political party elites to the Indonesian House of Representatives, and the consideration of experts in the labor sector.

¹ Darmodiharjo, Darji & Shidarta, 2004, *Principles of Legal Philosophy*, Jakarta: Gramedia, p.113.

² Anak Agung Prabhaputra, et al., 2019, Outsourcing System in Industrial Relations in Indonesia, *Jurnal Analogi Hukum*, Vol. 1, No. 1, p. 23.

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Outsourcing has been implicitly regulated in Law No. 13 of 2003 concerning Manpower (Manpower Law). However, it is now explicitly and clearly regulated in Law No. 6 of 2023 concerning the Stipulation of Government Regulation instead of Law No. 2 of 2022 concerning Job Creation into Law, with implementing regulations in Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment, and Permenakertrans Number 19 of 2012. Practices in outsourcing work agreements tend to use Fixed-Term Work Agreements or contracts.⁴ Legal relationships are divided into two categories: the legal relationship between the outsourcing company and the recipient company, and the outsourcing company and the outsourced workers. Some forms of outsourced work include cleaning services, call center staff, couriers, drivers, and customer service.

A relationship is definitely not far from problems; tension inevitably arises within a relationship. Employment issues are a direct example of tension between employers and employees. Termination of employment by employers often occurs without the employee's consent, or it may result from lawsuits or tensions arising from the parties' unfulfilled rights and obligations. In this regard, the government should provide legal protection to its citizens. The nation's ideal is justice for all Indonesians. Arbitrary actions against workers in the outsourcing system are a concrete example of how employers often fail to comply with the legal provisions established and enacted by the government. Therefore, workers, especially those in outsourcing employment relationships, can still fight for their rights against unlawful acts by companies, as the government has provided legal protection through its laws and regulations.

Case Study

Ainaya Mazaluna (20/employee) is a worker placed at PT Pos Indonesia (Persero), Semarang City, based on a fixed-term employment agreement with PT Dapensi Trio Usaha, Semarang City Branch, utilizing an Outsourcing system. Started working in November 2019 with two contract extensions namely on January 1, 2020 to December 31, 2020 and the second contract on January 1, 2021 to December 31, 2021, but in mid-2021 or before the contract expired in 2021, Ainaya was asked to become a "PARTNER" by PT Dapensi Trio Usaha Semarang City Branch by being forced to provide a Letter of Resignation. Due to the actions of PT Dapensi Trio Usaha Semarang City Branch, Ainaya then initiated both bipartite and tripartite legal efforts and filed a labor dispute lawsuit with the Head of the Semarang District Court, case Number 15/Pdt.Sus-PHI/2022/PN.Smg terminated the employment relationship between Ainaya and PT Dapensi Trio Usaha, Semarang City Branch, because the company was proven to have terminated the employment relationship with workers before the end of the Fixed Term Employment Agreement.⁵

Based on the description above, the author is interested in analyzing the government's role in providing legal protection for outsourced workers and its enforcement of laws regarding laid-off outsourced workers.

II. RESEARCH METHODS

This legal research is normative juridical research by analyzing written legal sources (law in the book) or secondary data.⁶ This study uses a statutory regulatory approach, namely Law Number 13 of 2003 concerning Manpower, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, Law Number 48 of 2009 concerning Judicial Power and other regulations related to the settlement of industrial relations disputes in Indonesia, including Decision Number 15/Pdt.Sus-PHI/2022/PN.Smg Jo. Decision Number 1427K/Pdt.Sus/2022.

Secondary legal materials comprise literature, including journal articles, books, and research findings, all of which are relevant to the main issues addressed in this study. Therefore, the data collection technique is through a literature review (library research).⁷ The analysis in writing the results of this research is descriptive, so that it can explain the formulation of this problem clearly and in detail as intended in this legal research.

III. DISCUSSION

1. The Role of the Government in Providing Legal Protection for Outsourcing Workers

The role of law is vital for humans because it can maintain order when humans have different desires.⁸ Therefore, the correlation between law and the political system is clearly visible in the formation of regulations in force in Indonesia. Indonesia is a country that adheres to a civil law system.⁹ The development of the civil law system originated in several European colonies, including Indonesia, a former Dutch colony. Countries that adopt the civil law system view the law as being based on the positivist philosophical school of thought. Some of the thoughts of prominent philosophers on positivism include:

³ Article 64, Law Number 13 of 2003 concerning Manpower.

