



Application of Outsourcing Labor Perspective of the New Criminal Code

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ABSTRACT

The development of outsourcing practices in Indonesia faces new challenges with the enactment of a new Criminal Code that presents a different perspective in protecting outsourced workers. This study examines how the regulation of outsourced labor within the framework of the new criminal code and its juridical impact on the protection of workers involved in tripartite Labor Relations. Using normative juridical methods with a statutory and conceptual approach, this study analyzes the harmonization between the new criminal code and labor regulations governing outsourcing in Indonesia. The findings of the study show that the new penal code brings important breakthroughs through the recognition of corporations as subjects of criminal law and the application of corporate criminal liability, creating a layered protection system that integrates administrative, civil, and criminal dimensions for outsourced workers. However, the implementation of regulations still faces complexity due to the employment relationship between workers, vendors, and service user companies. Harmonization between the new criminal code with the Labor Law and the job creation law is an urgent need to close legal gaps and realize comprehensive legal certainty. The study recommends the implementation of joint liability mechanisms, strengthening the capacity of labor inspectors, and standardizing labor agreements to realize optimal protection for outsourced workers.

INTRODUCTION

The practice of outsourcing or outsourcing of Labor has become an increasingly massive phenomenon in the Indonesian Labor world, where companies delegate some of their operational functions to third parties to increase business efficiency and flexibility. This transformation of the labor system has complex juridical implications, especially related to the protection of workers' rights who are often in a vulnerable position due to the absence of a direct employment relationship with the employer company (user company). The enactment of Law Number 1 of 2023 concerning the new Criminal Code (KUHP) brings a new paradigm in the enforcement of labor law, especially in regulating criminal aspects related to violations of the rights of outsourced workers. The new criminal code introduces several progressive provisions that can be used as a basis for legal protection for outsourced workers, such as regulations on corporate liability and corporate responsibility in employment crimes.

However, harmonization between the new criminal code and existing labor regulations still requires in-depth studies to ensure optimal legal protection for outsourced workers in Indonesia.

Based on the above background, this study formulates the following problems: (1) How is the regulation of outsourcing labor in the perspective of the new criminal code?(2) What are the juridical implications of the implementation of the new criminal code on the legal protection of outsourced workers?; and (3) How is the harmonization between the new criminal code and the labor regulations governing outsourcing in Indonesia?. This study aims to: (1) Analyze and outline the outsourcing labor arrangements within the framework of the new criminal code; (2) reviewing the juridical implications of the implementation of the new criminal code on the mechanism of legal protection of outsourced workers; and (3) formulating the concept of harmonization between the new criminal code and labor regulations related to outsourcing to realize legal certainty. This research is expected to provide theoretical and practical benefits. Theoretically, this research will enrich the scientific treasure of criminal law and labor law related to the application of the new criminal code in the context of industrial relations. In practical terms, the results of this study can be a reference for policy makers, Legal Practitioners, outsourcing companies, and workers in understanding and applying the provisions of the new Criminal Code to realize fair legal protection for outsourced workers.

METHOD

This research uses normative juridical method with statutory approach (statute approach) and conceptual approach (conceptual approach) to analyze outsourcing labor arrangements within the framework of the new criminal code. Normative juridical method was chosen because this study focuses on the study of positive legal norms contained in legislation related to Labor and criminal law. The type of data used is secondary data sourced from primary legal materials including Law Number 1 of 2023 on Criminal Code, Law Number 13 of 2003 on employment, and Law Number 6 of 2023 on job creation, as well as secondary legal materials in the form of scientific journals, books, and legal articles relevant to research topics. Data collection techniques are carried out through library research by identifying, inventorying, and reviewing various legal sources related to research problems. The collected Data is then analyzed using qualitative methods with descriptive-analytical techniques, namely outlining the applicable legal provisions and then analyzing them systematically to find relationships, coherence, and harmonization between legal norms. The analysis process is carried out in a deductive manner by departing from general propositions to specific conclusions in order to answer research problems comprehensively.

RESULTS AND DISCUSSION

Outsourcing practices in Indonesia's labor system are undergoing significant transformation through evolving labor regulations. The concept of outsourcing basically refers to the delegation of part of the implementation of work to other companies through contract agreements or the provision of workers' services, as stipulated in articles 64, 65, and 66 of Law No. 13 of 2003 concerning manpower. The political dynamics of outsourcing law in Indonesia shows congruence with the political configuration when legislative products are made, where there is a fundamental difference between the arrangement in the Civil Code Book III which does not limit the type of work with the labor law which limits outsourcing only to supporting work. In the global context, the phenomenon of transfer of undertaking has become a complex issue that requires comprehensive protection of workers' rights, especially regarding employer obligations, legal procedures for the implementation of transfers, and protection from arbitrary dismissal. The enactment of Law No. 6 of 2023 on the determination of Perppu Cipta Kerja brought about a paradigmatic change by removing restrictions on the types of work that can be

outsourced, thus creating a significant protection deficit for workers.

