



The Payment of Wages for Outsourced Workers of PT Carefastindo

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ABSTRACT

Outsourcing refers to the use of labor services by contracting out or transferring the duties and responsibilities of work or company activities from the original autonomous parent company to another company as a provider of labor services through the form of a cooperation contract. This research aims to determine whether the implementation of wages for outsourced workers at PT Carefastindo has followed the applicable regulations. The method used in this research is an empirical research study that refers to the results of research in the field. The data used in this research are the implementation and regulations related to the applicable work copyright regulations, evaluations, and interviews with workers at PT Carefastindo. The results indicate that in the implementation of wages for outsourced workers at PT Carefastindo Surabaya, East Java, there is still an implementation of wage payments below the City Minimum Wage. The implementation of wage payments for outsourced workers should fulfill the principle of justice, which refers to proportionality, the provision of salaries, and fulfillment by taking into account achievement and seniority. This wage payment refers to the needs of workers and families from an economic perspective, in accordance with the amount of wages received from the same job as others. Several factors occur in the wages of outsourced workers at PT Carefastindo who are paid below the City Minimum Wage, including the existence of a Cooperation Contract or Work Agreement given to the client of PT Carefastindo.

Keywords: *Outsourced Workers, Outsourcing, Wage Implementation, Wages*

INTRODUCTION

Today, the problem of employment or labor has never been solved, either from the problems of protection, wages, welfare, training, or labor supervision. This is more due to the weakness of the government system in enforcing labor law, which tends to diverge. On the other hand, the coordination and actions between government institutions still need to be more optimal and still highly cautious. Thus, there are still many workers who have not obtained their rights.

Receiving wages is the most significant goal of workers in the workplace. Every worker expects a decent wage to fulfill their life needs. Wages play a significant role and are a feature of the relationship of employment. It can even be stated that wages are the primary purpose of a worker to work for another person or legal entity. Therefore, the government participates in solving this wage problem through various policies outlined in government regulations.

Looking at the history of labor and employment in Indonesia, it begins in the dark period, with the existence of slavery and forced labor being a concern at that time. Slavery is a labor situation in which a person designated as an enslaved person works at the behest of another person and has no right to their life (Rahman, 2019).

Workers are people who work while receiving wages or other rewards. Workers' wage demands arise with the establishment of a working relationship between the worker and the employer and terminate upon the end of the working relationship. The rights of every worker/employee in Government Regulation (PP) No. 36/2021 concerning Wages are the right to a decent living, to be treated equally, without discrimination in the application of the payroll system, to receive the same wage for work of equal value (Indonesia, 2021).

Wages are one of the main elements in labor relations, considering that the existence of wages is always associated with a source of income for workers/laborers to achieve a decent standard of living for themselves and their families. Government Regulation No. 36/2021 concerning Wages as a regulation in the field of wages is required to answer the challenges of the dynamics of globalization and the transformation of information technology, which has an impact on changes in the social and economic order, including changes in the pattern of work relations in the field of employment (Abas, 2022). This issue often occurs with outsourced workers. The Labor Law, Law No. 13/2003 on Labor, provides justification for assigning part of the work to another company or worker/labor service provider, which is more commonly known as outsourcing (Khakim, 2014).

Outsourcing may be defined fundamentally as a form of employment relationship in which there is no organizational relationship between the organization and its workers since the workers are officially considered to be workers of the outsourcing company. The outsourcing company pays workers' wages after receiving wages from the company that uses labor from the outsourcing

company. The work order, even though it is initially issued by the company using the labor, is also officially issued by the outsourcing company and typically the order is issued as a package. The majority of these outsourced workers are professionals in their fields, with a young average age and a strong work ethic. The disadvantage is that they need to have the opportunity to have a special relationship with the company's decision-makers.

When receiving wages, companies are obliged to pay workers' wages in accordance with the minimum wage. The minimum wage is the lowest monthly wage consisting of basic wages, including bonuses determined by the Governor as a safety net according to Article 25 Paragraph 1 of the Government Regulation of the Republic of Indonesia No. 36/2021 concerning Minimum Wages (Khairani, 2016). Minimum wages are divided into two categories: Provincial Minimum Wage (UMP) and Regency/City Minimum Wage (UMK). Provincial minimum wage refers to a wage that applies to all regencies/cities in one provincial area. Meanwhile, the regency/city minimum wage is the wage that applies in one regency/city area.