⁴ Wiwin Budi Pratiwi & Devi Andani. Legal Protection of Workers with Outsourcing Systems in Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol. 29 No. 3, 2022, p. 653.

⁵ Decision of the Semarang City Industrial Relations Court No. 15/Pdt.Sus-PHI/2022/PN.Smg.

⁶ Soerjono Soekanto & Sri Mamudji, 2007, *Normative Legal Research: A General Review*. Jakarta: Raja Grafindo

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- a. Hans Kelsen and Reine Laws of Law, which states that law is a logical arrangement of statutory regulations that apply in a particular place.¹⁰
- b. H.L.A. Hart, who stated that law is a command that comes from humans.¹¹
- c. John Austin, law is a command from the ruler or power in a country.¹²

Based on several definitions of positivism by philosophers, law can be understood as what the ruler desires, which is a command in the form of legislation and applies to all people in a given place. In the positive legal school, there is a gap between law and morality, so the justice achieved is formal justice. Understanding theory is the correlation between two or more observable variables. Based on this, the theory is intended to test certain truths or to confirm specific facts. This theory and school of thought are mutually compatible, one of which is positivism, which is used to explain or confirm facts using a legal basis identical to statutes. It allows for clarification of the facts surrounding the resolution of legal problems, whether they comply with established and applicable laws or not. The industrial relations dispute case involving an Indonesian citizen, namely Ainaya, pertains to the termination of employment due to a court decision that has permanent legal force. This decision was made following the actions of one of the parties, who committed an unlawful act, and the failure to fulfill their respective rights and obligations. This case began with an attempt to coerce the employer into agreeing to change Ainaya's employment status to "PARTNER" or submitting a letter of resignation, which is unlawful. The outsourcing company, for example, denied the terminated worker's rights, who was deemed absent for failing to show up for work, despite the worker's actions being a result of tensions with the outsourcing company.

Employment law and Civil Procedure Law in Indonesia represent the government's role in protecting outsourced workers, as Indonesia adheres to a positivist approach. The government has issued several regulations as a legal framework to protect the relationship between workers and companies, particularly for outsourced workers, including:

- a. Article 62 of Law Number 13 of 2003 concerning Manpower;
- b. Article 79 paragraph (2) of Law Number 13 of 2003 concerning Manpower, as amended by Law Number 11 of 2020 concerning Job Creation; Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes;
- c. Article 64 letter b Jo. Article 16 paragraph (1) letter a Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Hours, and Termination of Employment;
- d. Article 40, paragraph (2) of Government Regulation of the Republic of Indonesia No. 36 of 2021 concerning Wages

The government's role in providing legal protection, particularly for outsourced workers, serves as a form of protection and a guarantee of public welfare, a key goal of the Indonesian nation. The creation of these laws and regulations must be adhered to and implemented by all parties involved, and failure to do so constitutes an unlawful act.

2. The Role of the Government in Enforcing the Law Regarding Outsourcing Workers Who Are Terminated

Termination of Employment Relations may not be conducted, unless there are reasons prohibited by law, and is not done unilaterally with the intention of not harming either party. Looking at the Decision of the Panel of Judges who decided the Ainaya case, it is strongly influenced by the role of the theory of Positivism, as the panel of judges decided the case, namely:

(1) In the Convention:

- a. *In Exception: Rejecting the Defendant's exception;*
- b. *In the Main Case: 1. Granting the Plaintiff's lawsuit in part; 2. Declaring that the Defendant terminated the Employment Relationship with the Plaintiff before the end of the Fixed Term Employment Agreement; 3. Sentencing the Defendant to pay the Plaintiff in cash and immediately with the following details: - Food allowance - Rp. 800,000,-; Shortage of Religious Holiday allowance in 2020 Rp. 37,568,-; - Compensation for the remainder of the contract, Termination Compensation, Remaining annual leave 2021 Rp. 11,640,100,- ; Rp. 2,182,518.75; Rp. 1,164,010,-; Total Rp. 15,824,196.75 (fifteen million eight hundred twenty four one hundred ninety six rupiah and seventy-five cents).*

(2) In the Counterclaim: Reject the counterclaim in its entirety;

(3) In Conventions and Recoventions: Charge court costs of IDR 310,000 to the State."¹³

The decision demonstrates that the law enforcement of government laws and regulations is based on the theory of proof, which argues that the accused must prove (Article 163 HIR). Thus, the workers have been able to prove that the Defendant (PT Dapensi Trio Usaha, Semarang City Branch) has committed an unlawful act, namely the termination of employment before the contract expires, and making efforts to transition to "PARTNER" by obscuring the obligations as ordered by the recipient of outsourcing services.

