

Protection For Informal Sector Workers Towards Employment Systems That Is Justice

Wandi

Abstract: All countries recognize the principle of Equality before the Law as the rule of law principle used by the Anglo Saxon State which includes the Supremacy of Law and the Constitution Based on Human Rights, so based on that the enforcement of Equality Before The Law must be binding anyone whether male, female, ordinary people, wealthy people, law enforcement officials or even officials. This principle includes freedom to participate in political life, freedom of speech (including freedom of religion), freedom to be yourself, freedom from arbitrary detention and arrest and the right to retain private property (2) The Difference Principle, which the point is: social and economic difference must be regulated so that it provides the greatest benefits for those who are least disadvantaged; (3) The principle of equal equality of opportunity (The Principle of Fair Equality of Opportunity), the point of which is: socio-economic inequality must be regulated in such a way so as to open positions and social position for all people under conditions of equal opportunity.

Keyword : Legal Protection, Workers, outsourcing, sosio normatif.

1. INTRODUCTION

The rise of labor demonstrations in Indonesia can lead to thoughts about the need for an equitable Indonesian labor law system. The use of the term "labor law" in that title is not a mistake or negligence. There are two reasons for choosing that title. First, the Department of labor law is broader than labor law. Labor law is a law that regulates matters relating to the existence of an employment relationship between workers / workers and employers / employers. Law Number 13 of 2003 concerning Manpower which is further abbreviated as UUK, narrowed the understanding of employers only to employers. Between the rules and substance of the UUK contains differences (1). Supposedly, if the Law on Manpower is interpreted as its substance, the substance regulates employment relations that are carried out in an informal environment, the legal relationship between the state and its employees and the military. (2). To realize Indonesia as a state of law, the state is obliged to carry out the development of national law that is carried out in a planned, integrated, and sustainable manner in the national legal system that guarantees the protection of the rights and obligations of all the people of Indonesia based on the 1945 Constitution of the Republic of Indonesia. legislation is one of the requirements in the framework of national law development which can only be realized if it is supported by certain, standardized, and standard methods and methods which are binding on all institutions that are authorized to make laws and regulations (3). The development of law in Indonesia since the reformation era until today is very much influenced by the politics of law, so that the law runs as if ignoring the sense of justice of the people. The phenomenon of power and political interference with the prevailing legal process actually disrupts independence and the supremacy of the law itself. What happens is the legal process that puts the interests of certain groups or groups (4).

That all countries recognize the principle of Equality before the Law, such as the principle of rule of law used by the Anglo Saxon State which includes Supremacy of Law and Constitution Based on Human Rights, so based on that, the enactment of Equality Before The Law must bind anyone, whether men, women, ordinary people, rich people, law enforcement officials or even officials. However, the political policy of law in Indonesia that has developed so far cannot meet the criteria and standardization of the rule of law itself (5). This phenomenon clearly can not fulfill the principle of equality before the law (Equality Before The Law) as mentioned in Article 27 paragraph 1 and Article 28 paragraph 1 of the 1945 Constitution, this principle provides the basis that law enforcement must not distinguish between race, ethnicity, religion, type the sexes, groups, groups and people may not discriminate (45). The development of labor law in Indonesia has many dimensions that not only relate to the interests of workers who will, are and have engaged in employment relations, but how to get everyone to get a job and the worthiness of life for humanity, as mandated by Article 27 paragraph (2) and Article 28 D paragraph (2) of the 1945 Constitution which essentially states that each citizen has the right to work and a decent living for humanity without discrimination in the implementation of work relations (47). The right to work and the rights in work are not only socio-economic rights, but also are fundamental human rights (fundamental human rights) (3). This has implications for the state's obligation to facilitate and protect citizens so that they can earn an income with a decent standard of living, so that they are able to meet their basic needs fairly on the basis of human dignity and dignity. Therefore, in providing legal protection in the field of labor, careful planning is needed to realize the obligations of the state, one of which is aimed at child and women workers who due to their inability in the forms of exploitation, violence, discrimination, violation of children's labor rights and women, both those felt real or hidden towards them (48). The direction of labor development has clearly been stated in the 1945 Constitution. Work is not merely carrying out an activity on a regular basis, but work carries meaning for the person concerned to increase his humanity. Human dignity is not merely a physical aspect in the form of wages, but every worker needs to be treated fully as a human being (49). The government as a stabilizer and dynamist in the field of manpower, must be able to provide relevant legislation so that the interests of the parties can be

• Wandī, Low Faculty Islamic of Indragiri University. E-mail: wandi_sh68@yahoo.com

fulfilled (6). The question we must answer now is whether our labor law has guaranteed justice for workers / workers, especially informal sector workers? Because, if it does not guarantee justice, there will be a lot of unrest for the workers / workers and also employers later. On this basis the author tries to parse "Legal Protection for Outsourcing Workers Towards a Fair Employment Law System". From the background description of the problem above, as for the problem formulation in writing this paper are (7):

1. What is Legal Protection for Outsourcing Workers According to Labor Law?
2. How is labor law to provide a sense of justice for outsourcers in the perspective of legal philosophy.