One of the institutions that use outsourcing work services in Surabaya is Ciputra World Mall Surabaya. Ciputra World Mall Surabaya is one of the institutions and malls located in the city of Surabaya. The work that is handed over to outsourced workers is cleaning service. These outsourced workers come from a work service provider company, PT Carefastindo. PT Carefastindo, as a work service provider in practice, commits wage violations against its workers, which violates the provision/application of the City Minimum Wage that has been regulated in the legislation. PT Carefastindo provides wages to its workers below the City Minimum Wage of IDR 2,700,000 and IDR 50,000 for the Social Security Agency on Health, for a total of only IDR 2,650,000 in a month. Therefore, this research aims to find out whether the implementation of wages for outsourced workers at PT Carefastindo has followed the applicable regulations.

LITERATURE REVIEW

According to Law No. 13/2003 Article 1 Paragraph 30 concerning Labor, the definition of wages is the right of workers/laborers who are received and expressed in the form of money as compensation from employers or recruiters to workers/laborers which are determined and paid according to a work agreement, contract, or laws and regulations, including benefits for workers/laborers and their families for a job or service that has been or will be performed (P. R. Indonesia, 2003). There are several opinions of experts regarding the definition of wages. The definition of basic wages, according to Gitosudarmo in Lerian (2019), is a reward given by the employer to the workers, whose receipt is routine and fixed every month. Even if they do not come to work, the wages will still be received in full. As cited by Rusadi (2015), Hasibuan defines basic wages as compensation that is paid periodically to employees who are permanent and have specific guarantees.

Furthermore, Handoko, as quoted by Sabila (2017), defines and recognizes basic wages as the provision of financial payments to workers as a reward for work performed and as motivation for future work activities. Basic wages are regarded as a reward for services as it is the organization's effort to maintain and improve the welfare of its workers.

RESEARCH METHODOLOGY

This type of research is empirical research, which is a systematic, controlled, critical research and study with field data as the main data source, such as the results of interviews and observations. Empirical research is used to analyze laws that are seen as patterned community behavior in the lives of people who constantly interact and relate to social aspects (Poespasari et al., 2023). This research employs a socio-legal approach, which is the basis of a research study through empirical analysis or a research approach in the field that attempts to acquire reliable data and legal information from interviews with participants in the discussion (Hamid & Intan, 2022). Furthermore, according to Samekno in Maribet et al. (2017), socio-legal approach research is research that examines legal studies by including social factors while sticking to the scope of legal writing.

RESULT AND DISCUSSION

Implementation of Wages for Outsourced Workers at PT Carefastindo

Outsourcing is the utilization of labor by contracting out or transferring the duties and responsibilities of work or company activities from the parent company that was previously managed by itself to another company as a labor provider in the form of a cooperation contract. Provisions regarding outsourcing are regulated in Articles 64 to 66 of Law No. 13/2003 concerning labor, which states that a work agreement is established between employers and laborers, where the company may hand over part of the implementation of work to other companies through a written work outsourcing agreement made.

In 2023, the Job Creation Act was issued, which is Government Regulation in Lieu of Law No. 2/2022 concerning job creation into law, and was passed on March 31, 2023. In the Job Creation Act, there are several rules that have been changed, such as the policy provisions on outsourcing rules, deleting Article 65, and restoring Article 64, which was previously regulated in the 2020 Job Creation Act. Government Regulation in Lieu of Law No. 2/2022 in the article above explains that companies may hand over part of the implementation of work to other companies through written outsourcing agreements.

In an employment relationship, there must be an element of rights and obligations. From the worker's perspective, their obligation is to work as much as possible, and in return, they are entitled to wages and monetary benefits. Most people may be more familiar with the term salary than wage. However, the official

term used in Law No. 13/2003 on labor is wage. The definition of wages is the right of workers to receive from the company as a reward in the form of money and express it to workers in the form of money according to the provisions of work agreements, contracts, or laws and regulations in force at the time, including benefits for workers. Treatment is given to workers with work and services that have been or will be carried out by the employer in the company that provides the cooperation contract. In contrast, there is no specific definition of the term allowance in the Job Creation Act. However, there is a definition of the term 'fixed allowance' in the explanation section of Article 94, which states that payments to workers are made on a regular basis and are not linked to the worker's attendance or the achievement of particular work performance.

When observed in the implementation of companies, wage matters often raise problems that often lead to conflicts between companies and workers. There are several common problems among workers to the current day regarding wages and allowances in Indonesia. The first common problem is a decrease in wages. Any worker certainly does not expect their wages to decrease because, obviously, what they expect is an increase in wages. However, a decrease in wages in certain situations is inevitable. For example, in post-pandemic conditions like this, companies have experienced a decline in revenue and hence have to take retrenchment strategies such as lowering workers' wages. The inability of the company to pay workers' wages forces the company to reduce the number of workers with the aim of maintaining the economic system of the company to remain in business and avoid bankruptcy.

