

# REGULATING ON OUTSOURCING WORKER IN INDONESIA

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## 1. Introduction

Global competition causes the business world to change their strategy in making competitiveness, therefore competitions within the business world among companies lead the company to focus on the process or activities in making their product or service which related to the main competence. By focusing on its main competence, the company will produce some qualified and competitive products in the marketplaces.

In the tight competition, company struggle for efficiency in their production cost, and one of the solutions is undertake outsourcing system, which will economize their expense in labor cost.

In the general term, the terminology of outsourcing can be contracted as contract of job as stated in Concise Oxford Dictionary, meanwhile, regarding to the contract itself means “*Contract to enter into or make a contract. From the latin contractus, the past participle of contrahere, to draw together, bring about or enter into an agreement.*” (Webster’s English Dictionary).

In the specific meaning, Maurice F Greaver II, in her book, *Strategic Outsourcing, A Structured Approach to Outsourcing: Decisions and Initiatives*, that outsourcing states as bellow (Maurice : 1998) “*Strategic use of outside parties to perform activities, traditionally handled by internal staff and resources.*”

Thus, it can be resumed that outsourcing means is subcontracting a process, such as product design or manufacturing, to a third-party company.<sup>[1]</sup> The decision to outsource is often made in the interest of lowering firm costs, redirecting or conserving energy directed at the competencies of a particular business, or to make more efficient use of land, labor, capital, (information) technology and resources. *Outsourcing* became part of the business lexicon during the 1980s, it commonly use in certain jobs such as cleaning service, machine operator, technician, packer boy, etcetera.

Outsourcing in the Indonesian Labor Law is ruled by Act number 13 year 2003 about manpower article 64,65 and 66, in the article 64, outsourcing stated as providing of manpower and wholesale contracting of job. Beside Act number 13 year 2003, the outsourcing matters is regulated in the Decree of Ministry of Manpower and Transmigration of Republic of Indonesia Number KepMen. 101/Men/VI/2004 Year 2004 about the procedure of permits of Manpower Agency, anyhow, those rules remain incomplete in regulating on outsourcing business. In its development, the meaning of outsourcing as wholesale contracting will be revised due to the meaning of outsourcing tend to be construed as sub contracting (to do certain job) rather than contracting worker (Nur Cahyo:2007)

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<sup>1</sup> This paper proposed to International Association of Law School, in term of IALS conference on “Labor Law and Labor Market in the New World Economy”, 21-23 May 2010, Milan - Italy

Within Presidency Instruction Number 3 Year 2006 about the Policy Package on the Investment climate stipulated that outsourcing is one of most serious factor to be concerned in term of attracting investor to do their business in Indonesia. The government concerning has been implemented by ordering to Manpower Minister to revise The Act Number 13 Year 2003, particularly, in regulating outsourcing.

Outsourcing system must be chosen as long strategic decision for the company, because, it can not be calculated profitably in short term period. Outsourcing, it is certainly costly for the short term budget, due to high cost for management fee payment to the agency but, in turn, for the long term it will be efficient and profitable. It can be valued beneficially if the company consider efficiency in full time employee cost, employee benefit, pension, carrier development program, etcetera. The company's activities can be focused on their competence in its business hence it will be able to compete in the marketplace, while the supporting job (non core business) can be done and delegated to the other professional party. In its implementation, this shifting job arise some problems in manpower matters.

The problems of outsourcing are various due to the lack of regulation and incomplete to regulate all problems of outsourcing. While, the outsourcing scheme has been applied in many companies in Indonesia, it can be highlighted some problems as follows:

1. How the company classifies or distinguishes definition of core and non core business which became the ground of implementation of outsourcing system?
2. How the relationship between outsourcing worker and company which use its service (user company)?
3. What is the dispute settlement mechanism if any outsourcing worker violates the rule of User Company?

