



Applying the Principle of Freedom of Contract in the Making of Work Agreement between PT Sumberdaya Dian Mandiri and Outsourcing Workers of PT Bank Mandiri (Persero) Tbk Padang

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Abstract

This study applies an empirical juridical research approach that is more focused on problem solving to examine the implementation of the law from the regulations governing it; especially reviewing the standard agreement documents using the principle of freedom of contract, the consensual principle, and the principle of good faith and propriety which can be concluded from the Articles concerning related agreements, as well as the regulations governing the work agreement of PT Sumberdaya Dian Mandiri regarding the provision of outsourcing services for PT Bank Mandiri (Persero) Tbk Padang. The results of the study show that there is no clear understanding of outsourcing in the Law; but it only contains the provisions of the work agreement, collective labor agreement, worker service agreement, and work contract agreement. However, in this case, the outsourcing work agreement did not apply the full freedom of contract principle in which Nining Sri Rahayu and Regina Aulia Ansori were only asked to sign a work agreement draft prepared by PT Sumberdaya Dian Mandiri. In addition, this agreement had fully implemented a balanced consensual principle in which Nining Sri Rahayu and Regina Aulia Ansori had the choice to accept or reject the contents of the agreement. However, the difficulty in finding a job resulted in Nining Sri Rahayu and Regina Aulia Ansori choosing to sign the agreement. Thus, the rights of outsourcing workers are not fully guaranteed by the outsourcing company.

Keywords: Principle of Freedom of Contract; Work Agreement; Labor

Introduction

The daily practice of outsourcing is considered to be more profitable for employers because of the lack of welfare received by workers in terms of wages received by workers.¹ In addition, the employment relationship is always in the form of a non-permanent/ contract where workers can be terminated at any time if the company considers the worker to be unproductive. The rest,

¹ Elmuti, Dean. "The perceived impact of outsourcing on organizational performance." *American Journal of business* 18.2 (2003): 33-42.

social security (if any) is only within the minimum limit and there is no job security and guaranteed career development for workers/ employees.²

The current trend shows that many agreements in business transactions occur not through a balanced negotiation process between the parties; however, the agreement occurs with one of the parties preparing the standard requirements on an agreement form that has been printed and then presented to the other party for approval.³ It hardly gives any other freedom at all to negotiate the terms offered. Such agreement is called standard agreement or basic agreement.⁴

The presence of a standard agreement is full of ongoing controversy. Many experts who oppose its presence in the treasury of business law even though those who support them are also not small in number.⁵ Large-scale agreements such as leasing agreements, franchises, accounts payable, housing loans, vehicle loans, and consumer financing, will definitely use agreements with the standard model. One reason is that it is practical. However, it is actually more based on efforts to minimize the loss of the agreement maker.

This agreement in the form of a standard agreement is related to the violation of a principle that is highly upheld in the world of agreement; i.e. the principle of freedom of contract (*partij autonomi*).⁶

This principle is the source of the rapid development of treaty law; not only in Indonesia, but also at regional and international levels. Based on the principle of freedom of contract, people may make or not make an agreement. The parties that have agreed to make an agreement are free to determine what may and may not be included in an agreement. The agreement taken by the parties binds them according to the Law (Article 1338 of the Civil Code). The application of this principle provides an important place for the entry into force of the consensual principle, which indicates a balance of interests, the balance of sharing the burden of risk, and the balance of bargaining positions.

1. *Application of the Work Agreement between PT Sumberdaya Dian Mandiri and Outsourcing Employees/ Workers of PT Bank Mandiri (Persero) Tbk*

The agreement that becomes the material of this study is an outsourcing agreement related to the activities of providing and distributing Junior Micro Credit Sales (MKS) 1 of outsourcing junior workers provided by PT Sumberdaya Dian Mandiri. The user of the labor is PT Bank Mandiri (Persero) Tbk, which is located in Padang City and is subject to applicable laws in Indonesia.

Employment relationship that occur in outsourcing practices are different from employment relationship in general, because there is triangular employment relationship in outsourcing.⁷ It is called a triangular relationship because it involves 3 (three) parties in an

² Gennaro, Rosario, Craig Gentry, and Bryan Parno. "Non-interactive verifiable computing: Outsourcing computation to untrusted workers." *Annual Cryptology Conference*. Springer, Berlin, Heidelberg, 2010.

³ Fill, Chris, and Elke Visser. "The outsourcing dilemma: a composite approach to the make or buy decision." *Management decision* 38.1 (2000): 43-50.

⁴ Grefen, P., Ludwig, H., Dan, A., & Angelov, S. (2006). An analysis of web services support for dynamic business process outsourcing. *Information and Software Technology*, 48(11), 1115-1134.