This study is expected to provide benefits both theoretically and practically (8). The expected benefits of this study are:

1. Theoretically

It is hoped that this study can be used as a contribution to the development and renewal of law, especially in terms of theory and legal development, especially in the field of labor law.

2. Practically

This study is expected to be of benefit to the Government and business people as well as workers / laborers and also various groups concerned with labor issues. In addition, this study is also expected to be able to contribute / contribute thoughts for all parties, to provide legal protection for the rights of the Informal Sector workers in Indonesia.

2. METHOD AND THEORY CONCEPTS

2.1 Approach Method

The writing of this scientific work uses descriptive analysis method, described holistically, comprehensively and integrally. Data analysis is deductive, based on general theories or concepts to show the relationship between data and other data. While the approach used is socio-normative, because this paper uses secondary data, with a view to describing the theoretical analysis and development of labor law in Indonesia, a study of the legal protection of labor rights for workers (9).

2.2 Concept Theory

The theoretical concept approach used in analyzing the theory and legal development towards the protection of labor rights is the approach to the flow of legal positivism as a consequence of the understanding of legism in Indonesia, while the theoretical concept used to view the legal protection of labor rights in Indonesia is through the concept of justice theory. One form of the ideals of the law that is classic and universal is the demand for justice (10). Of the many theories of justice today, the most comprehensive is put forward (4). He said that the three things that were the solution to the main problem of justice were: 1) The principle of maximum freedom equal to everyone (Principle of Greatest Equal Liberty) (11). This principle includes freedom to participate in political life, freedom of speech (including freedom of religion), freedom to be yourself, freedom from arbitrary detention and arrest and the right to retain private property 2) The Difference Principle, which the point is: social and economic difference must be regulated so that it provides the greatest benefits for those

who are least disadvantaged; 3) The principle of equal equality of opportunity (The Principle of Fair Equality of Opportunity), the point of which is: socio-economic inequality must be regulated in such a way so as to open positions and social position for all people under conditions of equal opportunity (12). In carrying out the principle of justice it is likely that one principle will conflict with another principle. Therefore, the priority scale proposed as follows. The first priority stipulates that "the same principle of maximum freedom" applies earlier than the other two principles (13). This basic freedom must not be limited in the name of greater material benefit for everyone or even for the least disadvantaged. If restrictions must be made, freedom should only be limited for the sake of a greater balance of freedom for everyone. The second priority, "the principle of equality of fairness" applies earlier than the "principle of difference". What is also interesting is that Rawls place self-esteem as the most basic human need in the theoretical framework (15). Thus, the theory of justice that he developed was to serve human dignity, not to the general welfare which is the basis and main measure of the concept of utilitarian justice (16). Because public welfare is largely determined by powerful and powerful parties, justice governed by law is only a means of efficiency for the parties concerned (5).

3. DISCUSSION

3.1 Legal Protection for Outsourcing Workers According to Labor Law

Various labor problems can also arise due to the insecurity of the basic rights and normative rights of workers as well as discrimination in the workplace, resulting in conflicts that include low wage rates, health insurance, work safety guarantees, old age savings, facilities provided by the company, and usually ends in termination of employment (17). Legal protection for workers is the fulfillment of the basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution "Every citizen has the right to work and a decent living for humanity", and Article 33 paragraph (1) which states that "The economy is structured as a joint effort of kinship" (18). Violation of basic rights protected by the constitution is a violation of human rights. Various labor problems can also arise due to the insecurity of the basic rights and normative rights of workers as well as discrimination in the workplace, resulting in conflicts that include low wage rates, health insurance, work safety guarantees, old age savings, facilities provided by the company, and usually ends in termination of employment (19). Legal protection for workers is the fulfillment of the basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution "Every citizen has the right to work and a decent living for humanity", and Article 33 paragraph (1) which states that "The economy is structured as a joint effort of kinship" (20). Violation of basic rights protected by the constitution is a violation of human rights. (21), (22), and (23) Protection of labor is intended to guarantee the basic rights of workers and ensure equality and treatment without discrimination on any basis to realize the welfare of workers and their families while taking into account developments in the progress of the business world and the interests of employers. Legislation relating to the protection of workers is Law No. 13 of 2003 concerning manpower and implementing regulations of legislation in the field of

