



Legal Protection and Right of Outsourcing in Pt Bukit Asam (Persero) Tbk.

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ABSTRACT

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This article aims to find out about legal protections related to the rights received by Outsourcing Labor in PT Bukit Asam (Persero) Tbk South Sumatra. This article uses empirical legal research methods, and its approach uses statute approach and case approach. The data sources used are primary legal material is PERMENAKER No. 19 of 2012 on Terms of Partial Submission of Work to Other Companies. This article shows that Legal Protection and Right of Outsourcing Labor in PT Bukit Asam during the pandemic Covid-19 are still many that have not been fulfilled as stipulated in PERMENAKER No. 19 of 2012 on Terms of Partial Submission of Work to Other Companies. It right is quite varied.

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Introduction

After the 1998 Reformation, labor problems in Indonesia have become increasingly complex. The prolonged economic crisis has contributed significantly to labor issues, ranging from unemployment to legal certainty. In Asia, Indonesia was the last country to experience a crisis but was the longest to escape from the crisis. The prolonged economic crisis had an impact on labor issues in Indonesia.

In the practice of laborers who work under a certain time employment agreement, it is referred to as "temporary workers/contract laborer/laborers for a certain time/KKWT; while workers who work under an indefinite Time Agreement are called "Permanent Workers". The term "contract labor" is not known in law, is a term given in everyday use in society to describe the labor conditions of workers who are based on a work contract within a certain period time. This term is contrasted with "permanent workers" (workers who have permanent jobs). However, that does not mean the law does not regulate contract labor. In general, there is only known division between "permanent workers" and "temporary workers/contract workers/laborers for a certain period time / KKWT" (including contract workers, casual daily laborers, sub-contracted workers, etc., which do not include permanent workers (Kepmenaker No100 / Men / VI / 2004) However, Principle is that whatever the status of a worker, he has the same rights, no exception, the status of a worker

does not diminish the rights he gets, this is because the law regulates that discrimination may not occur based on status (Muhammad, 2006; Uwiyono, 2003).

The issuance of Law No. 13 of 2003 has also provided opportunities for outsourcing practices that are increasingly widespread in Indonesia on the grounds of market demands. Outsourcing is part of the market mechanism intended to make efficiency in business activities or processes. On the other side, this practice raises work uncertainty.

On the part of workers, outsourcing makes labor poor and does not have job certainty. On the company side, this practice helps them protect their business by cutting off business operations into smaller companies (Djokoprantom & Indrajit, 2003). This condition has a consequence for workers, which is increasingly difficult for workers to organize themselves to fight for their interests. These workers are usually only contracted for a certain period, of time so that they have absolutely no long-term certainty and job security (Munir Fuady, 2004).

There is a projection that the business services company of labor procurement or better known as outsourcing (subcontracting) services will be majority concerned. Because the global economic conditions do not allow companies to provide salaries to permanent employees in large numbers, and the number of unemployed. Especially for Indonesia where informal employment is far beyond formal employment, contract workers are a bridge for millions of informal workers to become formal workers (Damanik, 2006). In addition, as stated by the Director of Manpower and Economic Analysis of Bappenas Bambang Widianto, the company was also prohibited from outsourcing (Arum, 2019; Jehani, 2008).

The implementation of outsourcing itself in practice also occurs many deviations and smuggling of understanding or deliberately misused by the employer, even though the law itself stipulates that Article 65 paragraph (4) of Law 13 of 2003 provides protects for workers outsourcing that "work protection and work conditions for workers/laborers in other companies as referred to in paragraph (2) are at least the same as work protection and work conditions at the employer company or by following per under applicable laws and regulations " so it is clear that outsourced laborers are also given the same rights and space as permanent workers (Yoserwan, 2006). The main issues to be discussed in this study are the fulfillment of rights by outsourcing workers at PT. Bukit Asam (Persero) Tbk. under the provisions of PERMENAKER TRANS No. 19 of 2012.

Methodology

The object of the empirical research is sociological, economical, or socio-psychological data, or more generally "human behavior". However, most arguments in legal reasoning are not "true" or "false" but more or less convincing. They do not quality for an empirical verification.

Results and Discussion

Legal Protection and Right of Outsourcing Labor in PT Bukit Asam, Tbk

This study aims to find out more about the implementation of the rights of outsourced workers who work at PT Bukit Asam Tbk. Researchers conducted interviews with several speakers, including Mr. Ahmad Saichu., General Manager of the Derti PT Bukit Asam TBK Unit and Mr. M. Jahri, SH of the SBBM management - PT Bukit Asam Tbk Sector. In addition, the researchers also distributed questionnaires to 20 workers Outsourcing is taken by 2 people from 10 companies (vendors) who carry out the work of PT Bukit Asam Tbk. To understand the implementation of the rights of workers / outsourcing workers who work at PT Bukit Asam Tbk, the researcher made a questionnaire consisting of 18 questions asked to 20 respondents taken from 10 companies (vendors) each of two people. The ten companies are companies (vendors) that carry out transportation work, namely:

- a. "Kobara" Coal Mine Employee Cooperative
- b. PT Guna Karya Nusantara
- c. PT Hanindo Citra
- d. PT Sinar Baraja Sakti
- e. PT Global
- f. PT Tri Cipta Abadi
- g. PT Gapura Mitra Perdana
- h. PT Indah Jaya
- i. PT Gerhana Mulia
- j. PT Jala Bumi Perkasa.