The wage itself, including the amount and procedure of its payment, is something that is mutually agreed upon by the company and the worker in the form of a work agreement. The agreement should have been discussed at the beginning of the contract between the company and the worker before the worker starts the working period. Therefore, the wage reduction policy must also be established based on the agreement of both parties. In other words, a company cannot decide to reduce workers' wages unilaterally, as this will lead to the mistreatment of workers by the company and may result in strikes or lawsuits against the company.

The second common problem is the provision of wages below the provincial minimum wage or regency/city minimum wage to workers. In practice, the Job Creation Act was formulated to protect workers' rights. One way to protect them is to have a minimum wage that applies at the provincial or regency/city level. The decision on provincial minimum wage and regency/city minimum wage is delegated to the local government. The Job Creation Law details the prohibition of companies paying wages below the provincial minimum wage or regency/city minimum wage. If the regulation is violated, the company will be subject to severe sanctions, which include imprisonment for a minimum of one year and a maximum of four years or a fine of a minimum of IDR 100,000,000 and a maximum of IDR 400,000,000. Therefore, all companies are obliged to pay workers in accordance

with the provincial minimum wage or regency/city minimum wage, as the Job Creation Law itself still provides an opportunity for companies to suspend the implementation of the provincial minimum wage or regency/city minimum wage in their companies. The technical provisions of the suspension are regulated in detail in the Decree of the Minister of Manpower No. Kep.231/MEN/2003 concerning Procedures for Suspending the Implementation of Minimum Wage.

The third common problem is the deduction of workers' wages. Unlike deductions, wage reductions are regulated in the Job Creation Act. In principle, companies may deduct wages in the form of fines, compensation, or salary advances. The technical implementation of deductions refers to company regulations, collective agreements, or employment contracts. Fines may be deducted from salary if it is found that the worker has violated the provisions of the employment contract, company regulations, or collective agreements. The Job Creation Act on wages emphasizes that deductions from workers' wages are only allowed up to 50 percent of the wages of each worker.

The fourth common problem is the delay in wages. In principle, companies must pay wages to their workers at the agreed time in accordance with the employment contract. If there is a delay, there is a risk of severe consequences for the company in the form of fines whose technical details are regulated in the wage plan. Article 88A of the Job Creation Act of the Government Regulation in Lieu of Law No. 2/2022 states that the fine for companies that are late in paying wages from the fourth day to the eighth day is 5 percent of the amount of wages paid per day. If the wages are not paid after the eighth day, the fine increases by 1 percent per day so that in one month, it can be at most 50 percent of the amount of workers' wages to be paid. Employers who intentionally or negligently cause delays in the payment of wages must expect a fine of a certain percentage of the worker's wages. If more than one month's wages are not paid by the company, the fine imposed is not only 5+1 percent but also interest according to the government bank rate. For the record, the fine still cannot override the company's obligation to pay workers' wages.

The wage system for outsourced workers is a framework for how the wage system is organized, implemented, and determined to ensure that workers always receive welfare. The wage system itself in Indonesia is generally established based on its functions, including the following:

1. Ensuring a decent common life for workers and their families
2. Representing the reward for the work of the worker
3. Providing incentives to encourage workers to improve their productivity (Sulistawati, 2013).

Fundamentally, legal protection of wages is regulated in Government Regulation in Lieu of Law No. 2/2022 on Job Creation Article 66. Article 66 states that the working relationship between outsourcing companies and the workers they

employ is established based on a written work agreement, either a specific time work agreement or an uncertain time work agreement. The article also states that the protection of workers/laborers, wages and welfare, working conditions, and disputes arising are implemented at least in accordance with the provisions of laws and regulations and are the responsibility of the outsourcing company. The wages of workers and laborers are also regulated in Article 88A, which states:

1. The right of workers/laborers to wages arises at the time of employment between workers/laborers and employers and ends when the employment is terminated.
2. Every worker/laborer has the right to receive equal pay for work of equal value.
3. Employers must pay wages to workers/laborers in accordance with the agreement.
4. Wage arrangements determined by agreement between employers and workers/laborers must be at least the wage provisions stipulated in laws and regulations.