manpower (24). Sociologically, the position of workers is not free. As someone who has no provision for life other than that, he is forced to work for others. And it is the employer who basically determines the conditions of work. Given the position of workers who are lower than the employer, it is necessary for government intervention to provide legal protection. Legal protection according to Philip: (25) always related to power. There are two powers which are always a concern namely government power and economic power. In relation to government power, the issue of legal protection for the people (governed), against the government (governing). In relation to economic power, the problem of legal protection is protection for the weak (economy) of the strong (economy), for example protection for workers against employers (26). Legal protection for workers / laborers is needed considering their weak position. Mentioned by (27), namely: Legal protection from the employer's power is implemented if the laws and regulations in the field of Manpower which require or force the employer to act as in these laws are truly implemented by all parties because the validity of the law cannot be measured only legally, but it is measured sociologically and philosophically (28). Bruggink divides the validity of the law into three, namely factual, normative and evaluative / material (29). Factual enforceability, ie the rules are adhered to by the community members / effectively the rules are applied and enforced by legal officials; normative validity, which is a suitable rule in the herarkist legal system evaluative validity is that empirically the rules appear to be accepted, philosophically the rules fulfill the obligatory nature because of their contents (30). Legal protection for workers is basically aimed at protecting their rights. Protection of workers' rights is based on Article 27 paragraph (2) of the 1945 Constitution, namely "Every citizen has the right to work and a decent living for humanity". Besides guaranteeing protection for work, it is also set forth in the provisions of Article 28 D paragraph (1), namely that every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law (48). Article 28 D paragraph (2), namely that every person has the right to work and to receive fair and appropriate compensation and treatment in a work relationship. These provisions indicate that in Indonesia the right to work has obtained an important place and is protected by the 1945 Constitution (46). Workers are part of the Indonesian nation, so they have the right to be protected and get a decent living. The criteria for a decent living for humanity can be interpreted as creating worker welfare (31). Based on the provisions of Article 1 number 31 of Law Number 13 of 2003 concerning Manpower (LN Year 2003 No. 39, TLN No. 4279), the welfare of workers is a fulfillment of physical and spiritual needs and / or needs, both within and outside the employment relationship, which can directly or indirectly enhance work productivity in a safe and healthy work environment (32). In theory, there is a legal principle that says that workers and employers have an equal position. In terms of labor, it is called a work partner. But in practice, the position of the two was not parallel. Employers as owners of capital have a higher position than workers (33). This is clearly seen in the creation of various company policies and regulations ". Given the position of workers / laborers who are lower than the employer, it is necessary for government intervention to provide (34). Realizing the importance of workers for companies, governments and the community, it is necessary to think about how workers can be safeguarded in carrying out their work (35). Likewise, care must be taken to ensure that

workers' health and well-being are taken care of as much as possible, so that vigilance in carrying out work can be guaranteed. These thoughts are worker protection programs, which in daily practice are useful in maintaining company productivity and stability (36). Worker protection can be done either by providing guidance or by increasing the enforcement of human rights, physical and technical as well as social and economic protection through norms that apply in the work environment. Thus the protection of these workers includes (37):

- a. Work safety norms, which include: work safety related to machinery, aircraft, work tools, materials and work processes, workplace conditions and the environment and ways of doing work.
- b. Norms of occupational safety and company health hygiene, which include: maintenance and heightening the health status of workers, is done by regulating the provision of medicines, care of the sick workforce. As well as regulating the availability of places, methods and conditions of work that meet company health hygiene and employee health to prevent illness, both as a result of work or general illness and place health requirements for workers' housing.
- c. Work norms, which include: protection of workers who are related to working hours, wage systems, rest breaks, child labor, women's work, decency, worship according to their respective religions and beliefs held by workers and recognized by the government, social obligations, and so on in order to maintain the excitement and morale of work that ensures high work efficiency and maintain treatment in accordance with human dignity and morals.
- d. Workers who get work accidents and / or suffer general illnesses due to work are entitled to compensation for care and rehabilitation due to accidents and / or diseases caused by work of their heirs have the right to receive compensation.

According to Soepomo in Asikin worker protection is divided into 3 (three) types, namely (39):

- a. **Economic Protection**
Namely the protection of workers in the form of sufficient income, including when workers are unable to work against their will.
- b. **Social Protection**
Namely the protection of labor in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- c. **Technical Protection**
Namely the protection of labor in the form of security and safety.