From the first question, "Are there any work agreements signed at the time of entry or when they are hired?", The responses can be seen in Table 1:

Table 1. Employment agreement

Available	Unavailable
8 Person	12 Person

Source: Primary Data

From the Table 1, it can be seen that the majority of workers who work in outsourcing companies do not sign a work agreement when they are accepted to work at the company (Vendor) who does work at PT Bukit Asam Tbk. Based on information obtained from Mr. M. Jahri, SH management of the United Trade Union (SBB) - PT Bukit Asam Tbk Sector, namely the local trade unions in the company, both Law No. 13 of 2003 and Kepmen No. 100 of 2004 do not require written work agreements between workers and employers.

So the work agreement can be done verbally, and this is clearly regulated in Article 51 paragraph (1) of Law 13 of 2003 expressly states "Work agreements are made orally or in writing" and in the explanation of the article stated "In principle the work agreement is made in writing, but seeing the diverse conditions of the community it is possible to verbally work agreement" meaning that the work agreement made verbally remains valid,

but the legal consequences of the verbal agreement are as stipulated in Article 57 paragraph (2) of Law 13 of 2003 namely "A work agreement for a specified time made not in writing contrary to the provisions referred to in paragraph (1) is stated as a work agreement for an indefinite period of time (or commonly referred to as a permanent worker). In article 57 paragraph (1) it is explained that "(1). A work agreement for a certain time is made in writing and must use Indonesian language and Latin letters ", meaning that a work agreement that is required to be written is a work agreement for a certain time or commonly called a contract worker, thus permanent workers are not required to have a work agreement in writing, so thus outsourcing workers who work at PT Bukit Asam Tbk who have been accepted to work in a vendor company verbally, then based on these provisions are permanent workers in the outsourcing company concerned then all of his rights should apply in accordance with the provisions of the legislation as permanent worker. Next, the second question the researcher asked respondents about the status of the employment relationship, obtained in the Table 2:

Table 2. Employment relationship status

Employment relationship status		
Permanent	Daily	Daily release
4 persons	10 persons	6 persons

Source: Primary Data

From the data above it can be seen that the status of the employment relationship between workers and companies (vendors) who do work at the company PT Bukit Asam Tbk is mostly claimed by the owner or management of the company with the status of daily workers, both permanent daily workers and casual daily workers.

The parties should be bound in an agreement in accordance with the contract law that contains compensation issues if one party defaults or breaches the contract will provide a guarantee by guaranteeing the other party. In carrying out the contract, it is not dealing with risk, rather than cooperation from other parties. Regarding the payment of wages at the Company can be seen in Table 3:

Table 3. Wage Payment Method

Employment relationship status		
Monthly	Daily	Unit of Results
4 persons	2 persons	14 persons

Source: Primary Data

From table 3, it is obtained that most of the (70%) methods of payment of wages are based on yield units. Monthly wages are only given to workers whose status is permanent at a vendor company.

The above facts do not provide protection for the welfare of outsourcing workers. According to the theory of legal protection, a new norm can be considered reasonable, if an interest intended to be protected by that norm is violated. This theory becomes a strong

grip to reject a claim from someone who feels that his interests have been impaired by an unlawful act. Next, we asked whether there was a basic wage given every month. The respondents' answers can be seen in Table 4.

Table 4. Monthly Basic Wages

Available	Unavailable
8 Person	14 Person

Source: Primary Data

From the Table 4, it is obtained that most of the figures (70%) of respondents answered 'no' basic wages provided by the company every month. Monthly wages are only given to workers whose status is permanent at a vendor company. This of course does not meet the sense of justice among the workers themselves, especially in terms of the cumulative justice theory, where all workers should get the same treatment.

Next, the researcher asked if there were other benefits aside from the salary provided by the company every month. The respondents' answers can be seen in Table 5.

Table 5. Other Benefits

Available	Unavailable
8 Person	12 Person

Source: Primary Data

From Table 5, it is obtained that most (60%) of respondents answered that they did not receive other benefits besides wages. Two of the eight people who received other allowances other than wages, only received food allowances, amounting to ten thousand rupiah (IDR. 10,000, -).