Meanwhile, Article 88C stipulates that:

1. The Governor shall set the provincial minimum wage.
2. The Governor may set the district/city minimum wage.
3. Determination of the regency/city minimum wage, as referred to in Paragraph 2, is carried out in the event that the results of the calculation of the regency/city minimum wage are higher than the provincial minimum wage.
4. The minimum wage, as referred to in Paragraph 1 and Paragraph 2, shall be determined based on economic and labor conditions.
5. Economic and employment conditions, as referred to in Paragraph 4, utilize data from authorized institutions in the field of statistics.
6. In the event that a regency/city has yet to establish a minimum wage and intends to establish a minimum wage, the determination of the minimum wage shall comply with certain conditions (Direktur Jenderal Peraturan Perundang-undangan Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2018).

Based on the above regulations, it can be concluded that the company of PT Carefastindo Surabaya is fully responsible for the implementation of the wages of outsourced workers in accordance with the city minimum wage with the current regulations. The wage system at PT Carefastindo for outsourced workers is a monthly wage. According to the results of an interview with Judy Christian, Branch Manager of PT Carefastindo, it is known that the wage system for outsourced workers at PT Carefastindo is a monthly wage system. This statement was also reinforced by Yusliana Pohan's statement as a street sweeper at PT Carefastindo, who stated that the deduction of wages for her absence on a workday was valid.

This is in line with the explanation of Doedik Afriyanto, the Operations Manager of PT Carefastindo, who said that there were a number of agreements at the beginning that had been conveyed to prospective workers regarding the wage system for street sweepers. One of these agreements is the understanding that workers' wages are calculated when they are present at work, and vice versa, that their wages will be deducted if they are absent from work.

Based on these interviews, it can be concluded that the wage system of PT Carefastindo for outsourced cleaning service workers is a monthly wage system where the wages are given based on the attendance rate and the work of the outsourced cleaning service workers. The monthly wage is paid on a monthly basis only to workers who have the status of contract workers in their work agreement. Since the monthly wage will only be given based on the worker's attendance, therefore if the worker is absent, then on the days of absence, the worker will not be given a wage.

The provision of wages should fulfill the principle of justice, which refers to proportionality, the provision of salaries, and fulfillment by taking achievement and seniority into consideration. Providing wages refers to the economic needs of workers and their families, in accordance with the amount of wages received from the same job as other workers. Researchers also conducted an interview with Luky Oktaviana, the Operational Admin of PT Carefastindo, who said that the amount of wages given by PT Carefastindo as an employer to outsourced cleaning service workers at client sites that work with PT Carefastindo per month only reaches IDR 2,700,000. From this, it can be understood that the wage of outsourced workers of PT Carefastindo of only IDR 2,700,000 per month is far below the city minimum wage payment that should be given to these workers.

Nevertheless, there is a particular problem complained about by workers whose wages are below the city minimum wage. There are several other workers whose wages are adjusted to the city minimum wage, with the same workplace and workload as the workers whose wages are below the city minimum wage. This inequality and injustice has become a topic of discussion among the cleaning service workers. Payment of wages in accordance with the city minimum wage is significantly valuable for cleaning service workers to fulfill their daily needs, especially for those with families. Payment of wages in accordance with the city minimum wage may motivate these workers to be passionate about working in the workplace.

Based on the results of the interview above, it can be comprehended that the rights of outsourced cleaning service workers at PT Carefastindo Surabaya are in accordance with the applicable law, which is Government Regulation in Lieu of Law No. 2/2022 on Job Creation or Wages. Several matters that become the rights of workers are:

1. Right to Work

The right to work is also one of the human rights as it is related to the work and the right to life for workers who deserve and become stable for the economy of the workers.

2. Right to Wages

The right to a fair wage is a legal right that shall be received by every worker and demanded by a worker who is bound to a company that has been agreed upon by the worker from the beginning.

3. Right to be Treated Well

Every worker must be treated well and reasonably within the work environment, without any discrimination within the company.

4. Right to Social Security

The right to social security is related to the potential dangers that workers may encounter in the course of their work (P. P. Indonesia, 2022).

The existence of cooperation contracts or work agreements that are below the city minimum wage given to PT Carefastindo's clients is a factor inhibiting PT Carefastindo from providing wages below the city minimum wage to its outsourced workers. Clients who cooperate with PT Carefastindo are unable to provide wages to outsourced cleaning service workers due to their financial incapacity in the aftermath of the pandemic. The implementation of outsourced workers' wages at PT Carefastindo Surabaya East Java itself has followed the implementation, especially regarding the wage policy and the payment of the rights and obligations of cleaning service workers because there are still many irregularities in the implementation of outsourced workers' wages.

