



## Human Rights Perspective of Protection Law for The Outsourcing Bank Workers in Ciptakerja Omnibus Law Bill

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### Abstract

*In economic development, The bank is one of the economic "spine" of the country, competition in the world of banking business makes bank needs to focus for creating many products and services which is related to their main competition, for the recruitment staff bank also using outsources company to make easier and everything more efficiency for them. Outsourcing in Indonesia refers to power experts. The Indonesian government also have rights to protects all employee because there are law bills number 13 the year of 2003 (No. 13 Tahun 2003) about outsources employment it said outsources employment could not taking care of the main job in the company but in Omnibus Law bills it is said all the outsources employee could working in everything and all the type of job desk in a company could be handle by outsourcing workers. This journal is using normative method research, this normative method of research it has function is to discuss bills that people talking about. The Author is using a few methods for this journal such as legislative approach, conceptual approach for the main purpose is to help the academic world for having Journal about employment laws.*

### A. Introduction

The implementation of economic development in Indonesia, the economic and legal fields has a very important role in economic progress. In the Economic fields is one of the backbones for economic today for developing society law always to be linked for the sake of a better standard of living around society.

Competition in the world of business banking makes banks have to concentrate on the process and activities of product and services development. In the process of recruitment of their employee. Bank also using Outsources company. These days there is no exact law that could protect all the staff of outsourcing, article 1601 civil code or article 1601 KUHP said: "An agreement wherein

first party, contractor ties themselves into one job with other parties who give the job and that contractor received the payment". Outsourcing in Bahasa it has meaning is a power expert. In practice, a basic understanding of outsourcing is the transfer of the part of the work nor the whole of work for the support of strategy for private or company used (Priambada, 2008).

Form of the protections of the state from the government for the labor its self, in the end, it is all about the intervention of government to protect the labor, In this part usually, the government are using regulation and deregulations rules that will give the company and the workers all the clear legal foundation. In article 19 paragraph 2, an international covenant of civil right said:"

Every single person has freedom of speech and rights, these rights are including having a right to search, to receives, to give information that written or printed, in the form of arts or using another media that she. He has been chosen". It must be recognized that workers and labor are needed this jobs for living meanwhile for the companies, their needs cheaper workers so their company could run, this reciprocal mutualism needs sometimes could trigger many conflicts between workers and companies, that's why Omnibus Law bills are not 100 percent worst it can be used to fix statutory governance in Indonesia it can save time and money(Denis Kirchhoffand Leonard J.S.Tsuji, n.d.) and it only discusses few topics and subjects. President Joko Widodo said it will take 50 years if each law is discussed (CNBC Indonesia, 2022). Besides that one of the advantages of the omnibus Law method is to give the framers of Omnibus Law more time to discuss every different element and to align few aspects.(Michel Bedard, 2012)"type":"book"},"uris":["http://www.mendeley.com/documents/?uuid=928d8d6b-b2e7-49fd-8581-39e66793b532"]},"mendeley":{"formattedCitation":"(Michel Bedard, 2012

Outsourcing has meaning is "to delegate of few aspects of the job to services company whose already has some mutual agreements". Outsourcing in employment law also has meanings" is to the utilization of the company to the labor for producing ", In management term outsourcing is "Delegations of the operation from outsources labor to the company whose using outsourcing services". In Indonesia Outsourcing is regulated in Employment Right Bills number 13 in the year 2003, article 64, 65 and 66 (Undang-Undang Ketenagakerjaan article 13 the year 2003 article 64, 65, 66) and Ministerial Regulation and the Transmigration Republic of Indonesia No.Kep.101/Men/VI/2004 the year 2004 about The licensing procedure about services provider company but the government is still thinking that rules are not 100 percent completed also.