These three types of legal protection absolutely must be understood and implemented as well as possible by employers as employers. Actually, legal protection is generally divided into two namely (40):

- a. **Passive Legal Protection**
In the form of actions from outside (other than workers / workers) that provide recognition and guarantees in the form of regulations and policies relating to workers' rights.
- b. **Active Legal Protection**
In the form of actions from workers related to efforts to fulfill their rights (41). Active legal protection is divided into two namely:

- a. Active-preventive legal protection, in the form of rights granted by workers in connection with the application of government or employer regulations or policies that will be taken if they affect or harm workers' rights.
- b. Active-repressive legal protection, which is in the form of demands to the government or employers for regulations and policies that have been applied to workers deemed to cause harm.

Protection of workers is a common and normal thing in most governments in any country in the world. In many developed countries, the politics of international trade is aimed at protecting industries and their domestic workers, as evidenced by the many protections, subsidies and strict immigration regulations (42). Specifically to protect contract workers (outsourcing), the provisions in Article 6 are very important provisions to equalize treatment with permanent workers. According to (42) this Article, every worker / laborer has the right to receive the same treatment without discrimination from the employer. Just now how is the realization of this good rule. According to (48) Article 56, an employment agreement is made for a certain time (contract labor / outsourcing) and for an indefinite period of time, for an indefinite period of time it can also be called a permanent worker. Whereas the work agreement for a certain time is based on:

- a certain period of time.
- The completion of a certain job.

Most outsourcing workers are included in certain time work agreements and are intended to cover the difficulty of determining certain types of work that can be completed within a certain time such as regarding chartering of work. This is also an opportunity that employers and labor providers can benefit from in order to get cheap and quality labor.

For outsourcing workers, this distinction can actually be made meaningless if they know the basic rights of workers as mentioned in Article 6 above, namely the right to non-discrimination. These basic rights are emphasized in the following Articles (48):

- Article 35 paragraph (2) states that the implementation of work placements by labor placement services companies must provide protection from recruitment to placement of workers.
- Article 35 paragraph (3) of Law Number 13 Year 2003 concerning Manpower states that employers in hiring workers are required to provide protection that includes welfare, safety, and health, both mental and physical workforce.

The formulation of these two verses provides a very broad understanding of the meaning of protection because the legal principle is that the shorter the legal formulation, the broader the understanding and implementation (3). This is confirmed again by the words "encompassing" well-being, safety, and health. The word encompasses means to encompass but is not limited to what is said in the encompassing word, so there is still something beyond it. Understanding if it is connected in Article 6 of Law Number 13 Year 2003 regarding Manpower, there is actually no substantial difference between permanent workers and outsourced workers, including their normative rights if they are taken into account from their work by the

employer. When the formulation of Article 59 of Law Number 13 Year 2003 returns to the specific time employment agreement where outsourcing workers fall into this category, workers must be given jobs according to their nature by what is mentioned in paragraphs 1 and 2 of Article 59 of Law Number 13 2003 concerning Manpower. If it is not appropriate, for example, office administrative work that cannot be separated from the routine work of a work employee as another permanent worker, then by law this outsourcing worker must be recognized by the employer as another permanent worker. This is reiterated by Article 65 paragraph 4 and paragraph 8 so that their rights must be restored and equated with permanent workers, including in terms of work period (48). Where the rights of contract / outsourcing workers are not fulfilled, the demands of these workers can be submitted to the Intermediary Employees of the Department of Manpower and Mobility of the Local Population with a request to be given mediation so that the employer provides normative rights of contract / outsourcing workers who are dismissed by employer (5). The advice of this intermediary employee can be in the form of a suggestion that the employer re-establish a non-discriminatory employment relationship with the worker or in the event that the worker is terminated then normative rights are given as given to permanent workers (8). These contract / outsourcing laborers need to be given legal protection because of the reason to save the work force that has the potential for one right and the other to make progress in general economic progress. Most of these outsourcing workers are professionals in their fields, young in age, and have good morale. Their shortcomings are that they do not have the opportunity and do not have a special relationship with the policy makers of the company. They also come later when compared to permanent workers because indeed they also later came in the world (7). According to (9) there are only two ways to protect workers / laborers. First, through labor laws, because by law means there is a state guarantee to provide decent work, protect it in the workplace (health, work safety and decent wages) to the provision of social security after retirement. Second, through trade unions / labor unions (SP / SB). Because through SP / SB workers / laborers can express their aspirations, negotiate and demand the rights they should receive. The union / labor union can also represent workers / laborers in making a Collective Labor Agreement (CLA) governing workers 'and workers' rights and obligations with employers through a general agreement that guides the industrial relations (9).