This situation comes from the complaints and concerns of outsourced cleaning service workers of PT Carefastindo Surabaya. As an employer, PT Carefastindo Surabaya has yet to be able to provide wages for cleaning service workers based on the city minimum wage. Workers' rights and employers' obligations still need to be fulfilled due to financial constraints and work contracts that are based on the amount given by PT Carefastindo's clients themselves. The implementation of outsourced workers' wages at PT Carefastindo Surabaya does not possess the principle of justice in its implementation, specifically in the attitude and implementation of the policy. The cleaning service workers have performed their obligations, yet their priority rights as workers have yet to be fulfilled as their wages are still below the city's minimum wage.

Elements of Criminal Law in the Implementation of Workers' Wages

The problem of implementing the wages of outsourced workers will be inseparable from the existence of legal elements. Legal elements include a number of rules that apply to outsourcing companies. If, in the implementation of the wages of outsourced workers, it is still found that payments are below the minimum wage, there can be a legal element in the criminal realm against PT Carefastindo. Government Regulation in Lieu of Law No. 2/2022 on job creation states that

employers are obliged to pay workers the minimum wage. There will be criminal consequences that can arise if there is a violation.

The criminal element in the implementation of wages for outsourced workers has been fulfilled and is regulated in Government Regulation in Lieu of Law No. 2/2022 on job creation, which was passed several months ago by the House of Representatives, in Article 88E Paragraph 1, Article 88C Paragraph 1 and Paragraph 2, and also Article 88F. These articles explain that the minimum wage, as referred to in Article 88C Paragraph 1 and Paragraph 2, applies to workers/laborers with a working period of less than 1 year in the company concerned. Article 88F states that in certain circumstances, the government may determine a minimum wage calculation formula that is different from the minimum wage calculation formula, as referred to in the explanation of the rules in Article 88D, Paragraph 2. In addition, the Governor can determine the regency/city minimum wage, as stated in Article 88C Paragraph 2. Determination of the regency/city minimum wage, as referred to in Paragraph 2, is carried out in the event that the results of the calculation of the regency/city minimum wage are higher than the provincial minimum wage is an explanation of Article 88C Paragraph 3. Meanwhile, Article 88C Paragraph 4 explains that the minimum wage, as referred to in Paragraph 1 and Paragraph 2, is determined based on economic and labor conditions. Therefore, PT Carefastindo has fulfilled a number of elements of criminal law due to the implementation of the payment of cleaning service workers' wages below the city minimum wage stipulated in Government Regulation in Lieu of Law No. 2/2022 on Job Creation (Saptohutomo, 2023).

Legal Consequences of the Criminal Law Arising in the Implementation of Wages for Outsourced Workers

A criminal offense is an act of doing certain things with elements of guilt as an act that has been prohibited and shall be punished by criminal punishment. The imposition of criminal punishment against the perpetrator is necessary to maintain legal order and ensure public order. There are several classifications of criminal offenses, including:

1. Crimes

Conceptually, crimes can also be referred to as *rechterdelicht*, which refers to acts that are contrary to justice, regardless of whether the act is punishable by law or otherwise. Despite not being formulated as an offense in the law, this act is an act that is genuinely perceived by the community as an act that is contrary to justice. This type of criminal offense is also commonly referred to as *mala per se*. Acts that can be qualified as *rechterdelicht* include murder, theft, and others.

2. Violations

This type of criminal act is referred to as *wetsdelicht*, which refers to acts that are only realized by society as criminal acts since the law formulates

them as an offense. These acts are only realized as criminal acts by society because the law threatens these acts with criminal sanctions. This crime is also known as *mala qui prohibita*. Actions that can be categorized as *wetsdelicht* include parking a car in an area with a no parking sign, driving a motor vehicle slowly on the right side of the road, and so on.

In its development, the qualitative classification of crimes and offenses as above is generally only accepted sometimes. The rejection of the qualitative classification of criminal acts is motivated by the fact that some crimes are only recognized as criminal acts by the public after they have been formulated in criminal law. Thus, not all crimes are acts that have actually been perceived by the community as acts that are contrary to justice. There are also offenses that have been experienced by the community as acts that are contrary to justice, even though they have yet to be formulated as criminal acts in the law.