⁵ Halvey, John K., and Barbara Murphy Melby. *Business process outsourcing: Process, strategies, and contracts*. John Wiley & Sons, 2007.

⁶ Suharnoko, *Legal Agreement*, Prenada Media Group, Jakarta, 2004, page 3

⁷ Gallie, Duncan, et al. "Restructuring the employment relationship." *OUP Catalogue* (1998).

outsourcing employment relationship which includes the employer, the service provider/ the recipient of the work and the workers/ laborers. Since it is triangular, the employment relationship between the three is the employment relationship between the employer and the service provider company and the employment relationship between the service provider company and the workers/ laborers. The employer company is only bound to fulfill the obligations of the service provider company and vice versa. Therefore, under normal circumstances, the employer company is not responsible for fulfilling the rights of workers/ laborers unless the violation of the terms and conditions of outsourcing occurs. The party that is directly responsible for fulfilling the interests and rights of workers/ laborers is a service provider company, because it is bound by a work agreement with its workers/ laborers.

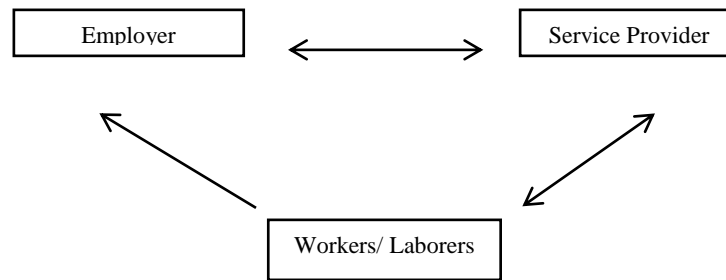


Figure 1. Chart of Outsourcing Employment Relationship

According to Khairani, the purpose of this statement requires the existence of an employment relationship between the service provider company and workers who will work in the employer company made in written form. The form of the employment relationship can be in the form of a work agreement that is non-specified in time and/ or work agreement that is specified in time provided that the conditions specified in Article 59 of Law No. 13 of 2003 are fulfilled.⁸ Then, Article 66 paragraph (2) can cause uncertainty in the relationship between the worker and the employer and/ or the relationship between the worker and the service provider company because each can throw responsibility for the worker. According to Khairani, in the employment service agreement, employment relations actually apply between workers and employers (users of service workers) not with service providers, because those who provide jobs, orders and wages are companies that use services for workers; not the company that provides workers.⁹ Moreover, in Article 1 No. 15, the employment relationship between service provider company and outsourcing workers does not fulfill the elements of work, orders and wages because the service provider company only has the authority to govern and pay wages; meanwhile, the work belongs to the employer. So, there is an inconsistency between Article 66 paragraph (2) and Article 1 No. 15. If this inconsistency is continued, it can cause uncertainty for employers and workers.¹⁰

Supporting jobs whose work can be submitted to service provider companies include:

- a. Cleaning service business;
- b. Business of providing food for workers (catering);
- c. Security business (security/ security unit);

⁸ *Ibid.*, page 255

⁹ *Ibid.*, page 257

¹⁰ Nova Asmirawati, 2011, *Outsourcing Workers in the Manpower Law, Indonesian Legislation Journal*, Accredited, Jakarta, Directorate General of Laws and Regulations of the Ministry of Law and Human Rights of the Republic of Indonesia, Vol.8 No.3 September 2011, page 385-386.

- d. Business in mining and petroleum support services; and
- e. Business in providing transportation for workers/ laborers.

Meanwhile, in cases raised by the author, services whose work is submitted to the service provider company are Junior Marketing. This is not in accordance with Minister of Manpower Regulation No. 19 of 2012. Article 66 of the Manpower Act does not explain in detail what types of business support in a company, so the employer company itself decides whether certain activities in the company are the main activities or supporting activities. The authority to decide on supporting activities should be carried out by an independent institution or tripartite institution in employment so that the flow of activities that draw supporting activities and main activities is more objective.

Then Article 19 paragraph (1) of the Minister of Manpower Regulation No. 19 of 2012 states that the agreement for the provision of workers/ laborers services must at least contain the type of work to be carried out by workers/ laborers from the workers' service provider company. In addition, paragraph (3) states that the employment relationship between the company providing the services of workers/ laborers and the employed workers/ laborers is based on a non-specified time work agreement or a specified time work agreement. This provision is in line with Article 15 which states that the working relationship between the recipient company is contractor and the workers/ laborers can be based on a non-specified time work agreement or a specified time work agreement. However, this is contrary to the Decision of the Constitutional Court No. 27/PUU-IX/2011 which states that employment relationship may not be based on a specified time work agreement if the work is not in accordance with Article 59 of the Manpower Law.¹¹ For this reason, it is necessary to synchronize regulations to protect the parties involved, especially workers/ laborers.