3.2 Employment system that is just in the Legal Philosophy Perspective

The first element of the Labor law system is the substance of the Employment law. The substance of labor law is the legislation on labor. There must be compliance with regulations, including vertical and horizontal synchronization between labor laws. Conformity must be based on a layer of law. In accordance between the rules of law with legal theory and legal philosophy. In this connection the question arises: Are the Indonesian labor law rules consistent in providing a sense of justice? This question refers to the study of legal dogmatics. The condition of Indonesian labor regulations, there are still some rules of law that have not been consistent. There are labor laws that are inconsistent both vertically (between low and high legislation) and horizontally (between legislation which are hierarchically equivalent) (10). Examples

of minimum wage arrangements, outsourcing work systems, Indonesian Workers (TKI), dualism of labor relations rules, individual labor law, labor law and social security law are not separated. There is a vertical inconsistency in the regulation of minimum wages. Protection of each worker's wages comes from Article 27 paragraph (2) of the 1945 Constitution, namely "every citizen has the right to work and a decent living for humanity" and Article 28 D paragraph (2) The 1945 Constitution "that every person has the right to work and to receive fair and appropriate treatment and reward in an employment relationship" (30). The translation of fair and decent wages in employment is decent income for humanity (Article 88 paragraph (1) of Law Number 13 of 2003). Wages are defined as: workers / laborers' rights received and expressed in monetary terms in return from employers or employers for workers / laborers who are determined and paid according to a work agreement, agreement or legislation including benefits for workers / laborers and their families for a job and / or service that has or will be performed (19). (Article 1 number 30 of Law Number 13 of 2003). This provision is not further specified in the implementing regulations. The amount of the minimum wage depends on the needs of decent living (KHL). KHL is a standard requirement for a single worker / laborer to be able to live physically fit for the needs of 1 (one) month (Article 1 number 1 Minister of Manpower and Transmigration Number 13 of 2012 concerning Components and Implementation of Stages of Achieving the Need for Decent Living Needs). This vertical inconsistency also results in a violation of the legal theory of decent wages (7).

Article 3 ILO Convention Number 131 is:

The elements to be considered in determining the minimum wage level must, to the extent possible and appropriate in relation to national practices and conditions, include:

- a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative standard of living of other social groups;
- b) economic factors, including economic development requirements, levels of productivity and desire to achieve and maintain high levels of employment.

If there is a contradiction with the legal theory that has been questioned universally, then there is a great possibility that a philosophical conflict will occur. Providing fair wages for workers. Mistakes determine the minimum wage in terms of legal dogmatics, legal theory and philosophy, the legal responsibility of one of the guarantees of national labor, namely "reject low wages". The second example is agreeing to the inconsistency of the substance in the outsourcing arrangement or it can be called "outsourcing". Outsourcing benefits from economic theory aimed at achieving work efficiency compared to support using home manufacturing (12). In terms of the completion of legal theory, outsourcing is a form of contract work. Article 64-66 UUK has wrongly stated the limits of outsourcing as meant by the definition of outsourcing in the form of outsourcing of workers (not outsourcing of work). Furthermore, in the level of the law of the Constitutional Court ruling Number 27 / PUU-IX / 2011, which ruled Article 66 paragraph (2) letter b of Law Number 13 Year 2003 is contrary to conditionality to the 1945 Constitution (conditional unconstitutional). This decision is a substitute for