It can be understood that in the implementation of the wage payment of outsourced workers at PT Carefastindo Surabaya, there is a violation in the form of payments below the city minimum wage. This action is included in a criminal offense because it violates the rules that apply to the payment of the city minimum wage. Therefore, legal consequences arise in the implementation of the wages of outsourced workers. In criminal law, if an outsourcing company pays workers wages below the city minimum wage, the company may be subject to criminal sanctions as a legal consequence. This is in line with what has been stipulated in Article 185 of Government Regulation in Lieu of Law No. 2/2022 on Job Creation, which applies a criminal rule of imprisonment for 1 year or a fine of at least IDR 100,000,000 and a maximum of IDR 400,000,000. This is as referred to in Article 88E of Government Regulation in Lieu of Law No. 2/2022 on Job Creation which states that companies are prohibited from paying wages lower than the city minimum wage. From this article, it can be interpreted that PT Carefastindo Surabaya is prohibited from paying the wages of its outsourced cleaning service workers lower than the minimum wage, since PT Carefastindo may face the criminal sanctions that were explained previously.

Legal Remedies for Violations Occurring in the Implementation of Wages for Outsourced Workers in the Criminal Law

Employers can also be subject to criminal sanctions if they violate the provisions of wage provision. Article 185 of the Government Regulation in Lieu of Law No. 2/2022 on Job Creation has explained and mentioned that anyone who violates the provisions referred to in Article 88A Paragraph 3 or pays wages lower than the minimum wage may be subject to criminal sanctions of imprisonment for a minimum of 1 year and a maximum of 4 years or a fine of at least IDR 100,000,000 and a maximum of IDR 400,000,000. These criminal acts are included in criminal offenses. Therefore, outsourced workers of PT Carefastindo Surabaya

may report these criminal acts to the police and take criminal legal action against the company or employer.

In addition to criminal law efforts in the form of reporting to the police for criminal violations of wages below the City Minimum Wage, it can also be reported to the labor inspectorate. The authority of the Commitment Making Officer (PPK) as a Civil Servant Investigator (PPNS) is precisely to conduct investigations in the field of labor (similar to the authority of the Police Officer Investigator) as stipulated in Article 182 Paragraph 2 of the Labor Law:

1. Examine the truth of reports and information regarding criminal acts in the field of labor;
2. Conduct examination of persons suspected of committing criminal acts in the field of labor;
3. Seek information and evidence from persons or legal entities concerning criminal offenses in the field of labor;
4. Conduct examination or confiscation of materials or evidence in criminal cases in the field of labor;
5. Conduct examination of letters or other documents regarding criminal offenses in the field of labor;
6. Request the assistance of experts in the context of carrying out the tasks of investigating criminal acts in the field of labor and
7. Terminate the investigation when there is insufficient evidence proving the existence of a criminal offense in the field of labor.

Implementing this authority is undoubtedly challenging since those being supervised are wealthy business owners. With their wealth, business owners may influence various parties in their favor. It is common knowledge that business owners have been spending more for the betterment of their business, either voluntarily or involuntarily. Therefore, in carrying out their roles and functions, Commitment Making Officers and Civil Servant Investigators must possess strong commitment and consistency in performing their supervisory duties. The disappointment with the recent practice of the Industrial Relations Court will force workers to look for alternatives to find justice and legal certainty, especially regarding violations of labor rights as regulated by the law.

Elements of Civil Law Arising in the Implementation of Wages for Outsourced Workers at PT Carefastindo

PT Carefastindo's implementation of wages for outsourced workers is explained in terms of the elements of civil law in addition to the elements of criminal law. In terms of the resulting elements of civil law, the elements of civil law that apply to the findings of the implementation of wages for outsourced workers are Articles 64 and 65 of the Labor Law *jo* Article 66 of the Government Regulation in Lieu of Law No. 2/2022 on Job Creation, which states that an employer or service user may hand over the performance of part of the work to

another company that is a legal entity through a written work agreement. The company that accepts the offer or contractual agreement from the employer company must fulfill the conditions stipulated by the law that the work must be separated from the main activity of the production process, being a subsidiary, not the main activity of the employer's implementation, even though they may not directly impede the production process. It can be understood that supporting activities only help the overall smooth running of the main activities of the production process indirectly. Another obligation of the company is to protect outsourced workers in the event of problems in the provision of work by their employer.