⁷ Kornelius Benuf & Muhamad Azhar, *Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems*. Gema Keadilan, Vol. 7, No. 1, 2020, pp. 20-23.

⁸ Islamiyati, 2018, Critique of Positivist Legal Philosophy as an Effort to Realize Just Law, *Law & Justice Journal*, Vol. 1, No. 1, p. 83.

⁹ Yusriadi, 2020, *Dogmatic & Theoretical Legal Science and Problems of Law Enforcement*. Semarang: Undip Press, p. 93

¹⁰ Suteki, 2021, *Law and Society*. Bantul: Thafa Media.

¹¹ Abintoro Prakoso, 2022, *Legal Theory*, Sleman: LaksBang Justitia. p. 247

¹² *ibid*, 81

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Valid evidence, two witnesses from the Plaintiff, namely Shepta Alberto Aghil and Dewi Eva, and the legal basis for protection from the government can explain to the panel of judges a quo that they genuinely know that the Plaintiff is an outsourcing worker at PT POS Indonesia based on PT Dapensi Trio Usaha, which has been asked to resign by PT Dapensi Trio Usaha. PT Dapensi Trio Usaha Semarang City Branch admitted that Ainaya is a worker who works at PT Pos Indonesia. It was found that PT Pos Indonesia (the company receiving outsourcing services), which terminated the employment relationship, had ordered PT Dapensi Trio Usaha to pay the rights of the three Contract Workers, one of whom was Ainaya.

In the author's opinion, Ainaya's decision to fight for her rights aligns with the statutory regulatory process. The stages taken by Ainaya before filing a lawsuit with the Head of the Industrial Relations Court at the Semarang City District Court included submitting a bipartite application. Bipartite negotiations were then conducted between the Employer (outsourcing company) and the workers' legal counsel. Following the application's failure, a tripartite negotiation continued with the Semarang City Manpower Office, facilitated by the Manpower Office mediator. The tripartite negotiations failed to resolve, and subsequently, a lawsuit was filed with the Head of the Industrial Relations Court at the Semarang City District Court, case number 15/Pdt.Sus-PHI/2022/PN.Smg.

Regarding attitudes regarding legal protection for workers, namely the fulfillment of all rights held by workers, namely the fulfillment of all rights held by workers, which are one of the human rights.¹⁴ The role of the authorities or government in issuing these regulations must be balanced by law enforcement, in this case, judges. Therefore, the panel of judges' decision in this case reflects the correlation between positivist theory, which is based on legal products created by the authorities, and the provision of justice for justice seekers. It clearly demonstrates that not all judges' decisions based on statutory regulations are inherently harmful. The value of justice and legal certainty remains crucial for justice seekers, especially those who are employed, as employers (companies) can easily terminate employment if they no longer require their services.¹⁵ However, this is not the case for workers, who often have to start from scratch to meet their daily needs. In the author's opinion, the government's role as the party with the authority to create and ratify laws has created a legal relationship between the political system and the law, where those in power create laws and are themselves shaped by them. Legal products related to employment, particularly outsourcing, can serve as a legal umbrella or demonstrate the value of legal certainty for outsourced workers whose employment is terminated unilaterally by their employers. As outsourcing is seen as more efficient in management, it can be a solution to increase production cost efficiency, especially in order to reduce labor costs.¹⁶ The role of the government as a law enforcer, through the judge's decision as an authorized party formed by the government, can be one of the means by which law enforcement officers achieve justice in terminating the employment of outsourced workers. It must protect the interests of both workers and companies, especially in the outsourcing sector.