Meanwhile In Labour Law (Undang Undang Ketenagakerjaan) number 13 in the year of 2003, there is no the things that cal-

led Outsourcing there is just explain the meaning, but the meaning of Outsourcing we can see it in provisions of article 64 Employment Law Bills number 13 in the year of 2003 "The Company can give mostly job desk to another company under a mutual written agreement between both parties".(Undang – Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003) Many pros and cons to these bills for example:(Sinar harapan, 2022)

1. Business Owner can focus on core business
2. Cost reduction
3. Investment money it could change into shopping cost
4. There is no more turn over workers

In Omnibus Law bills there are so many controversial bills one of them is about the fate of Outsourcing employee workers. The Indonesian government,s state of protection for the outsourcing workers is one of the interventions of Government, RUU, or Bills it is said "Labor protections, salary, and benefits, conditions of employment become the responsibilities Outsourcing company" this bills completely different from UU no 13 the year 2003 about employment. In Old regulation, it said, "Outsourcing worker can not have responsibilities about the job that related to the main production". Article 66 UU no 13 the year of 2003 (article 66 UU no 13 the year 2003 said: "Main company could not make Outsourcing worker have responsibilities to work that related into main producing or main factor job"). Said Iqbal, KSPI President once said (Mohammad, n.d.) "This bill of having too many flexibilities long back a time ago there are only 5 types of work that outsourcing can be work of but with this bills nowadays its seems all type of work can be handle by Outsourcing it mean it jeopardized the life of labor themselves because labor they can be fired anytime without minimum wages and severance pay". In UU no 13 the year 2003 article 66 it is clear that there is a boundary between workers and outsourcing staff but in Omnibus law, it seems main workers could be replaced anytime.

This Omnibus Law will make many problems if the Outsourcing worker can work

in any segmentation of the job it will make many changes in labor fields and employment world and of course all human rights. From that many backgrounds that is why this journal has the title "HUMAN RIGHTS PERSPECTIVE OF PROTECTION LAW FOR THE OUTSOURCING BANK WORKERS IN CIPTAKERJA OMNIBUS LAW BILL with the main reason this Journal will have academic people to have a discussion or to have many references.

## B. Research Method

The author is using Normative law research or doctrinal research for this journal. Normative law research it has meaning is Research that the object of study are regulatory document and library material (Soejono dan Abdurrahman, 2003) this research has function is to research all the object of study through library material and law bills document so it will give many detail information through analytical law discussion between primary ingredients and secondary ingredients even this methodology could predict what kind of bills or situation that would happen in the future. (Dyah Octorina Susanti dan A'an Efendi, 2014)

The object the author will discuss in this journal is about regulatory law and regulations related to "The Human Rights perspective for the Outsourcing Bank Workers in Omnibus Law Cipta Kerja". The author is using a few approaches, two of them are the Legislative or statute Approach and the Conceptual Approach. Statute Approach is "The Approach that used law products or based on law product base", (Bahder Johan Nasution, 2016) this method also examined all the laws bills that related to a law issue that had been talked or discussed also figure out things too (Peter Mahmud Marzuki, 2005), related to that then this approach set via Legal Protection of Outsourcing Bank Workers in Cipta Kerja Omnibus Law Bills according to Human Right Perspectives while Conceptual approach it is used to research and discussed all the things that had been settled because there are not still regulations that been solved yet. (Dyah Octorina Susanti dan A'an Efendi,

2014)

This implementation is to legal principles and Legal Concepts which is contained from bachelor of law and Legal doctrines that related to Human Right Perspective in Cipta Kerja Omnibus Law which is related to the technique of search legal materials that have ingredients such as Legal facts, gathering legal and non-legal material, examine the legal issue, conclude and gives a prescription of argumentation which has been arranged in conclusion.

## C. Results And Discussion

It is been a long time since the Omnibus Law is well known and had been applied in many countries that their countries are using common law, but in Indonesia, it seems people just knowing about this law since the government arranges the draft of Omnibus Law Cipta Kerja Bills. "In literature, Omnibus Law has many meanings, but generally the meaning of Omnibus Law is The bills that arrange many aspects (related or non-related) outsourcing issue so it will have one aim which is the used of Outsourcing nowadays many companies are using it but there is no fixed or settled law about Outsourcing itself through dissolution subject", Which is not looked at the outsourcing workers as not the subject that we are protected from but as the subject that we could be exploitation.