The new criminal code promulgated through Law Number 1 of 2023 presents a new dimension in the protection of outsourced workers through the recognition of corporations as subjects of criminal law. The provisions of articles 45-50 of the new criminal code explicitly provide for corporate criminal liability, which is especially relevant in view of the practice of outsourcing involving legal entities in tripartite working relations. Although it does not specifically mention the term outsourcing, the new penal code provides a normative basis to ensnare various criminal acts that can occur in labor relations, including deprivation of Liberty, forced labor, fraud in employment contracts, wage evasion, to labor exploitation that can be qualified as trafficking in persons. In a comparative perspective, technology and service contract arrangements demonstrate the importance of comprehensive clauses governing data privacy, data security, warranties, indemnity, open source software, and service level agreements to ensure optimal protection for all parties.

The labor criminal law regime is now complementary between the special provisions in the labor law and the general provisions in the new criminal code as *lex generalis*. Violations of the normative rights of workers such as manipulation of labor contracts, wage deductions without legal basis, falsification of Labor documents, to systematic exploitation can be qualified as criminal offenses that can be processed cumulatively. Current regulations regulate the protection of workers from the aspects of Social Security, working days and hours, time off and leave, wages, and termination provisions, but their implementation faces the challenge of the complexity of triangular labor relations between workers, vendors, and service users. In modern nearshoring and outsourcing practices, it is important to distinguish between the two concepts where nearshoring emphasizes geographic proximity and time zones that facilitate better collaboration, in contrast to traditional offshoring that moves work to other parts of the world.

Corporate criminal liability in the context of outsourcing experienced significant strengthening after the introduction of the new criminal code. Corporations can be held accountable if the crime is committed for the benefit of the corporation, the corporation benefits, or the corporation allows the violation as stipulated in articles 46-47 of the new criminal code. Systemic violations such as not registering workers with BPJS, payment of wages below minimum standards, and unilateral termination of employment without compensation carried out as

a corporate policy can be sanctioned not only to the director but also to the legal entity itself. The fundamental challenge in the outsourcing system is the legal uncertainty regarding the existence of outsourced workers and the increasing possibility of job insecurity which is further exacerbated by regulatory changes in the job creation law. The EU's experience in implementing directive 2001/23 on the protection of workers' rights in transfer of undertakings demonstrates the need for effective harmonisation of regulations to address crucial issues and provide adequate legal remedies.

The new penal code creates a layered protection system for outsourced workers that includes administrative, civil, and criminal dimensions. Article 3 letter b of Law Number 6 of 2023 explicitly guarantees every citizen a job and fair and decent remuneration and treatment in labor relations. Although normative regulations have ensured legal certainty regarding workers' rights including the right to a minimum of 12 working days per year and various special leave as stipulated in Article 79 of the amended Labor Law, implementation on the ground still faces obstacles, especially due to the complexity of tripartite Labor Relations that create bureaucratic obstacles in the process of applying for rights. In the context of data protection and digital service contracts, it is important to ensure clauses governing rights to data, privacy, data control and data security as an integral part of modern employment agreements.

The spectrum of criminal sanctions in the new criminal code includes imprisonment for administrators, fines for corporations, additional crimes in the form of revocation of business licenses, to the payment of restitution to victims. This provision provides a more comprehensive enforcement instrument to protect the rights of outsourced workers who have been vulnerable to exploitation. Although there are legal loopholes that still have the potential to harm workers, especially related to social security and job stability, the existence of legal sanctions for employers who violate leave obligations and other normative Rights confirms the availability of enforcement instruments to protect outsourced workers. Practical experience shows that in economic realities where the phenomena of decentralization of production, outsourcing, relocation of companies, and deployment of service contracts lead to significant social costs and job losses, strong legal protection becomes increasingly crucial.