IV. CONCLUSION

A. Conclusion

The role of the government in drafting legal products on outsourcing is vital for countries that adhere to the civil law legal system, as law enforcers will use these legal products as a basis for decision-making and law enforcement. Thus, according to the author, although the justice obtained from the use of the Positivism theory is certain, it separates law and morals. It is not impossible to do good things; therefore, rulers who have the authority to create legal products that are fair, beneficial, and create certainty for all Indonesian people must prioritize the interests of the people, including workers and entrepreneurs. As the government issued regulations related to the protection of outsourcing workers, namely Article 1601 b of the Civil Code, Article 62 of Law Number 13 of 2003 concerning Manpower; Article 79 paragraph (2) of Law Number 13 of 2003 concerning Manpower as amended by Law Number 11 of 2020 concerning Job Creation; Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes; Article 64 letter b Jo. Article 16 paragraph (1) letter a of Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours and Termination of Employment; and Article 40 paragraph (2) of Government Regulation of the Republic of Indonesia No. 36 of 2021 concerning Wages. The legal case or lawsuit filed by Ainaya related to the actions of PT Dapensi Trio Usaha Semarang City Branch, which caused tension and led to legal action, was submitted to the relevant court but was not fulfilled, resulting in the termination of the employment relationship. Based on the judge's decision, it exemplifies the government's role in law enforcement, as outlined in positivist theory, which protects outsourcing workers from unilateral layoffs. The role of the judge as a law enforcer for the authority holder in the government is to show that the government not only protects but also participates in enforcing against parties who do not comply with laws and regulations, especially in the case of the Industrial Relations Court, which involves unilateral layoffs for outsourcing workers by not providing their rights.

¹³ Case Decision No. 15/Pdt.Sus PHI/2022/PN.Smg

¹⁴ Rudi Febrianto Wibowo & Ratna Herawati, 2021, Protection for Workers from Unilateral Termination of Employment, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3 No. 1, p. 117.

¹⁵ I Nyoman Putu Budiarta, 2016, *Outsourcing Law*, Malang: Setara Press. p. 22.

¹⁶ Kadek Agus Sudiarawan, "Legal Analysis of Outsourcing Implementation from the Perspective of Companies Using Worker Services" *Jurnal Ilmu Sosial dan Humaniora*, Vol. 5 No. 2, October 2016, p. 837.

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B. Recommendation

The recommended approach is for employers to comply with regulations in a proactive manner, ensuring the smooth realization of worker welfare. Additionally, the Government must firmly enforce compliance among negligent employers, issuing warnings for non-compliance in the implementation of their business. For justice seekers, especially outsourcing workers, this can serve as a basis for consideration in demanding justice for workers' rights when a transfer of work accompanies employment termination but does not include the provision of workers' rights, particularly the remaining salary for the work contract period.

REFERENCES

- 1) Law Number 13 of 2003 concerning Manpower, as amended by Law Number 11 of 2020 concerning Job Creation, and the second amendment to Law Number 6 of 2022.
- 2) Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment.
- 3) Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages.
- 4) Decision of the Semarang City Industrial Relations Court Number 15/Pdt.Sus-PHI/2022/PN.Smg. 2022
- 5) Agung Prabhaputra, Anak & et al. 2019. Outsourcing System in Industrial Relations in Indonesia, *Jurnal Analogi Hukum*, Vol. 1, No. 1, p. 23.
- 6) Benuf, Kornelius & Muhamad Azhar. 2020. Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems. *Gema Keadilan*, Vol. 7, No. 1, pp. 20-23
- 7) Febrianto Wibowo, Rudi & Ratna Herawati, 2021, Protection for Workers from Unilateral Termination of Employment, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3 No. 1, p. 117.
- 8) Islamiyati. 2018. Critique of Positivism Legal Philosophy as an Effort to Realize Just Law. *Law & Justice Journal*, Vol. 1, No. 1, p. 83.
- 9) Pratiwi, Wiwin Budi & Devi Andani. 2022. Legal Protection of Workers with the Outsourcing System in Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol. 29 No. 3 p. 653
- 10) Sudiarawan, Kadek Agus. 2016. Legal Analysis of Outsourcing Implementation from the Perspective of Companies Using Worker Services" *Jurnal Ilmu Sosial dan Humaniora*, Vol. 5 No. 2, October 2016, p. 837
- 11) Budiarta, I Nyoman Putu. 2016. Outsourcing Law, Malang: Setara Press.
- 12) Darmodiharjo, Darji & Shidarta, 2004, Principles of Legal Philosophy, Jakarta: Gramedia
- 13) Prakoso, Abintoro. 2022. Legal Theory, Sleman: LaksBang Justitia.
- 14) Soekanto, Soerjono & Sri Mamudji, 2007, *Normative Legal Research: A General Review*. Jakarta: Raja Grafindo.
- 15) Suteki. 2021. Law and Society. Bantul: Thafa Media.
- 16) Yusriadi. 2020. Dogmatic & Theoretical Legal Science and Problems of Law Enforcement. Semarang: Undip Press.



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