Indonesia protects the whole nation, promotes the general welfare, enriches the life of the nation, and enforcing the world order based on Pancasila. The most basic things that related to the employment or job for the citizen is UUD 1945 article 27 paragraph 2 "every citizen has the right to work for humanity "in the explanation of this article regulates the rights of citizens, in this case, every citizen has the right to work and decent living it is clear that the state provides legal protection for every citizen who wants to work. The position of the state here as a legal protector for its citizens is very important. In the resolution of the MPR no IV/MPR/1978 "Policy in the protection of labor indicated by improving wages and terms of employment, working safety and social security in the con-

text of improving the prosperity of the whole labor.

The creation of Cipta Kerja bill shows the legal politics of the executive to proceed into the legislative process and the government is currently taking steps to determine the pattern for shaping law through the legislative process so that a pattern of relief policy is formed that will create employment this means legal politic of Omnibus Law Bill has meaning is "The formation of law by applying Omnibus law in the formulation of law to increase investment to create jobs" as for the direction of political politics of Cipta Kerja Bills is the formation of a new law by adopting and trimming and simplifying deregulations. The rules that exist in the omnibus law can be a mobilizer or triggers for strengthening the capacity of Indonesia as a rule of law and its legislative function (DPR) (DPRRI, 2022).

In the Act no. 13 of 2003 concerning the employment of article 65 paragraph 2, the work that can be submitted to other companies as referred to in paragraph 1 must have following conditions: its has to be done separately from first work job task, b: done by direct or indirect orders from the employer, c: supporting the activity of the company as a whole, and d: does not directly inhibit the production process. when we look at the series of explanations above it can be said these rules have detailed details even though they cannot be said to be perfect either.

If compared with the rules in Omnibus Law Cipta Kerja concerning the provisions of outsourcing regulated in article 66 paragraph 1 "working relationship between outsourcing companies and workers based on specific time work is not specified time of work agreement" in this verse it is not clear what kind of work the worker can do. In law No. 13 of 2003 concerning manpower article 66 paragraph (1) workers from outsourced companies may not be used by employers to carry out main activities or those related to the production process, the entrepreneur is only allowed to employ workers with a certain time or not certain.

What is meant by supporting activities is activities that are not directly related to the

main business or core business in a company. these activities include cleaning services, catering food, security, supporting services business in oil mining, and providing business for labor transportation. We know that in some banks there are vendors which are extended by a time agreed with the position of supporting staff and back-office this will certainly be very worrying with the existence of Omnibus Law Cipta Kerja which does not regulate what jobs can be done by outsourcing personnel, this is not very good for the banking industry where we know it the banking industry must be carried out very carefully.

In the author's opinion, there should be clear rules about which sectors are held by outsourcing and related to the banking sector should not be included the impact of Law No. 13 of 2003 about employment, we can see that the rules regarding banking personnel have not yet been regulated, it would be better if the Omnibus law bill on the banking sector had been clarified its position towards outsourcing employees. Especially now that we're dealing with industry 4.0 where it needs security, speed, accuracy, and efficiency to compete with other financial companies.

The opening of the 1945 Constitution explained that the purpose of the state is promoting public welfare based on Pancasila for social justice for all Indonesian people, related to outsourcing if we look at Law No. 13 of 2003 about employment manpower. It was stated that there was a lack of clarity in the mechanism of the law which threatened the position of outsourcing employees because they cannot negotiate to defend their rights towards the vendor company that distributes it, this situation is detrimental to workers on the other hand in favor of employers or the entrepreneur themselves and this conditions contrary to the principle of justice for all Indonesian people as in the law opening the 1945 Constitution.

The workforce or workers is an important legal subject in the company. Without labor, the company also cannot carry out its business activities. It is fitting for workers to be respected and fulfilled their rights. Article

27 paragraph 2 of the 1945 Constitution regulated that every citizen has the right to work and a decent living. The unclear type of work carried out by outsourcing personnel such as at Omnibus law Cipta Kerja impressing the article maker of Omnibus Law indifferent to article 27 paragraph 2 of the 1945 Constitution.