Criminal law enforcement in the context of outsourcing requires synergy between labor inspectors as stipulated in Article 1 Number 32 of Law

Number 13 of 2003 with law enforcement officers. Effective coordination becomes crucial, especially in proving the elements of corporate misconduct and factual Labor Relations in the outsourcing system. In the event of nonconformities experienced by outsourced workers, they can take non-litigation settlement paths such as bipartite, mediation, conciliation, or arbitration before using the litigation path. Enforcement of legal certainty relies heavily on consistent oversight by the Department of Labor and the obligation of vendor companies to explicitly include workers' rights in employment contracts.

The transformation of the legal protection of outsourced workers after the new criminal code showed a significant increase in the certainty of the legal basis for corporal punishment, additional variations in criminal sanctions, and the affirmation of the principle of modern criminal liability. Prior to the new penal code, criminal protections for outsourced workers tended to be scattered and the sector with the majority of violations was only subject to administrative sanctions. Regulatory changes in the job creation Law Number 6 of 2023 have caused controversy because some provisions related to job types, working time, and severance pay are seen as reducing protection for outsourced workers, but on the other hand provide clearer arrangements regarding transfer of undertaking to protect employment in terms of changing vendors with the condition that jobs are still available.

Vertical synchronization requires conformity between the new criminal code and the 1945 Constitution, especially Article 27 paragraph (2) on the right to decent work, which is explicitly referred to in the consideration of Law Number 6 of 2023. Horizontal harmonization requires conformity between the new criminal code as a *lex generalis* with the labor law and the job creation law as a *lex specialist* in the field of Labor. In a comparative perspective, the experience of the European Union shows that the implementation of the directive on the protection of workers in the transfer of undertakings results in varying interpretations in different member states, so clarification is needed regarding the degree of effectiveness, critical issues, shortcomings and potential solutions in each jurisdiction.

The potential for conflict of norms arises when labor violations are only subject to administrative sanctions even though the impact is serious, while the new criminal code opens up the possibility of general criminal entrapment to fill this legal void. There is a significant legal gap regarding the standard of corporate proof of error in outsourcing practices involving complex tripartite relationships. Variations in labor agreements drawn up by vendors

can create uncertainty in the implementation of workers' rights, so stricter standardization is needed to ensure optimal protection.

Harmonization can be done through the preparation of strict implementing regulations, integrated law enforcement guidelines, and systematic interpretation between the job creation law and the new criminal code. An integrative approach is needed so that the protection of outsourced workers is not fragmented and creates comprehensive legal certainty. Key labor instruments such as specific time work agreements (PKWT) and indefinite time work agreements (PKWTT) must be harmonized with applicable regulations to protect the rights of outsourced workers, so that evaluation and strengthening of regulations are needed to build a fairer labor system.

Some of the strategic recommendations include affirming the limits of responsibility between service providers and users, implementing joint liability mechanisms in cases of serious violations, strengthening the role of labor inspectors in the process of proving corporate crimes, and revising derivative regulations to be in line with the corporate criminal liability regime in the new criminal code. Enforcement of legal certainty requires consistent supervision by the Labor Department and the obligation of vendor companies to explicitly include all rights of workers in employment contracts. Regulatory evaluation and strengthening are needed to build a more equitable employment system for outsourced workers in Indonesia, taking into account global experience in dealing with the complexities of transfer of undertakings and worker protection in the context of corporate and business movements.

CONCLUSION

The enactment of the new penal code brought a breath of fresh air in the protection of outsourced workers through the recognition of corporations as subjects of criminal law and the application of corporate criminal liability. This transformation creates a layered protection system that integrates administrative, civil and criminal dimensions for outsourced workers. However, the implementation of the regulation still faces complex challenges due to the tripartite employment relationship between workers, vendors, and service user companies. Harmonization between the new criminal code with the labor law and the job creation law is a necessity to close existing legal gaps. The existence of criminal sanctions against corporate violators of workers' rights provides a more comprehensive enforcement instrument, but its

effectiveness is highly dependent on the Coordination of labor inspectors with law enforcement officials in proving the elements of corporate guilt. The government needs to immediately draft derivative regulations that harmonize the new criminal code with labor regulations to create legal certainty for outsourced workers. The implementation of the joint liability mechanism between service providers and service users is a strategic solution to overcome the complexity of accountability in tripartite working relationships. Strengthening the capacity of labor inspectors in the process of proving corporate crimes should be a priority through special training and the provision of supporting infrastructure. Standardization of labor agreements with the explicit inclusion of all workers' rights needs to be required to avoid variations in interpretations that harm workers. Periodic evaluation of the implementation of regulations is needed to identify obstacles in the field and formulate adaptive solutions that are able to answer the dynamics of outsourcing practices in the era of modern labor transformation.

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