Thus, the employment relationship does not harm one party, especially labor, Article 65 paragraph (6) and paragraph (7) of Law No. 13 of 2003 concerning Manpower regulates that employment relationship in the pattern of outsourcing must be a written work agreement between labor and labor service providers, which is based on a non-specified time work agreement or a specified time work agreement that meets the requirements of Article 59 of Law No. 13 of 2003, as follows:

- a. A specified time work agreement can only be made for certain jobs which according to the type and nature of the work will be completed in a certain time, as follows:
 - 1) Jobs that are completed immediately or temporarily.
 - 2) The work for completion is estimated to be not too long and no later than 3 (three) years.
 - 3) Seasonal work.
 - 4) Jobs related to new products, new activities or additional products that are still under trial or exploration.
- b. Specified time work agreement cannot be held for work that is permanent.
- c. Specified time work agreement can be extended or renewed.

¹¹ *Ibid.*

- d. Specified time work agreements based on a certain period of time can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year.
- e. Employers who intend to extend the specified time work agreement, no later than 7 (seven) days before the specified time work agreement ends, have notified the intent in writing to the workers/ laborers concerned.

Based on the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, it must fulfill the following 4 elements:

- a. The agreement of both parties; i.e. between PT Sumberdaya Dian Mandiri and Nining Sri Rahayu and Regina Aulia Ansori which are written in a specified time work agreement.
- b. The object which is agreed upon; i.e. work.
- c. Ability or skill in carrying out legal actions.
- d. Employment does not contradict public order, decency, and applicable laws and regulations.
Based on Article 66 of Law No. 13 of 2003, it is explained that:

- a. Employers may not use workers/ laborers from companies of service providers of workers/ laborers to carry out basic activities or activities that are directly related to the production process, except for supporting service activities or activities that are not directly related to the production process. In this case Nining Sri Rahayu with the Identity Card number 1307095012920001 and Regina Aulia Ansori with the Identity Card number 1312056802950005, as workers, assigned by PT Sumberdaya Dian Mandiri as a Junior Micro Credit Sales (MKS) 1 at PT Bank Mandiri (Persero) Tbk. This Junior MKS 1 has the task of assisting Senior MKS in carrying out their duties including:

- 1) Carrying out marketing activities,
 - a) Observing and mapping the potential of micro-businesses that can be funded around the environment/ work area of micro networks.
 - b) Conducting coordination with the lower level MKS to set marketing targets based on micro business potential maps and directives from the Micro Mandiri Manager (MMM) network manager to Mayapada Business Partner (MMU).
 - c) Exploring information about the characteristics, behavior and habits of micro-businesses in the environment around micro networks from various sources such as market managers, local environmental administrators, merchant associations, etc.
 - d) Looking for and prospecting prospective debtors that are feasible to be financed, by prioritizing business sectors that are well known and understood in order to achieve the predetermined credit marketing targets.
 - e) Collecting the required and complete data/ documents for the credit application process which consists of three main things: debtor data (ID Card, Family Card, Marriage Certificate, Bank Indonesia ID), business data (Business Permit, sales data) and collateral data.

- 2) Investigation and initial verification of prospective debtors,
 - a) Conducting initial investigations and verification that includes: (a) investigating and verifying prospective debtors and documents (believing the truth of prospective debtor information and document compliance including: residence, business location, etc.); (b) investigating and verifying sources of income, business and ability to pay; (c) investigating and verifying collateral includes ownership, existence, value and supporting documents.
 - b) Giving recommendation and proposing micro credit applications submitted by prospective debtors, based on the results of the investigation and initial verification carried out on the prospective debtor above.

- 3) Administration,
 - a) Maintaining a list of all managed debtors and managed MKS under their supervision.
 - b) Documenting the managed debtor based on the due date with minimum information including credit limit, time period, monthly installment amount, address and telephone number as a guide in managing the portfolio.
 - c) Providing periodic reports to Micro Mandiri Manager (MMM) for the condition and development of the micro credit portfolio and its problems to become material for MMM evaluation.
 - d) Carrying out special tasks given by superiors.