In the banking world, accuracy and almost perfect work are needed because it is related to the distribution of funds not to mention very high levels of pressure and heavy responsibilities also related to services that directly serve the community. The Government related policymakers can at least provide solutions related to the fate of outsourcing in the world of banking do not let the consequences of unclear policies affect the company's performance. It must be regulated in terms of things or job positions that can be filled or that cannot be filled by outsourcing employees.

Humans are creatures of God who have the right to freedom the right to life the right to be protected and other rights. This is in line with the principles of natural law in the 18<sup>th</sup> century "namely individual freedom and the primacy of the ratio", and one of its adherents is Locke, according to Locke Legal theory goes from two things namely individual freedom and the primacy of the ratio, he also teaches social contracts, according to him, people who carry out social contracts are people who are orderly and respect freedom, the right to life and ownership of property as human rights.

According to Locke, the ideal society is a society that does not violate basic human rights other than that these rights are not left to the authorities when the social rights are exercised. Therefore the power given to the ruler is not absolute. Therefore, this should protect the rights of human nature or society from the dangers that threaten both from outside. and inside. that's the law made to protect citizens (Benard L Tanya, Yoan N Simanjuntak, Markus Y, Hage, 2010)

Omnibus law is born from the good intentions of a country that wants to improve the investment climate to accelerate the na-

tional economy, but it is unfortunate if you see that the work copyright bill or Omnibus law Cipta Kerja still has many legal issues. From the discussion above, it can be imagined that there are still many legal issues related to Omnibus Law Cipta Kerja. Naturally, if the draft reaps a lot of rejection.

Before going too far the government and Parliament need to review so it won't overlap the rules and make them ineffective. (Tanjungpura University, "Catatan Kritis Terhadap OmnibusLaw," 2022) In human rights, humans can develop themselves and their role and contribution to the welfare of human life. More explicit thoughts expressed by Immanuel Kant: human beings are intelligent and free will.

The state is tasked with upholding the rights and freedoms of its citizens, the prosperity and happiness of the people is the goal of the state and the law, therefore, these basic rights must not be impeded by the state (Tanjungpura University, "Catatan Kritis Terhadap OmnibusLaw," 2022) legal protection was born from a legal provision and all legal regulations given by the community which is a regulation to regulate community behavior between individuals and the government which is considered to represent the community.

According to Satijipto Raharjo legal protection is provided by the protection of human rights so as not to be harmed by others and to the public so that they can enjoy all the rights granted by law. (Satijipto Raharjo, 2002) The presence of the state in making the policy that was originally expected can protect basic rights even seemingly while in the implementation repressive and even exploitative in the interests of workers. While the role of the state in industrial relations seems facilitative and accommodative against the interests of investors and some agree with outsourcing, beneficial for business development, spur the growth of new forms of business which indirectly stimulates the growth of employment, alleviating unemployment and poverty and increasing people's purchasing power while for the company it is getting profit legalization.

The legalization of outsourcing is indeed problematic when viewed in terms of legal effectiveness where the entry into force of the law is based on their recognition by whom the law was directed. The legalization of outsourcing law in Cipta Kerja is still under debate among citizens or Indonesian society. Where they still want to improve the quality of their basic rights.

The history of the legalization of outsourcing is also causing a lot of controversies; instead, the position of the government reduces responsibility in providing legal protection for workers. Policies in the field of employment both at the local and national level are felt to be lacking in the direction of social protection. Employment policy makes labor as part of the market mechanism and components of production that has a sale value related to cheap wages for investors. Stigmatization of outsourcing practices in addition to the impact on low commitment, motivation, and loyalty of workers to the company and decreased work productivity also led to the escalation of industrial relations disputes that could lead to strikes.

