

ABSTRAK

Salah satu persoalan paling penting dalam UU No 13 Tahun 2003 adalah tidak adanya perlindungan hukum tentang hak-hak dasar pekerja, dan perlindungan atas keberlangsungan kerja (jaminan kerja), sehingga perusahaan bisa berlaku semena-mena terhadap pekerja *outsourcing*. Hal tersebut sedikit berbeda dengan adanya Putusan MK No 27/PUU-IX/2011. Tujuan dari penelitian ini adalah untuk mengetahui perlindungan *outsourcing* sebelum putusan MK dan kendala yang timbul dalam perlindungan Hukum Tenaga kerja Outsourcing, serta mengetahui isi putusan MK dan perlindungan tenaga Kerja pasca Putusan MK no 27/PUU-IX/2011

Metode pendekatan menggunakan metode Yuridis Normatif yaitu meneliti bahan-bahan kepustakaan yang merupakan data sekunder dengan cara mengadakan penelusuran terhadap peraturan-peraturan dan literatur berkaitan dengan permasalahan yang diteliti.

Hasil penelitian memperlihatkan bahwa: 1) perlindungan hukum tenaga kerja *outsourcing* selama ini belum berlangsung secara optimal, masih perlu mendapat perhatian khusus bagi pemerintah karena kurangnya hak-hak yang diberikan kepada pekerja *outsourcing* dan kendala yang timbul dalam praktek perlindungan hukum tenaga kerja *outsourcing*, antara lain: upah tidak sesuai UMP, sistem *outsourcing* tidak adil dan tidak transparan, perlindungan sosial pekerja belum maksimal, persebaran pekerja tidak merata, dan lemahnya perlindungan hukum bagi pekerja; 2) isi amar Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011 dengan surat edaran No. B.31/PHIJSK/2012 tidak mencabut dan merubah pasal-pasal terkait hanya saja memberi aturan baru dan norma baru mengenai perlindungan perjanjian kerja mengenai pengalihan perlindungan terhadap pekerja/buruh jika objek kerjanya tetap ada dan terjadi pergantian perusahaan yang melaksanakan pekerjaan *outsourcing*; 3) perlindungan hukum tenaga kerja *outsourcing* pasca Putusan MK No 27/PUU-IX/2011 menawarkan dua model *outsourcing*, yakni: **Pertama**, dengan mensyaratkan agar perjanjian kerja antara pekerja dan perusahaan yang melaksanakan pekerjaan *outsourcing* tidak berbentuk perjanjian kerja waktu tertentu (PKWT), tetapi berbentuk perjanjian kerja waktu tidak tertentu (PKWTT). **Kedua**, dalam hal hubungan kerja antara pekerja dan perusahaan *outsourcing* berdasarkan PKWT, maka perjanjian kerja harus mensyaratkan adanya pengalihan perlindungan hak-hak bagi pekerja yang objek kerjanya tetap ada, walaupun terjadi pergantian perusahaan yang melaksanakan pekerjaan borongan dari perusahaan penyedia jasa pekerja. “tujuan” dari putusan MK tersebut, idealnya ada tindak lanjut berupa perubahan UU ketenagakerjaan untuk mengatur kembali pelaksanaan *outsourcing* sejalan dengan putusan MK dalam rangka melindungi hak-hak normatif buruh. Lambat laun, pengawasan terhadap perusahaan pemberi kerja termasuk berbagai instansi pemerintah, dapat mendorong perusahaan pelaksana *outsourcing* untuk lebih manusiawi memperlakukan pekerjaanya.

Kata Kunci: Perlindungan hukum, tenaga kerja outsourcing, dan Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011

ABSTRACT

One of the most important issues in Law No. 13 of 2003 is the absence of legal protection regarding workers' basic rights, and protection of employment continuity (job security), so companies can arbitrarily apply to outsourced workers. This is slightly different from the Constitutional Court Decision No. 27 / PUU-IX / 2011. The purpose of this study is to determine the protection of outsourcing before the Constitutional Court's decision and the constraints that arise in the protection of Labor Law Outsourcing, as well as knowing the contents of the Constitutional Court's decision and labor protection after the Constitutional Court's Decree no 27 / PUU-IX / 2011

The approach method uses the Normative Juridical method which is researching library materials which are secondary data by conducting a search of the regulations and literature relating to the problem under study.

The results of the study revealed: 1) the legal protection of outsourced labor has not been optimal, so it still needs special attention for the government because it requires the rights granted to outsourced workers and encourages those arising in the practice of outsourcing labor protection, including: wages are not according to the UMP, the outsourcing system is unfair and not transparent, workers' social protection is not optimal, workers' distribution is unequal, and weak legal protection for workers; 2) contents of the Constitutional Court Decision Number 27 / PUU-IX / 2011 with circular letter No. B.31 / PHIJSK / 2012 does not revoke and amend articles which only relate to new regulations and norms for workers / laborers if the object is moved to remain and there is a change in the company doing outsourcing work; 3) legal approval of outsourcing labor after the Constitutional Court Decree No. 27 / PUU-IX / 2011 offer of two outsourcing models, namely: First, by requiring that the cooperation agreement between workers and companies that carry out the outsourcing work not in accordance with a specific time work agreement (PKWT), but PKWTT. Second, in the case of employment relations between workers and outsourcing companies based on PKWT, the employment agreement must require the ownership of the transfer of rights for workers associated with permanent work. In connection with the change of companies working on wholesale jobs from workers' service providers. The "purpose" of the Constitutional Court's ruling, ideally there is a follow-up of the amendment to the labor law for outsourcing with the Constitutional Court's ruling in order to protect workers' normative rights. Gradually, oversight of the donor companies including the government, can encourage outsourcing companies to more humanely treat their workers

Keywords: Legal protection, outsourcing labor, and Decision of the Constitutional Court Number 27 / PUU-IX / 2011