the statutory contract. The existence of the transfer of protection of the rights of workers / laborers who are fixed objects of the company carried out in part from the contract of another company or company providing workers / labor services (15). There are two legal considerations underlying the ruling above are the requirements that exist between workers in the company that are implemented in the Specific Time Work Agreement (PKWT) and the application of the principle of transferring diversion measures for workers / laborers (Transfer Implement Work Protection / TUPE) based on discussion non-discrimination in the fair acceptance of benefits and welfare for workers (25). MK Decision Number 27 / PUU-IX / 2011, was initially followed up with Minister's Circular Letter (SE) Number B.31 / PHIJSK / 2012 concerning Outsourcing and Specific Time Work Agreements (PKWT). Circular is not a rule of law. The SE is intended for internal Kemenakertrans institutions, not intended for the public. SE is not binding because it is only an appeal, can be implemented or not carried out there are no sanctions (20). The SE is not included in the hierarchy of Indonesian Legislation as in Law Number 12 of 2011 concerning Formation of Laws and Regulations. So SE has no legal power. In this regard, Mayday 2012 demands that "the issuance of a Government Regulation or Ministerial Regulation prohibiting outsourcing of labor" is appropriate (21). The contents of the Constitutional Court's Decree Number 27 / PUU-IX / 2011 and SE Menaker Number B.31 / PHIJSK / 2012, caused a polemic. There was a nationwide continuous demonstration to "eliminate outsourcing". Based on this labor condition, the Minister of Manpower and Transmigration issued Permenakertrans No. 19/2012 which limited only five types of supporting work that could be done by outsourcing work systems, namely security, catering, cleaning service, transportation, and supporting mining and petroleum work (47). This provision shows that the state has interfered in private matters. The only ones who have the right to determine core or supporting work should be the employer, not someone else, including the state. Furthermore, by basing on Permenakertrans Number 19/2012, a labor demonstration arises nationally to change the status of outsourcing employment relations for the type of work (which is not included in the type of supporting work that can be done by outsourcing work systems, namely security, catering, cleaning service, transportation, and supporting mining and petroleum work) become the status of permanent workers. In various areas this demonstration could lead to anarchist action (12). There is no substantial justice for employers to obtain guarantees of freedom of business. There is no choice for the employer to regulate how it works. The State should guarantee the freedom of business for employers to determine which parts of their work sequence are very important, important, less important and not important. The criteria for the importance of a part of the work can only be based on the originality of the work. In this regard, it is not wrong if the assumption arises that "the State has a very large share in creating social conflict" (32). The third example is Indonesian Migrant Workers (TKI) (according to the author the correct term should be overseas workers not migrant workers). Legal protection of migrant workers by Indonesia can only be done in the pre-placement and post-placement. Law No. 39/2004 also regulates legal protection during placement. In this case, it is important to remember that labor law is a functional law (21). In the case of migrant workers, labor law must comply with the principles or principles of international law. One of the

principles of international law is the principle of state jurisdiction. The question becomes whether the regulation regarding TKI is true by disregarding the jurisdiction of the country where the TKI works? Of course the answer is not true. It is unfair for other countries where Indonesian labor migrants work must obey Indonesian rules. From the three examples, it appears that the substance of Indonesian labor law is still incomplete. There are still vertical and horizontal inconsistencies in legal dogmatics, incorrectness based on legal theory and injustice in the study of legal philosophy. Our labor law has not differentiated Individual Employment Law - Collective Labor Law and Social Security Law (48). The substance of the law that does not pay attention to the methods of legal theory and legal philosophy, results in a wrong assumption of the value of law. Law is only interpreted as a limited part of legal certainty, not the substance of justice. Bismar Siregar views this as a mistake in legal education in Indonesia. The error must be corrected as soon as possible. The role of legal scholarship is very important. Legal experts, legal observers, legal reviewers and law enforcers must regard the law as an open system. Fair law is a good law if it meets 8 principles of legality, namely (40):

1. a failure to achieve rules at all, so that every issue must be decided on an ad hoc basis;
2. a failure to publicize, or at least to make available to the affected party, the rules he is expected to observe;
3. the abuse of retroactive legislation, which does not only itself does guide action, but under cuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change;
4. a failure to make understandable rules;
5. the enactment of contradictory rules;
6. rules that require conduct beyond the powers of the affected party;
7. introducing such frequent changes in the rules that the subject cannot orient his action by them;
8. a failure of congruence between the rules as announced and their actual administration.

4 CONCLUSION

These contract / outsourcing laborers need to be given legal protection because of the reason to save the work force that has the potential for one right and the other to make progress in general economic progress. Most of these outsourcing workers are professionals in their fields, young in age, and have good morale. Their shortcomings are that they do not have the opportunity and do not have a special relationship with the policy makers of the company. They also come later when compared to permanent workers because indeed they also later came in the world. There is no substantial justice for employers to obtain guarantees of freedom of business. There is no choice for the employer to regulate how it works. The State should guarantee the freedom of business for employers to determine which parts of their work sequence are very important, important, less important and not important. The criteria for the importance of a part of the work can only be based on the originality of the work. The substance of the law that does not pay attention to the methods of legal theory and legal philosophy, results in a wrong assumption of the value of law. Law is only interpreted as a limited part of legal certainty, not the substance of justice. Bismar Siregar views this as a mistake in legal education in Indonesia.