In creating harmonious working relationships all forms of symptoms that succumb to the dispute must be avoided. According to Adrian Sutedi, it cannot be denied "that the development of the business world is greatly influenced by the situation and conditions of industrial relations and the stakeholders, The better industrial relations, the better business relations".(Adrian Sutedi, 2009)

So harmony in industrial relations depends on all parties fulfilling their obligations to other parties so that the other party gets his or her rights. In these cases, the government must find a solution on how to minimize the negative impact of outsourcing practices that have been the case of false perceptions.

Those outsourcing companies only defend the interests of business owners and capital, in reality, the community has an interest in the company's performance in providing products and services, creating jobs and absorbing job seekers.(Adrian Sutedi, 2009)

The government itself has a gap between *das solen* and *das sain* in outsourcing

practices besides causing suffering for workers or laborers. It also has an impact on the progress of the productivity of this company according to Robert Owen (1771 — 1858). (James A.F.Stoner, 1990) The attitude of workers is very influential on company productivity because it is related to motivation in increasing labor production and work performance. Workers will work harder if they believe that the company cares for their welfare, this is what is called the Hawthorne Effect.

Another weakness in the substance of labor law that applies today is the opening of opportunities and potential that can hamper the fulfillment of basic labor rights. This is due to the many provisions concerning labor rights in labor legislation that are not protected by the application of sanctions. If an entrepreneur or a company does not fulfill it, for example, the absence of provisions on criminal sanctions and/or administrative sanctions for violations of article 64, article 65 and article 66 of law number 13 of 2003, concerning manpower.

Regarding labor violations of the terms and conditions of outsourcing only in the form of changes in the status of employment relations and accountability for the fulfillment of labor rights, meaning that it is still internal and the good intentions of entrepreneurs without any legal remedies that create a deterrent effect for entrepreneurs who violate these provisions. According to the principle of law, the substance of the law, employment also does not meet the legal principles that are related to the principle of legality.

Lon.L.fuller "as quoted in Esmi to know the law as a sister that must be examined whether she fulfills the eight principles as follows:(Esmi Warassih, 2005)

1. The legal system must contain regulation meaning that it cannot contain merely ad hoc decisions.
2. The rules that have been made must be announced.
3. Rules may not apply retroactively.
4. Rules are arranged in a formula that can be understood.
5. A system must not contain rules that conflict with another.

6. Rules cannot contain demands that exceed what is done.
7. Rules cannot be changed frequently.
8. There must be compatibility with the regulations that are passed with The day to day implementation.

In the banking business world, the vendor is the usual thing which is the employment relationship by hiring workers for the benefit of the principal, while the vendors themselves benefit from the difference between the services provided by the principal to the vendor with the wages paid by the vendor to the worker due to the employment relationship. This practice has been analyzed by Marx, who said that the worker is alienated from work because once the worker works on outsourcing he or she will work on the goals of the salaried vendor, and they will be exploited for the benefit of the vendor and the principal.

According to Soepomo, as quoted by Abdul Khakim, (Harjono, 2008) "work relationship is a relationship between a worker and an employer where the employment relationship occurs after an employment agreement between the two parties. They are bound in an agreement, on the one hand, the workers are willing to work for a living and the employer employs the workers for a living.

Differences in interests, economic and social status have led to disparity relations between workers and employers, The position of the parties in the law that should be equal is not the case with subordinate or high-level work relationships, where workers are always on the weak and marginalized. This condition usually makes the employer arbitrary to subordinates or workers, especially to outsourced workers, most of whom are contract workers.

The existence of law number 13 of 2003 which was originally expected to protect workers, apparently so far has not been as expected. Attitudes and actions and public policies in the field of labor turned out to still reflect paradigmatic errors in placing the position of the worker where the government position, entrepreneurs have experienced

many shifts. Government interference with industry which was originally expected to protect workers' basic rights, then the opposite happened. This presence impressed authoritarian, repressive, and even exploitative of the workers and facilitative and accommodating to the interests of employers or entrepreneurs.