- 4) Fostering good relationship with the debtor
 - a) Fostering debtors in order to be disciplined in managing their income, by routinely setting aside a portion of their income to save at Bank Mandiri as a source of payment for credit installments.
 - b) Maintaining good relationship with customers managed to determine the development of the debtor's business, knowing earlier the possibility of credit risk, exploring the business development of the debtor concerned and exploring the business development of the debtor's business environment.
 - c) Performing routine monitoring of debtors that will approach the due date by checking the savings balance.
 - d) Reminding the debtor regularly of installments/ obligations before the due date.
 - e) Conducting billing actively

- b. Provision of workers' services for supporting service activities or activities that are not directly related to the production process must meet the following requirements:
 - 1) It has an employment relationship between workers/ laborers and workers/ laborers service provider companies.
 - 2) The work agreement that applies in the employment relationship as referred to in letter (a) is a specified time work agreement that meets the requirements referred to in article 59 and or a written non-specified time work agreement which is signed by both parties.
 - 3) Wage and welfare protection, work conditions, and disputes that arise are the responsibility of the workers' service provider. In the specified time work agreement between Nining Sri Rahayu and Regina Aulia Ansori with PT Sumberdaya Dian Mandiri, it was explained that the wages received were IDR 2,250,000 with an income tax of 21% borne by PT Sumberdaya Dian Mandiri and the wages were paid at the end of the month. The amount of wages given to workers is not regulated in the Act. However, in Padang

City alone, the minimum wage in 2018 is IDR 2,100,000. Thus, PT Sumberdaya Dian Mandiri provides wages above the minimum wage in Padang City.

In addition, Nining Sri Rahayu and Regina Aulia Ansori also received uniforms and other work facilities but the number of uniforms obtained was not the same as that of other employees or employees at Bank Mandiri due to Nining Sri Rahayu's status and Regina Aulia Ansori as outsourcing employee. Nining Sri Rahayu and Regina Aulia Ansori admitted that sometimes this had caused controversy within themselves because they felt they were being treated unfairly. However, laws and regulations did not explain in detail the wages and work facilities that should be obtained. Thus, this is indeed an agreement between workers and labor provider companies and companies that use the labor services.

- 4) The agreement between the company of the user for worker/ laborer services and other companies acting as companies providing workers/ laborers services is made in written form and must contain the articles referred to in this Law.

The employment relationship between Nining Sri Rahayu and PT Sumberdaya Dian Mandiri is regulated in a specified time work agreement (PKWT). The specified time work agreement made by PT Sumberdaya Dian Mandiri is a form of a standard agreement. Based on interviews conducted with Nining Sri Rahayu and Regina Aulia Ansori, PT Sumberdaya Dian Mandiri gave the agreement paper which contained formal provisions ready to be signed.

In the agreement, there are 13 articles that must be adhered to by both parties; i.e. Nining Sri Rahayu and Regina Aulia Ansori and PT Sumberdaya Dian Mandiri. The worker/ laborer service provider is a form of business that is legally incorporated and has permission from the agency responsible for employment.

- c. If the provisions referred to in paragraph (1), paragraph (2) letters (a), letters (b), and letters (d) and paragraph (3) are not fulfilled, then based on the law, the status of the employment relationship between workers/ laborers and companies of worker/ laborer service provider turns to an employment relationship between workers/ laborers and employers.

An agreement takes place based on the principle of freedom of contract between two parties who have a balanced position. Both parties try to reach an agreement needed for the occurrence of this agreement through a negotiation process between them.

However, the trend shows that many agreements in business transactions occur not through a balanced negotiation process between the parties. However, the agreement occurred that one of the parties had prepared standard conditions on an agreement form that had been printed and then offered to the other party to be approved with almost no freedom at all for the other party to negotiate the offered terms. Such agreement is called standard agreement or basic agreement or adhesion agreement.

In the principle of freedom of contract there are 4 (four) kinds of freedom which consist of:

- a. Freedom for parties to make or not to make an agreement.

This freedom implies that outsourcing workers are free to make or not make an agreement; there is no compulsion for them to make or not to make an agreement. However, the difficulty in getting a job made this outsourcing worker directly contract the standard agreement. Based on data from the Provincial Statistics Agency of West Sumatra in 2017, in the past year, unemployment in West Sumatra increased by 12.8 thousand people and the main employment

status was the largest number of workers/ laborers/ employees as much as 31.75 percent. It was followed by a business status of as much as 22.75 percent, businesses assisted by temporary workers/ unpaid workers were 15.95 percent, and family workers were 12.45 percent.

Based on these data, it encourages employers to make standard agreements without negotiation. If the outsourcing worker is not willing to accept the agreement, there are tens of thousands of people who will replace them. This is what made Nining Sri Rahayu and Regina Aulia Ansori willing to sign that specified time work agreement.

b. Freedom to determine with whom the workers will enter into an agreement.

The Civil Code and other statutory provisions do not prohibit a person from making an agreement with any party he/ she wishes. The Law (the Civil Code) only determines that certain people are incapable of making agreements as stipulated in Article 1330 of the Civil Code. Therefore, a worker is free to determine with whom he/ she will enter into an agreement.

c. Freedom for parties to determine whether to have agreements with certain forms or not.