In line with the problem of payment of wages, the provision of other benefits should also fulfill a sense of justice. Although not all of them must be the same, at least they meet the criteria of distributive justice according to their portion. Salary wages received on average per month by workers can be seen in Table 6.

Table 6. Monthly salary (in IDR)

Monthly salary		
<1 million	1-2 million	> 2 million
0	16 persons	4 persons

Source: Primary Data

From Table 6, it is obtained that most (80%) of respondents have received monthly salary/wages above 1 million rupiah, and even 2 respondents said they have received monthly salary / wage above 2 million rupiah. So, no more workers receive wages below the Provincial Minimum Wage (UMP). Determination of minimum wages should be adjusted to the basic needs (Basic Need) of each worker. It is hoped that there will be no more workers whose basic needs are not met, including the families who are dependent.

Next, the researchers asked whether there was overtime pay given by the company for excess work hours. Respondents' answers can be seen in Table 7.

Table 7. Overtime Wages

Available	Unavailable
5 Person	15 Person

Source: Primary Data

From Table 7, it is obtained that most of the figures (75%) of the respondents answered 'no' overtime pay provided by the company. Based on information obtained from Mr. M Jahri, SH, SBBM manager - PT MHP Sector, the majority of workers receive wages based on unit yields. So even if there are jobs that exceed working hours, they still receive wages in accordance with the results they get. Next, we asked whether if the worker was sick the wages were still paid. Respondents' answers presented in Table 8.

Table 8. Payment of wages

Paid	Not Paid
6 Person	14 Person

Source: Primary Data

From Table 8, it is obtained that most of the figures (75%) of the respondents answered 'no' wages given by the company if the worker is sick. This is contrary to Article 93 paragraph (2) letter a of Law No. 13 of 2003. In addition, of course this is contrary to human rights, because in essence, human rights are a tool to strengthen and protect each individual, by setting minimum standards for how a person should be treated, what must be given to them the right to minimum wages and working conditions safety. Next, the researcher asked if there was help / wages that were damaged by the company while it was not working. Respondents' answers presented in Table 9.

Table 9. Wages for Damaged Equipment

Available	Unavailable
6 Person	14 Person

Source: Primary Data

From Table 9, it is obtained that most of the figures (70%) of respondents answered 'no' wages given by the company while not working due to damaged equipment. This is contrary to Article 93 paragraph (2) letter f of Law No. 13 of 2003 which states that paragraph (1) "wages are not paid if workers/laborers do not do work" and in paragraph (2) "The provisions referred to in paragraph (1) do not apply, and employers are required to pay wages if: (f). workers/laborers are willing to do the work that has been promised but the employer does not employ him, either because of his own mistakes or obstacles that should have been avoided by the employer / laborers can return to work, thus not workers who do not want to work, so according to the above provision's employers must pay the

workers' wages. The next question the researchers asked about the provision of penitentiary days (THR). Based on responses from respondents is obtained in Table 10.

Table 10. Granting THR

Available	Unavailable
18 Person	2 Person

Source: Primary Data

From Table 10, it is obtained that most (90%) of respondents answered, 'there is' THR given by the company, although the amount varies, there are even workers who only receive basic necessities. While based on the provisions of the law, the provision of religious holiday allowances must be given a minimum of (1) month wage wages that receive monthly fixed wages, whereas for wages based on unit yields, religious holiday allowances are calculated based on the total income for one year (12 months) then divided by 12 (twelve) and the amount must not be less than the Provincial Minimum Wage (UMP) if the amount is less than the UMP, then the entrepreneur is obliged to pay in accordance with the provisions of the UMP. In the author's research above it is clear that there are deficiencies and errors in the provision of religious holiday allowances, and it is seen that there is only one company that provides one month's salary. But there is one company that doesn't give THR's at all. Next the researchers asked about the long hours worked a day. Based on responses from respondents is obtained in Table 11.

Table 11. Office hours

Office hours <8hours		
<8 Hours	8-16 Hours	> 24 Hours
4 persons	2 persons	14 persons

Source: Primary Data

From Table 11, it is obtained that most (70%) of respondents answered the hours of work required by the company for 24 hours, 10% 8-16 hours and 20% worked less than 8 hours. When the researchers asked why some of their working hours were 24 hours a day, an explanation was obtained that their working hours were not specified. They must be ready at any moment. As a driver, for example, sometimes they have to queue to load or unload cargo in a long time, sometimes even have to queue for more than 12 hours. Regarding the number of working days in a month, respondents gave responses 12 people (60%) answered 24 days in a month, 4 people (20%) answered 22 days in a month, 2 people (10%) answered 26 days in a month, 2 people (10%) answer 30 days a month.