In the element of civil law, the applicable rules regarding the implementation of outsourcing wages and work agreements are in Article 1601 of the Civil Code. In this article, it has been explained regarding the construction arrangements in the contracting of work that will carry out the contract agreement. This article can be summarized into several definitions: first, agreements relating to worker or labor service activities with the service activity itself; second, labor agreements; third, work contracting agreements based on labor service protocols. These three legal constructions function separately from one another. Their existence is regulated in different provisions, such as regarding the importance of regulatory services that are specifically left to the party who wishes to conduct an agreement. The first party wants the second party to carry out the work, and the second party will receive wages/compensation for the performance that has been carried out. For example, the relationship between PT Carefastindo Surabaya and its clients in managing contract agreements and providing work to clients is further regulated by the provisions of Article 1792 of the Civil Code. The relationship between PT Carefastindo Surabaya and its client to enter into a Cooperation contract agreement is in the contract content, which also regulates the wages of the outsourced cleaning service workers.

In the second structure of the employment agreement in the regulation of Article 1601 jo Article 1601a of the Civil Code, there is an agreement between workers who are ordered by the company to work for wages. This structure is different from Law No. 21/1954 on Labor Agreements. In the structure of the law, agreements between workers and laborers only concern labor unions and outsourcing companies instead of agreements between workers and employers.

The third legal construction regarding the work contracting agreement involves the party who contracts the work with a party who contracts the work. The first party demands a work result or performance in accordance with the agreement with the second party. In return, the second party will receive a sum of money as the price of the work contracting. The deadline for the delivery of the work has also been determined in the agreement.

Generally, this work contracting agreement pattern is used for the purpose of constructing a building. However, other works that solely carry out work

contracting are regulated by the provisions of Article 1606 of the Civil Code. However, this provision does not explicitly mention what is classified as part of work contracting, including what parts of outsourcing can be outsourced in the work that will carry out cooperation contracts with other companies. In the end, this provision also depends on the conditions of the two respective parties.

Fundamentally, the law has determined the status of permanent and non-permanent workers, especially for supporting activities that only apply to workers who are not directly related to the main activities. The form of agreement can be made through a specific time work agreement or an indefinite time work agreement made in writing and signed by both parties. The existence of a work contractor or service provider must fulfill certain conditions stipulated in the provisions of Article 66 of the Government Regulation in Lieu of Law No. 2/2022 on Job Creation: First, the implementation of outsourcing work must be separated from the main activities of the production process, and as a main supporting activity; Second, the company that does the work or the company that provides the service must be a legal entity and the agreement between the company that provides the work and the company that does the work or the service must be in written form; Third, the working relationship between the company that does the work or the service and the worker must be regulated in a written work agreement.

If the agreement between the company providing the work and the company contracting the work does not comply with the provisions of Article 65 Paragraph 2 and Paragraph 3 of the Government Regulation in Lieu of Law No. 2/2022 on Job Creation, then by law, the employment relationship between the company contracting the work or service and the worker switches to an employment relationship between the user or employer company and the worker. In addition, the law provides a warning as a starting point for the company providing the work that the change in status has implications for the status of future workers and also stipulates in Article 1320 of the Civil Code regarding the legal terms of the agreement at the time the agreement took place between the parties of the company PT Carefastindo Surabaya with the client and the outsourced cleaning service workers to be obliged to fulfill the contents of the agreement that had previously been agreed upon by the parties respectively in accordance with the applicable rules and the contents of the contract agreement until now.

The implementation of outsourced wages at PT Carefastindo Surabaya has fulfilled the elements of civil law. At the beginning of outsourced workers' work, the company has made a work agreement between the company and the worker. However, PT Carefastindo Surabaya has mentioned that the amount of wages to be received by workers is below the city minimum wage due to the economic conditions in the current Covid 19 pandemic era. In the contents of the contract agreement between PT Carefastindo Surabaya, East Java, and the client company that is working together, the contents of the contract are agreed on the payment of the outsourced workers' wages.

Civil Legal Consequences Arising on the Implementation of Wages for Outsourced Workers at PT Carefastindo

Wage payments below the minimum wage were found in the implementation of wages for outsourced workers at PT Carefastindo Surabaya. Therefore, legal consequences arise for the implementation of outsourced workers' wages in the realm of civil law. The consequences in civil law of agreements arising in the implementation of wages for outsourced workers at PT Carefastindo Surabaya can be null and void. If the company or employer gives a wage that is less than the minimum wage, and this is contained in the work agreement between the two parties, then the agreement can be null and void. This is due to the fact that the objective requirements of the agreement still need to be fulfilled, as the validity of the agreement is contained in Article 1320 of the Civil Code regarding the validity of the agreement. The contents of the agreement regulate wages below the city minimum wage for outsourced cleaning service workers. Therefore, under civil law, the agreement can be null and void. The content of the contract agreement between the client and the outsourced cleaning service workers cannot be re-executed as it violates the applicable legal provisions as explained in the mentioned article (Afifah & Haryanto, 2022).