Generally, an agreement is bound to a certain form. The agreement is made in two forms: written and oral forms. A specified time work agreement between PT Sumberdaya Dian Mandiri and Nining Sri Rahayu and Regina Aulia Ansori is in the form of a written agreement that binds both parties. If disputes occur, written agreements can easily be used as evidence.

d. Freedom for parties to determine the content, enforceability and terms of the agreement.

Juridically, the existence of a standard agreement is still questionable because there are still parties who agree with the agreement but there are also those who reject the agreement. Based on interviews with outsourcing workers/ employees of PT Bank Mandiri (Persero) Tbk Padang, Nining Sri Rahayu and Regina Aulia Ansori, there was no negotiation process before making the employment agreement. In this case, the principle of freedom of contract does not apply to the making of an outsourcing work agreement.¹² Outsourcing company, PT Sumberdaya Dian Mandiri offers workers a letter that contains the provisions of work along with articles that must be carried out by workers/ employees along with what rights will be received by workers/ employees. Furthermore, the last article describes the termination of employment or dismissal of employment. If the workers/ employees are interested and are willing to comply with the stipulated conditions, the passed workers/ employees can immediately sign a work agreement and can work directly with the company PT Bank Mandiri (Persero) Tbk Padang.

According to Nining Sri Rahayu and Regina Aulia Ansori, the agreement is indeed very helpful in making it easier to get a job to support the family. However, on the other hand, many of their rights are not fulfilled by labor service providers. The outsourcing workers can only remain silent and are forced to accept the conditions given by the employer company because they need the job. Then, these outsourcing workers can be terminated at any time if the company—that they work for—does not need them anymore because there is no clear employment agreement for these outsourcing workers. If at any time there are problems, these outsourcing workers can be dismissed unilaterally by the service provider company.

It was clearly seen that the principle of freedom of contract was not fully implemented in the agreement made between PT Sumberdaya Dian Mandiri and Nining Sri Rahayu and Regina

¹² Interview with Nining Sri Rahayu and Regina Aulia Ansori, on February 1, 2018 and March 10, 2018 at the office of PT Bank Mandiri, (Persero) Tbk Padang

Aulia Ansori because PT Sumberdaya Dian Mandiri only offered the contract to those outsourcing workers who were only required to choose whether to accept or reject contents of the contract. In addition, Article (5) paragraph (3) concerning a specified time work agreement states that: “if on the assessment of the FIRST PARTY or on the USER COMPANY’s proposal it turns out that the SECOND PARTY does not fulfill one or several or all points in paragraph 1 of this article, so, based on this AGREEMENT, THE FIRST PARTY is unilaterally entitled to terminate employment with the SECOND PARTY”. The first party is PT Sumberdaya Dian Mandiri and the second party is Nining Sri Rahayu, a company that uses outsourcing services; in this case, PT Bank Mandiri (Persero) Tbk. It is the same as the contract that applies to Regina Aulia Ansori.

Implementation of agreements, which is made by default by one party, often creates problems. So, when a problem arises after it is implemented, the aggrieved party only questions whether this agreement fulfills the consensual requirements based on article 1230 of the Civil Code Law No. 13 of 2003 or even the standard conditions are canceled automatically.

Purwahid Patrik states that if someone has signed an agreement, then he/she agrees with what is stated in the agreement.¹³ Similarly, Munir Fuady stated that the signing of an agreement means that the parties have agreed to the contents.¹⁴

Trietel in Purwahid Patrik says that someone who signs an agreement is bound by promises even though he/ she does not read it.¹⁵ If someone affixes a signature to the standard agreement letter, the signature evokes a sense of trust that the signed person knows and wants the contents of the agreement he/ she signed because it is not possible for someone to sign what he/ she does not know.

For this reason, based on the description above, it is “reasonable” if PT Sumberdaya Dian Mandiri considers that after the signing of the agreement by both parties, the agreement becomes valid and binding. With the signing, Nining Sri Rahayu and Regina Aulia Ansori agreed with all the terms and conditions governing the agreement which included wages and other incentives, working hours, obligations, and other matters stipulated in the agreement. Therefore, a balanced consensual principle was created when the agreement took place because at the time of signing the contract, Nining Sri Rahayu and Regina Aulia Ansori could choose to accept or reject the contents of the work agreement at that time. Thus, no party is in a weak position. Initially, the outsourcing system was expected to overcome the problem of unemployment in Indonesia and be able to provide welfare to the community. However, it actually raises new problems due to the lack of clarity in the outsourcing system in regulating rights and the absence of the application of the principle of freedom of contract in making work agreement between employers and their workers. The work agreement is standard and the party that receives the job (outsourcing worker) must follow and comply with all agreements that have been established by the employer.