It is indeed difficult to determine whether there has been a violation of work time, because Article 77 paragraph (3) of Law No. 13 of 2003 states that "the provisions on working hours governed by Article 77 paragraph (2) do not apply to certain business sectors or occupations" and if we see in the explanation of the article states "what is meant by certain

business sectors or certain occupations in this paragraph for example work in companies offshore oil drilling, long distance transportation driver, long distance flight, sea ship work, or logging "so if we look at the reality and implementation then what is done by (vendor) over the power of PT Bukit Asam Tbk then it does not violate the provisions of the law - invitation. Next the researcher asked about the worker's right to annual leave. Respondent's answer can be seen in Table 12:

Table 12. Right to Annual Leave

Annual Leave	Not taking Annual Leave
4 Person	16 Person

Source: Primary Data

From the data above, it is obtained that most (80%) of the respondents answered 'no' annual leave given by the company, only 4 people or 20% answered there. This is of course very contrary to Article 79 paragraph (1) of Law No. 13 of 2003 which states that employers are required to give time off and leave to workers/laborers. In connection with the above question the researcher also asked about the rest time in each week. Respondent's answer can be seen in Table 13.

Table 13. The Right to Off Work / Holidays

Off Work	Not Off Work
4 Person	16 Person

Source: Primary Data

From Table 13, it is obtained that most (80%) of respondents answered respondent had no rest time/holiday provided by the company, only 4 people or 20% answered there. This of course violates Article 79 paragraph (1) of Law No. 13 of 2003 which states that employers are required to give time off and leave to workers/laborers. Next, the researchers asked whether workers were included in the Workers' Social Security (Jamsostek) program. Respondent's answer can be seen in Table 14.

Table 14. Social Security

Available	Unavailable
8 Person	12 Person

Source: Primary Data

From Table 14, it is obtained that most (60%) of respondents answered that not included in the Jamsostek Program. This is of course, very contrary to Article 99 of Law No. 13 of 2003 which states in paragraph (1). Every workers/laborer and his family are entitled to obtain labor social security, and in paragraph (2). Workers' social security as referred to in paragraph (1), is carried out in accordance with applicable laws and regulations. And the Act which specifically regulates Workers' Social Security is Law Number 3 of 1992 concerning Workers' Social Security, and in this law clearly states that every company that employs 10 (ten people) or pays more than one salary million per month, the company is

obliged to include its workers/laborers as Social Security participants, and if this is not followed then it will be subject to criminal acts. Next, the researchers asked if there was help from the company if they were sick, how much assistance was given and whether if the sick family also received help from the company. Respondent's answer can be seen in Table 15.

Table 15. Healthy Aid

Health Insurance		
Include Families	Personal	None
4 persons	12 persons	4 persons

Source: Primary Data

From Table 15, it is obtained that most (60%) of respondents answered that there was help if the illness was provided by the company but not including families, 20% answered there was help if the illness provided by the company included families, but the ceiling was limited to Rp. 150,000, - (One Hundred Fifty Thousand Rupiah) or for mild illness. 20% answered there was no help if sickness was given by the company. Next the researchers asked whether the company bears the cost of treatment in the event of a work accident. Respondent's answer can be seen in Table 16.

Table 16. Cost of Treatment if there is a Work Accident

Available	Unavailable
18 Person	2 Person

Source: Primary Data

From Table 16, it is obtained that most of the figures (90%) of respondents answered "yes" the company covers the cost of treatment in the event of a work accident. But someone answered that it was included in the Social Security Program. As a closing question, the researcher asks whether the company is allowed to form a union. Respondent's answer can be seen in Table 17.

Table 17. Labor union

Not understand	Yes
18 Person	2 Person

Source: Primary Data

From Table 17, it is obtained that most (90%) of respondents answered, 'don't know' and only two people answered 'yes' because they had entered the union. This shows that the outsourced workers at PT Bukit Asam Tbk do not care about the existence of the union. This can be seen from the answers of respondents 'do not know' even though the choice of answers that the author presents 'yes' or 'no'.

From the discussion regarding the implementation of the rights of workers/outsourcing workers who work at PT Bukit Asam Tbk it can be concluded that there are still many workers' rights that have not been fulfilled by the company (vendor). Workers' rights that have not been fulfilled include the right to overtime, the right to seek medical treatment if sick, the right to rest/leave and several other rights relating to workers' rights as stipulated in TRANS PERMENAKER No. 19 of 2012.

Conclusion

Based on the results of research and discussion, it can be concluded that: The implementation of the rights of outsourced workers who work at PT Bukit Asam Tbk are still many that have not been fulfilled by the company (vendors). Workers' rights that have not been fulfilled include rights to employment status, right to overtime pay, right to receive medical expenses if sick, right to rest or annual leave, right to religious holiday allowance, right to workers' social security work (Jamsostek), and several other rights relating to workers' rights as stipulated in PERMENAKER TRANS No. 19 of 2012.

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