5 REFERENCES

- [1]. Asikin, Zainal, Dasar-dasar Hukum Ketenagakerjaan. Jakarta: Raja Grafindo Persada, 1993.
- [2]. Asri Wijayanti, "Perlindungan Hukum bagi Buruh yang di PHK di Perusahaan Swasta", Prespektif Hukum, Jurnal Ilmiah Fakultas Hukum Universitas Hang Tuah, vol.2 no. 2., 2002.
- [3]. Baqir Sharief Qorashi, Keringat Buruh, Hak dan Peran Pekerja Dalam Islam, Penerjemah: Ali Yahya, Penerbit Al-Huda., 2007
- [4]. Beverly R. Dixon. A Handbook Social Science Research, Oxford:Oxford University Press., 1987
- [5]. Catherine Marshall and Gretchen R. Rossman., Designing Qualitative Research. London.. 1994
- [6]. Damanik, Sehat. Hukum Acara Ketenagakerjaan, Menyelesaikan Perselisihan Hubungan Industrial Menurut Undang-Undang No. 2 Tahun 2004, Disertai Contoh Kasus. Cet. 1. Jakarta: DSS Publishing., 2004.
- [7]. Djumaldi, Perjanjian Kerja. Jakarta: Bina Aksara. 1987
- [8]. Duanne R. Monette Thomas dan J. Sullivan Cornell R. Dejons. Applied Social Research, Chicago San Fransisco:Halt Reinhart and Wiston Inc. 1989.
- [9]. Fuady, Munir, Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global. Bandung: Citra Aditya Bakti . 2002.
- [10]. Goenawan Oetomo, R., Pengantar Hukum Ketenagakerjaan dan Hukum Ketenagakerjaan di Indonesia. Jakarta: Grhandhika Binangkit Press.. 2002
- [11]. George Ritzer dan Douglas J. Goodman, Teori Sosiologi, Dari Teori Sosiologi Klasik Sampai Perkembangan Mutakhir Teori Sosial Postmodern, Penerjemah: Nurhadi, Cetakan Kedua. 2009,
- [12]. Hakim, Abdul, Hukum Ketenagakerjaan Indonesia Berdasarkan Undang-Undang Nomor 13 Tahun 2003. Bandung: Citra Aditya Bakti, 2003,
- [13]. Halim, A Ridwan dan Gultom, Sri Subiandini, , Sari Hukum Ketenagakerjaan Aktual, Jakarta:Pradnya Paramita. 1987
- [14]. Hartono Widodo dan Judiantoro, , Segi Hukum Penyelesaian Perselisihan Ketenagakerjaan, Jakarta: Rajawali Pers. 1992
- [15]. H. Manullang, Sandjun, Pokok-Pokok Hukum Ketenagakerjaan Indonesia, Jakarta: Rineka Cipta. 1995,
- [16]. Jhon M. Echols dan Hassan Shadily,Kamus Indonesia-Inggris, Gramedia Jakarta. 1985
- [17]. Kartasapoetra, G, Hukum Ketenagakerjaan di Indonesia Berdasarkan Pancasila, Jakarta:Sinar Grafindo. 1992,
- [18]. -----, , Hukum Ketenagakerjaan Pancasila Bidang Pelaksanaan Hubungan Kerja, Bandung:Armico. 1983
- [19]. Kartasapoetra, G, dan Widianingsih, G, Rience, Pokok-pokok Hukum Ketenagakerjaan, Bandung:Armico. 1982
- [20]. M. Solly Lubis, Filsafat Hukum dan Penelitian Hukum, Bandung Mandar Maju. 1994,
- [21]. Nurima, Ramadi Renal, "Tata Cara Penyelesaian Perselisihan Ketenagakerjaan Dalam Pengadilan Hubungan Industrial Menurut Undang-Undang No. 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial." Skripsi Universitas Indonesia. 2006,
- [22]. Oetomo, R. Goenawan, Pengantar Hukum