¹³ Purwahid Patrik, *Principle of Good Faith and Compliance in the Agreement*, Publishing Agency of Diponegoro University, Semarang, page 38, 1986.

¹⁴ Munir Fuady, *Contract Law from the Viewpoint of Business Law*, Second Book, Citra Adiya Bhakti, Bandung, page 89.

¹⁵ Purwahid Patrik, *Op. Cit.*, page 45

2. *Rights of Workers in Accordance with the Provisions Contained in Law No. 13 of 2003 Concerning Manpower*

Rights and obligations describe a legal relationship between workers and companies where both parties are jointly bound in a mutually agreed work agreement. Meanwhile, the existing legal relationship is between outsourcing companies and employers, in the form of work provision agreements. Employer companies with workers do not have a direct employment relationship. The employment relationship that occurs is the employment relationship between the outsourcing workforce and the outsourcing company, and outsourcing workers should use the rules of the outsourcing company, not the rules of the employer company.

In addition, the rights and obligations of outsourcing workers, with the provision of specified time work agreement in its implementation between PT Bank Mandiri (Persero) Tbk and PT Sumberdaya Dian Mandiri, are as follows:

- a. The outsourcing workers' rights of Junior Micro Credit Sales from PT Bank Mandiri (Persero) Tbk Padang, as the employer, include the following:
 - 1) In the period of validity of this agreement, outsourcing workers have the right to obtain twelve (12) days of annual leave after working continuously for twelve (12) months with full wages, this leave arrangement is regulated in Article 7 of a specified time work agreement.
 - 2) Outsourcing workers are entitled to wages.

Article 6, concerning remuneration and other facilities, states that the second party or outsourcing worker has the following rights:

- a) **Monthly Basic Salary**

PT Sumberdaya Dian Mandiri will pay wages to Nining Sri Rahayu and Regina Aulia Ansori for IDR 2,250,000 per month paid at the end of the month. The amount of this wage is above the minimum wage in Padang City. Thus, Article 88 paragraph (3) of Law No. 13 of 2003 states that wage policies that protect workers include the minimum wage. Moreover, in accordance with Article 89 paragraph (1) letter a, the minimum wage is determined based on the province or regency/ city.
- b) **Uniforms and Work Facilities**

In Article 6 related to a specified time work agreement, it is explained that it is recommended to use work safety equipment/ work facilities related to work and in accordance with the applicable provisions of PT Bank Mandiri (Persero) Tbk. Therefore, PT Sumberdaya Dian Mandiri will provide the facility of which Nining Sri Rahayu and Regina Aulia Ansori are required to use it. Based on the results of the interview, Nining Sri Rahayu and Regina Aulia Ansori received Bank Mandiri uniforms, but there were not as many as permanent employees/ laborers.
- c) **Overtime Pay**

In Article 2 related to a certain time work agreement, it was explained that PT Sumberdaya Dian Mandiri would assign Nining Sri Rahayu and Regina Aulia Ansori to work outside the provisions of paragraph 1 of this Article (if necessary). In addition, as compensation for overtime work, Nining Sri Rahayu and Regina Aulia Ansori would receive overtime pay in accordance with applicable regulations. Yet, in its implementation, this overtime pay was never paid.

d) Social Security for Workers

In accordance with Article 99 of Law No. 13 of 2003, it is explained that every worker/ laborer and his/her family have the right to obtain labor social security carried out in accordance with the applicable laws and regulations. Meanwhile, the Social Security for Workers in specified time work agreement is explained in Article (6) letter c; in this case, PT Sumberdaya Dian Mandiri insured Nining Sri Rahayu and Regina Aulia Ansori in accordance with the standards stipulated in Law No. 24 of 2011 concerning the Social Security Management Agency which included Accident Insurance, Life Insurance, And Pension Plan.

Accident Insurance and Life Insurance Contributions were borne by PT Sumbedaya Dian Mandiri, while Pension Plan Contribution of 2% and Social Security Agency (BPJS) contribution of 1% were borne by Nining Sri Rahayu and Regina Aulia Ansori.

e) Religious Holiday Allowance

In Article 6 letter d related to a specified time employment agreement, it is explained that PT Sumberdaya Dian Mandiri will pay a holiday allowance for employees whose amount is determined in accordance with applicable labor provisions. In accordance with Article 100 paragraph (1) and (2) of Law No. 13 of 2003, it is explained that employers are obliged to provide welfare facilities that are implemented taking into account the needs of workers/ laborers and the size of the company's ability. According to the author, this holiday allowance is a form of facility given to workers at PT Bank Mandiri (Persero) Tbk to improve the welfare of workers/ laborers.

b. Obligations of outsourcing Junior Micro Credit Sales workers to PT Bank Mandiri (Persero) Tbk Padang, as an employer company, among others, as follows:

1) Complying with the applicable work rules,

2) Carrying out work with all the maximum capabilities,

In Article 8 paragraph (2) related to the specified time work agreement, it was explained that Nining Sri Rahayu and Regina Aulia Ansori were fully responsible for the smooth running of the duties and the work provided by PT Sumberdaya Dian Mandiri in accordance with the job description as mentioned in Article 1 paragraph (5) this particular work agreement.