Providing legal protection for workers is the mandate and purpose of employment law. , as said by Senjun.H.Manulang "that the purpose of labor law is to protect labor against unlimited power and from employers. Zainal Asikin as quoted by Asri Wijayanti also said "Legal protection from the power of service is implemented if the laws and regulations in the field of labor which require or force the employer to act as in the legislation are carried out by all parties because the enactment of the law cannot be judged only but measured sociologically and physiologically.(Asri Wijayanti, 2009)

Lawrence M.friedman argues, speaking of law as a system, all components in the form of structural, substance, and culture components of the system must function as follows:(Esmi Warassih, 2005)

1. The component called structure is an institution created by the legal system that functions to support the operation of the legal system itself.
2. The substance component is: in the form of legal norms, both laws and regulations, decisions and so on all of which are used by law enforcers and those governed.
3. The cultural component of law consists of ideas, attitudes, hopes, and opinions about law.

Referring to the above theoretical system as proposed by Lawrence F. Friedman, to provide legal protection for outsourced bank employees must be seen as a system consisting of structural components, substance, and workforce legal culture. To provide maximum legal protection for banking workers, it is:

1. Structural components of the labor system, namely institutions that support the workings of the labor law system, such as the Industrial

Relations Court, the department in charge of labor issues, labor supervisory employees, mediator employees, industrial relations, labor PPNS, and others.

2. Substantial components of the labor law system are several laws, conferences, ILO, government regulations, Decree of the Minister of Manpower, POJK, and others that are used by law enforcers and regulators.
3. The cultural component of the employment system Namely the ideas, attitudes, expectations, and opinions of the people—these mean the views of workers and employers and the parties involved as well as those concerned about the legal issues of employment it self.

The three components above must be in the spirit of the Omnibus Law Act so that they can be used as a legal basis so that in their implementation they can work, collaborate and work together to accelerate the pace of our country's economy.

Labor law as a modern legal concept has a function as the aspirations of the working community based on the desired objectives, namely protecting the interests of the parties in the employment relationship. A fragile labor law system results in the scarcity of the most vulnerable parties in an employment relationship, namely "labor". Even in the practice of outsourcing where most workers are contract employees, guarantees of continuity of work and fulfillment of their rights as workers are completely unprotected.

The Omnibus law bill should be able to meet the needs of labor legislation that are currently outdated, so they are no longer able to follow social, economic, political changes and the development of the business community and all forms of business activities.

## D. CONCLUSION

Lately, the people of the Indonesian state are discussing the RUU Omnibus Law Bill CIPTA KERJA, Its been a long time the Omnibus Law is well known and had been applied in many countries that their countries are

using common law, but in Indonesia, it seems people just knowing about this law since government arranges the draft of Omnibus Law Cipta Kerja Bills. which some people said was controversial. Why is it controversial because there are so many overlapping and unclear regulations regarding outsourcing companies and the fate of the outsourcing employees themselves?

A few of the things that make this bill controversial are that all jobs can be outsourced. Of course for the banking sector this is very dangerous, People work In banking, it cannot just be anyone who could work there and reach positions that play an important role in the world of Banks.

And many things in the Cipta Kerja Omnibus Law bill are also detrimental to workers or labor but greatly benefit the employers or those who have companies as the author explained in the explanation above. Many pros and cons to these Omnibus bills for example :

1. Business Owner can focus on core business
2. Cost reduction
3. Investment money could change into shopping cost
4. There is no more turning over workers

But President Jokowi said it took 50 years to make this Cipta Kerja Omnibus bill again and as it is known the law in Indonesia is outdated considering that our country will enter the 4.0 Industry era. There are so many articles in the Omnibus Law that must be synergized with existing articles laws by the Government and the Parliament as policymakers. But it must be remembered that it must be adjusted to the development of nowadays. So that our country can compete with other more developed countries.

As we have heard there are important things that we all believe in and the Government and Parliament must acknowledge that In creating harmonious working relationships all forms of symptoms that succumb to the dispute must be avoided. According to Adrian Sutedi, it cannot be denied "that the development of the business world is greatly influenced by the situation and conditions of



industrial relations and the stakeholders “The better industrial relations, the better business relations”.

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