- Ketenagakerjaan dan Hukum Ketenagakerjaan di Indonesia. Jakarta: Grhandika Binangkit Press. 2004,
- [23]. Philipus M Hadjon, "Perlindungan hukum dalam negara hukum Pancasila, makalah disampaikan pada symposium tentang politik, hak asasi dan pembangunan hukum dalam rangka Dies Natalis XV/ Lustrum VIII, Universitas Airlangga. 1994,
- [24]. Shamad, Yunus, Hubungan Industrial di Indonesia. Jakarta: Bina Sumberdaya Manusia. 1995,
- [25]. Supriyanto, Hari, Perubahan Hukum Privat ke Hukum Publik, Studi Hukum Ketenagakerjaan di Indonesia, Yogyakarta :Penerbit: Universitas Atma Jaya. 2004,
- [26]. Syafa'at, Rachmad, Gerakan Buruh Dan Pemenuhan Hak Dasarnya, Strategi Buruh Dalam Melakukan Advokasi. Malang: Penerbit: In-TRANS Publising. 2008,
- [27]. Soepomo, Imam, Pengantar Hukum Ketenagakerjaan. Jakarta: Djambatan. 1999,
- [28]. Sutantio Retnowulan; Iskandar Oerip Kartawinata, Hukum Acara Perdata dalam Teori dan Praktek. Bandung: Mandar Maju. 1989,
- [29]. Sukarno, Pembaharuan Gerakan Buruh di Indonesia dan Hubungan Ketenagakerjaan Pancasila, Bandung. 1982,
- [30]. Syahrani, Riduan, Seluk-beluk dan Asas-asas Hukum Perdata. Bandung: Alumni. 2000,
- [31]. Toha, Halili, dan Pramono, Hari, Hubungan Kerja Antara Majikan dan Buruh, Jakarta: PT. Bina Aksara. 1987
- [32]. Triyanto, Djoko, Hubungan Kerja di Perusahaan Jasa Konstruksi, Bandung: Mandar Maju. 2004,
- [33]. Valerie J. Gilchrist, "Key Informant Interviews", dalam Benjamin F. Crabtree dan William L. Miller, Doing Qualitative Research, London: Sage Publications. 1992,
- [34]. W. Friedman, , Legal Theory, New York: Columbia University Press. 1967
- [35]. E.E. Reber, R.L. Michell, and C.J. Carter, "Oxygen Absorption in the Earth's Atmosphere," Technical Report TR-0200 (420-46)-3, Aerospace Corp., Los Angeles, Calif., Nov. 1988. (Technical report with report number)
- [36]. L. Hubert and P. Arabie, "Comparing Partitions," J. Classification, vol. 2, no. 4, pp. 193-218, Apr. 1985.
- [37]. R.J. Vidmar, "On the Use of Atmospheric Plasmas as Electromagnetic Reflectors," IEEE Trans. Plasma Science, vol. 21, no. 3, pp. 876-880, available at <http://www.halcyon.com/pub/journals/21ps03-vidmar>, Aug. 1992. (URL for Transaction, journal, or magazine)
- [38]. J.M.P. Martinez, R.B. Llavori, M.J.A. Cabo, and T.B. Pedersen, "Integrating Data Warehouses with Web Data: A Survey," IEEE Trans. Knowledge and Data Eng., preprint, 21 Dec. 2007, doi:10.1109/TKDE.2007.190746.(PrePrint)
- [39]. Asri Wijayanti, Menuju Sistem Hukum Perburuhan yang Berkeadilan, Universitas Muhammadiyah Surabaya, Jurnal ARENA HUKUM Volume 6, Nomor 3, Desember 2012
- [40]. Mufti Amri, Perlindungan Hak-Hak Pekerja Di Sektor Informal Menurut Perspektif Hukum Islam (Studi Kasus Industri Songkok Di Desa Bandung Kecamatan Kebumen), Skripsi, UIN Sunan Kalijaga, Yogyakarta. 2008,
- [41]. Natabaya, Sistem Peraturan Perundang-Undangan Indonesia, Sekjen dan Kepaniteraan MK. RI. 2006
- [42]. Satjipto Raharjo, Mengejar Keteraturan Menemukan Ketidakteraturan (Teaching Order Finding Disorder), Pidato mengakhiri masa jabatan sebagai guru tetap pada Fakultas Hukum Universitas Diponegoro Semarang, 15 Desember 2000.
- [43]. Surya Perdana, Pelaksanaan Jaminan Sosial Tenaga Kerja (Jamsostek), Tesis, Program Pascasarjana USU, Medan. 2001,
- [44]. Tan Kamelo, "Perkembangan Lembaga Jaminan Fidusia, Suatu Kajian Terhadap Jaminan Pelaksanaan Jaminan Fidusia dalam Putusan Pengadilan Tinggi Sumatera Utara, Medan: Disertasi Program Pascasarjana USU. 2002,
- [45]. Uwiyono, Aloysius. "Refleksi Masalah Hukum Ketenagakerjaan tahun 2005 dan Tren Hukum Ketenagakerjaan tahun 2006." <<http://www.ui.edu/indonesia/main.php?hlm=berita&id=2006-01-02%2010:37:40>>. 21 Juni 2007.
- [46]. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- [47]. Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan.
- [48]. Undang-Undang No. 2 Tahun 2004 Tentang Penyelesaian Hubungan Industrial.
- [49]. Undang-Undang No. 21 Tahun 2000 Tentang Serikat Pekerja/Serikat Buruh.