3) Upholding good relationship with PT Bank Mandiri (Persero) Tbk and PT Sumberdaya Dian Mandiri,

4) Replacing material damage and financial losses suffered by PT Sumberdaya Dian Mandiri as a result of negligence and carelessness that they did.

It is explained in Article 8 paragraphs (3) and (4) related to specified time work agreement that Nining Sri Rahayu and Regina Aulia Ansori are fully responsible personally if they make a deviation or violation of the applicable provisions that have been determined in accordance with the agreement.

Based on the results of analysis related to the contract in which there are rights and obligations of workers/ laborers in accordance with the applicable laws and regulations, the results of interviews with several outsourcing employees at PT Bank Mandiri (Persero) Tbk in

collaboration with PT Sumberdaya Dian Mandiri found several problems that were complained by the outsourcing workers, as follows:

a. The lack of wages that workers receive

Based on the results of interviews with several outsourcing workers at PT Bank Mandiri (Persero) Tbk, they explained that they had to work according to their assigned responsibilities and targets; as well as other employees who are not outsourcing workers. In fact, they claimed that the tasks they carried out were better than other employees, but the salaries/ wages obtained were far smaller than other employees. This of course must be a concern for the government and the Ministry of Manpower. According to Article 88 paragraph (1) of Law No. 13 of 2003, it is mentioned that every worker/ laborer has the right to obtain income that meets a decent living for humanity.

b. Job security is not guaranteed

The outsourcing agreement uses a specified time work agreement. Someone worker with a specified time work agreement one day his/ her work relationship will break (not fixed). Thus, continuity of work becomes a problem for outsourcing workers because of the possibility of layoffs at any time. Those outsourcing workers can also be appointed as a permanent employee if they are promotion by the company where they work; in this case, PT Bank Mandiri (Persero) Tbk Padang. However, the appointment was also not necessarily. There can also be no appointment at all. Everything is based on company needs.

Article 66 paragraph (2) letter c states that “wage and welfare protection, work conditions, and disputes arising are the responsibility of the worker service provider companies”. Protection for workers (Nining Sri Rahayu and Regina Aulia Ansori) was handed over to worker service providers (PT Sumberdaya Dian Mandiri). Then, the worker will do work at the employer’s place (PT Bank Mandiri (Persero) Tbk) while the one responsible to them is another company (PT Sumberdaya Dian Mandiri). It creates difficulties for protection for the outsourcing workers.

c. Rights that are less protected

Outsourcing workers are not permanent employees. So, companies using outsourcing services do not have full responsibility for outsourcing workers. Article 1 number 15 of Law No. 13 of 2003 states that employment relationship is relationship between employers and workers/ laborers based on a work agreement which contains the elements of work, wages, and orders. Furthermore, Article 50 states that labor relations occur because of the employment agreement between employers and workers/ laborers.

Meanwhile, in the outsourcing system, there is only work between employers and workers. There are only wages and orders to do work between service providers and workers. So, the three elements in a work relationship are not fulfilled because the relationship between workers and employers occurs indirectly because they have to go through a service provider company. Then, in the outsourcing employment relationship, the legal relationship between the employer company and the employee is not so clear because it must first establish a legal relationship between the employer company and the contracting company and/ or with a service provider company. The lack of clarity in the employment relationship has caused difficulties to protect the rights of outsourced workers.

Regarding the specified time work agreement and outsourcing workers, Article 1 paragraph (2) states that, “The SECOND PARTY understands and agrees that the SECOND PARTY cannot sue the FIRST PARTY and/ or USER COMPANY to appoint them as the USER

COMPANY's worker where the SECOND PARTY is placed". Based on the statement of the Article, we can see the obscurity of the outsourcing system in regulating rights and the absence of the application of the principle of freedom of contract in making work agreements between employers and their workers. The work agreement is a standard in which the party that receives the job (outsourcing workers) must follow and comply with all agreements that have been determined by the employer without the intervention of the FIRST PARTY.