Civil Remedies Against the Implementation of Outsourced Workers' Wages in the Civil Law

In civil remedies, as in Law No. 4/2002 on Industrial Relations Settlement, the procedures undertaken by the outsourced workers of PT Carefastindo Surabaya to litigate the issue of wages not being paid in accordance with the city's minimum wage and using the rights dispute process, the legal remedies that can be undertaken are as follows:

1. Conduct bipartite negotiations (between workers or workers' unions and employers) in a deliberative manner to reach a consensus;
2. Should the negotiations not come to an agreement within 30 days, one of the workers shall register the dispute with the agency in charge of the local labor department. At this stage, a witness is required to present evidence that bipartite negotiations have been conducted despite the inability to reach an agreement;
3. Since this is a rights dispute, after it is registered with the agency in charge of labor, mediation shall be held;
4. Should mediation still not lead to an agreement, either party may file a lawsuit to the Industrial Relations Court.

The Industrial Relations Court is a special court established in the general judicial environment, which is authorized to examine, hear, and give decisions on disputes over industrial relations. According to Law No. 2/2004 on Industrial Relations Dispute Resolution (PPHI Law), the Industrial Relations Court serves to resolve disputes that occur between employers or groups of employers and workers

or worker unions (S. N. R. Indonesia, 2004). There are several types of cases that can be resolved through the Industrial Relations Court, including the following:

1. Dispute of Rights

A dispute of rights may arise when the employer or company does not provide the rights that have been promised or agreed upon to the employee. This may occur if there are differences in the interpretation and implementation of rights that have been regulated by law, work agreements, company regulations, or cooperation agreements. A dispute over rights may also arise if there is discrimination in the workplace experienced by workers, which then triggers a conflict between the workers and the company. Differences in interpretation or implementation that trigger this conflict can be resolved through the Industrial Relations Court if there is no agreement between the two parties in a familial manner.

2. Dispute of Interest

Disputes of interest in work relations arise when there is disagreement over the creation of or changes to the terms of employment stipulated in a work agreement or collective work agreement. Interest disputes may also occur when company regulations are disadvantageous to workers. Workers may file a lawsuit to the Industrial Relations Court in order for the company to amend the regulation.

3. Dispute of Employment Termination (PHK)

According to Law No. 13/2003 on Labor, termination of employment (PHK) can only be carried out under certain circumstances. For instance, if the worker passes away, reaches retirement age, or commits an offense. Therefore, if the company terminates an employee without these particular conditions, the employee may sue the company through the Industrial Relations Court (Indonesia, 2004).

It can be concluded that the type of case involving outsourced workers of PT Carefastindo is a dispute of rights since the company does not provide the rights that have been guaranteed or agreed upon to the employees, which is the payment of wages below the city minimum wage. This may occur if there are differences in the interpretation and implementation of rights that have been regulated by law, work agreements, company regulations, or collective work agreements. Rights disputes may also arise if there is discrimination in the workplace experienced by employees, which then triggers conflict between employees and the company. Differences in interpretation or implementation that trigger this conflict can be resolved through the Industrial Relations Court if there is no agreement between the two parties in a familial manner.

CONCLUSION

In the implementation of wages for outsourced workers at PT Carefastindo Surabaya, East Java, it is still found that the payment of workers' wages is below the provisions of the City Minimum Wage. Factors causing the payment of workers' wages below the City Minimum Wage include the presence of a Cooperation Contract or Work Agreement given to the client of PT Carefastindo. The client who cooperates with PT Carefastindo does not provide wages for cleaning service workers due to the client's inability to provide financing for the current economic conditions after the COVID-19 pandemic.

The legal aspects arising from the wages of outsourced workers at PT Carefastindo Surabaya may lead to aspects of the realm of criminal law and the realm of civil law. The criminal aspect that arises could be in the form of a criminal act with criminal penalties as stipulated in Article 185 of the Government Regulation in Lieu of Law No. 2/2022 on Job Creation, which applies a criminal rule of imprisonment for 1 year or a fine of a minimum of IDR 100,000,000 (one hundred million thousand rupiahs) and a maximum of IDR 400,000,000 (four hundred million thousand rupiahs). In the realm of civil law, the case of underpayment of workers at PT Carefastindo Surabaya could be sued through the Industrial Relations Court. This case could be categorized as a dispute over the rights of the outsourced workers.

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