In the implementation of outsourcing system, people respond in vary of perception about outsourcing worker/employee. There are some people who support this system with regards to the efficiency of company budget plan , most of them are business people (Widodo : 2005). On contrary, some of them thought that outsourcing will cause uncertainty condition to employee/worker. Here the table of their perception.

**TABEL Pro and Con of Outsourcing System**

<b>PRO- <i>OUTSOURCING</i></b>	<b>CONTRA- <i>OUTSOURCING</i></b>
<ul style="list-style-type: none"> <li>- <i>Business owner</i> could be focused on core <i>business</i>.</li> <li>- <i>Cost reduction</i>.</li> <li>- Investment cost will be changed to be expenses cost</li> <li>- It can not be complicated in term of employee turn over</li> <li>- As a part of business modernization</li> </ul> <p>Source: "<i>Outsourcing</i>" <a href="http://www.sinarharapan.co.id">www.sinarharapan.co.id</a>)</p>	<ul style="list-style-type: none"> <li>- Uncertainty status of employment and lay off thread</li> <li>- Differentiate treat between Outsourcing worker and company employee in term of compensation and benefit</li> <li>- Lack of Career development program</li> <li>- User Company is most likely to revoke the contract with agency company which serve the outsourcing worker, hence the worker status will be uncertain</li> <li>- Human Exploitation</li> </ul> <p>Source : "Certain contract of employment and <i>Outsourcing</i>", <a href="http://www.sinarharapan.co.id">www.sinarharapan.co.id</a>), "<i>Outsourcing</i>, Pro and Con of Outsourcing" (<a href="http://recruitmentindonesia.wordpress.com">http://recruitmentindonesia.wordpress.com</a>)</p>

**2. Regulating Outsourcing based on The Act Number 13 Year 2003 about**

**Employment**

Analyzing relationship between outsourcing employee/worker and provider company (agency) , it will be priory explained the highlighted rules of outsourcing within Act Number 13 Year 2003 , especially in the article 64 , 65 and 66

Article 64 is a ground norm of entire rule of outsourcing system to let an outsourcing employee works in the company. In the article 64 states that the company could hand over a part of their job to be done by another company thru wholesale job contracting agreement or

employee/worker provider service agreement, and such jobs will be done by outsourcing employee/worker

While, in the article 65 consist of some provisions, such as :

1. Handing over part of executing job to another company (agency) shall be undertaken by making a written contract of wholesale job contracting
2. Such handing over job must be undertaken by any requirements such as :
  - a. To be done separately from a core business of user company
  - b. To be done by direct or indirect order of user company
  - c. It is merely a supporting activity of entire user company
  - d. It would not obstruct production process entirely

In the sub article (3) stipulated that outsourcing employee or worker protection shall equal to protection of company's employee (internal employee). In the article 65 sub article (4) stipulated that the requirements of employee must be the same with the internal employee who work within certain period, namely PKWT employee, as consequences, the rights of outsourcing worker equal to PKWT employee.

Regarding the status of outsourcing worker, In fact, many outsourcing workers are not contracted by a written agreement; although in the article 65 sub article (5) states that the outsourcing worker shall be employed by a written agreement of certain period work (PKWT). The agreement between User Company and outsourcing worker must be agreed by agency as well. By making a written agreement, it will make clearly and firmly the rights and obligations between the parties, thus, it makes easier to know each responsibility among the parties by law if any dispute aroused.

In fact, due to many companies employ outsourcing worker without a written contract, it causes many problems of employment and employee / worker rather difficult to sue the company, either user company or agency, the problems arise mainly related to the protection of worker's rights, for example:

1. Their benefit
2. Period of work
3. Overtime and holiday
4. Health insurance

### **3. Conclusion**

In term of anticipating global competitive market, many companies in Indonesian apply for outsourcing system, but regarding its implementation, there are some problems which must be clearly regulated with regard the rights of outsourcing employee/worker. Furthermore, it also must be clearly and comprehensively regulated to handle dispute which arise among User Company, agency and outsourcing employee / worker.

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