Other rights that appear to be blurred in specified time work agreement with outsourcing workers are that the rights of the outsourcing workers are not respected by others. Meanwhile, the responsibility for losses arising from termination of employment is fully borne by the outsourcing workforce. Article 5 paragraph (3) should state that "if upon the assessment of the FIRST PARTY or upon the USER COMPANY's proposal, the SECOND PARTY does not fulfill one or all of the points in this article, then based on this AGREEMENT the FIRST PARTY has the right to terminate employment with THE SECOND PARTY".

In Law No. 13 of 2003 concerning Labor, it is stated that the agreement ends if:

- Worker passes away
- The term of the work agreement ends
- The existence of court decisions and/ or decisions or establishment of industrial relations dispute resolution institutions that have permanent legal force.

- d. There are certain circumstances or events that are included in work agreements, company regulations, or collective labor agreements that can lead to the end of the employment relationship.

Based on the description above, the author concluded that the review of the results of the research on Article 6 paragraph 1 letters (a) and (b) is contrary to the provisions stated in Article 5 paragraph (3) of the agreement. The article argues that outsourcing companies did not respect the rights of workers and do not provide definite guarantees regarding the rights of outsourcing workers in accordance with the provisions stipulated in Law No. 13 of 2003 concerning Manpower.

Closing

1. Conclusions

Based on the description of the research results and discussion, the following conclusions can be drawn:

- a. The implementation of the agreement between PT Sumberdaya Dian Mandiri and outsourcing workers at PT Bank Mandiri (Persero) Tbk Padang; i.e. Nining Sri Rahayu and Regina Aulia Ansori applied a balanced consensual principle. At the time of signing the agreement, outsourcing workers are given the freedom to accept or reject the contents of the agreement. In addition, PT Sumberdaya Dian Mandiri also did not force the will of Nining Sri Rahayu and Regina Aulia Ansori to accept the contents of the agreement. For this reason, when signing a specified time work agreement, there is no weaker party between the two parties. They can choose to accept or reject the agreement. However, at the signing of the agreement, PT Sumberdaya Dian Mandiri only offered papers containing provisions relating to work to Nining Sri Rahayu and Regina Aulia Ansori. So, they cannot negotiate the contents of the agreement. Nining Sri Rahayu and Regina Aulia Ansori were not given the freedom to

negotiate the contents of the agreement which might benefit them more. Therefore, the principle of freedom of contract is not fully applied in that specified time work agreement; however, it has applied a balanced consensual principle.

- b. Rights and obligations show the legal relationship between the company and its workforce, in which both parties are jointly bound in a work agreement agreed upon together. The rights and obligations contained in the contractual agreement between PT Sumberdaya Dian Mandiri and Nining Sri Rahayu and Regina Aulia Ansori (Specified Time Work Agreement) are in accordance with Law No. 13 of 2003. It states that workers' rights are matters of leave, basic salary, facilities employment, overtime wages, labor social security and religious holiday benefits. Meanwhile, the obligation of workers is to comply with established work regulations, carry out work with all their abilities, uphold good relations, and replace material damage and financial losses caused by workers.

However, in its application, the rights of outsourcing workers are not fully guaranteed by outsourcing companies; for instance, overtime pay that is not paid, some of the problems complained by outsourcing workers are related to the minimum wages they get, unsecured job security, and less protected rights. It happened due to the existence of a work agreement and a vague regulation about this agreement. Therefore, attention from the government is needed to improve the welfare of outsourcing workers.

2. Suggestions

Therefore, the suggestions given by the author after analyzing this research are as follows:

- a. Suggestion for future researchers

Researchers can then consider increasing the number of research samples and can compare procedures between several outsourcing companies.

- b. Suggestion for service providers

In conducting work agreement between workers/ laborers and service providers, it is necessary to pay attention to the contents of the agreement and put forward the principle of freedom of contract. The service provider should be fully responsible for the contents of the agreement.

- c. Suggestion for the government

The government is expected to be able to improve regulations related to outsourcing work agreement so that weaknesses in the previous regulations can be minimized and every right of the parties concerned can be protected. There are three interests that must be considered in making legal rules to encourage the creation of a conducive situation. The first interest is from the point of view of the worker. For workers, guaranteeing the basic rights of workers can be carried out maximally if the state can reduce interference that limits the freedom of workers in association. The state must create a mechanism by which a rule of law can realize the principle of equality between workers and employers. It is, for example, the equal rights to access information to improve the quality of workers and trade unions in negotiations. The second interest is entrepreneurs. For entrepreneurs, business continuity and market orientation are basic interests. The creation of good governance, security guarantees, and law enforcement will change the attitude of more open entrepreneurs to accept trade unions as business partners. The third interest is the country that has an orientation to improving people's welfare and security.

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Interview

Interview with Nining Sri Rahayu and Regina Aulia Ansori, on February 1, 2018 and March 10, 2018 at the office of PT Bank Mandiri, (Persero) Tbk Padang.

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