

## LEGAL ISSUES ON OUTSOURCING COMPANY WITH ITS EMPLOYEE IN GETTING HIGH SALARY AT PT TIARA GADA PRATAMA, MEDAN, INDONESIA

**Humala Sitinjak**

Simalungun University (USI), Medan, Indonesia

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**ABSTRACT:** *Company ethics concerns the relationship of the company and its employees as a whole with its environment, while the work ethics associated between the company and its employees, and the individual ethics governs the relationships among the employees. companies are now recruiting their workers through a company of labor services provider or better known as outsourcing. Learn more about work systems of outsourcing. Lately some companies that use services outsourcing are increasing so that the word 'outsourcing' is familiar in our ears. Unfortunately, there are still many worker candidates who do not understand correctly, what is exactly meant with the outsourced workers. The dispute between PT Tiara Gada Pratama and its employees actually can be solved well as long as there is a good communication between the employees and the company.*

**KEYWORDS:** Legal Issue; Outsourcing; Employee; Salary

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### INTRODUCTION

In the conceptual framework of business ethics there is an understanding of company ethics, work ethics and individual ethics, which concerns the social relationships among companies, employees and the environment. The company ethics concerns the relationship of the company and its employees as a whole with its environment, while the work ethics associated between the company and its employees, and the individual ethics governs the relationships among the employees.

The problems of ethics are complex, scattered in various disciplines. In this case the company, in its survival faces various influences both from outside and inside the company. From inside the company is associated with the employees, especially how the implementation of ethics relationship with the rights and obligations of the employees to the company and vice versa.

If an employee works in a company, he must have loyalty to the company. He must support the goals and the vision-mission of the company. An employee who moves around the job in the hope of earning a higher salary is considered less ethical because he is only oriented on material. He has no real dedication to the company where he works. So some companies consider this action as a less ethical act and even more extremely, they consider this action as an immoral act. After the liability of the employee to the company has been described above, it is time to discuss the liability of the company to its employees. Besides assigning the responsibilities to the employees with various tasks related to the company, the company is obliged to provide what the employee deserves.

Discrimination in a company is to differentiate the employees for irrelevant reasons, based on prejudice or stereotypes. The discrimination can happen when the recruiting of an employee candidate, promotion, or job description.

In a company, discrimination behavior is considered unethical because it will harm the company, because it does not focus on the capacity and the ability of the employee candidates, but on other factors. The company will lose its competitiveness because it is not supported by experienced personnel. A clean, healthy, and comfortable workplace can have a positive effect and increase productivity in working. Meanwhile work safety is realized with a safe workplace and in accordance with safety standards that have been determined. Besides for self development, it make a useful contribution to the community, one's motivation to work is to get a wage or salary. There are several views on the fair sharing of rewards:

- a. Liberalistic view: fair reward is if it is adjusted for employee performance in the company.
- b. Socialistic View: fair remuneration if it suits the needs of the employees and their families.

According to Thomas Garrett and Richard Klonoski argue that there are six points to be considered in setting a salary, including:

- a. Legal Regulation: fair wage granting is in accordance with applicable law, e.g. legal minimum wage provisions.
- b. A decent wage: average salary is given equal to the minimum wage.
- c. A firm ability: a well-established firm that generates substantial profits must provide a higher salary than a company with a small profit margin
- d. Jobs with special characteristics: workers who perform jobs that require special skills or high risk levels deserve a high salary.
- e. Comparisons with the salaries of other companies: salaries or wages are given by companies by looking at salaries or wages of workers in other similar companies.
- f. Negotiating salaries or wages between workers and companies: direct negotiation between employers and employees is a smart way to determine a fair salary. Surely, the company must be fair when talking about it.
- g. Seniority and secret rewards: It is seniority that arises in payroll in work experience, working period, and loyalty and dedication to the company. But now seniority is not taken into account anymore, but more concern on achievement and rights. Provision of a secret salary from co-workers is considered unethical because it ignores the social control and destroys the working atmosphere.

## LITERATURE REVIEW

### Company

Company is a place of production activity and the gathering of all factors of production. Some companies are listed in the government and some are not. For companies listed in the government, they have a business entity for the company. This business entity is the status of the company which is officially registered in the government.

Type of company based on its business field:

- a. An extractive company which is engaged in natural wealth taking
- b. An agrarian company which works by cultivating land/fields
- c. An industrial company which produces raw and semi-finished materials into finished materials or increase their useful value
- d. A trading company which covers in trading
- e. A service company which is engaged in services

Type of company based on ownership:

- a. A state company which is established and capitalized by the state
- b. A cooperative company which is established and capitalized by its members
- c. A private company which is founded and capitalized by a group of people from outside the company

## **Workers**

Workers, laborers, employees are essentially human beings who use their energy and ability to get a reply in the form of income in the form of money or other forms to the employer or employer or employer. Workers are those who work on individual business and are rewarded daily or wholly in accordance with the agreement of both parties, either oral or written, which are usually provided on a daily basis. Basically, workers, laborers and employees are the same. But in Indonesia labor is always identified as lowly, abusive workers and so on. Meanwhile workers and employees are higher labors and given to the workers who do not use muscle but brain in work, but in essence these words have the same meaning that is the worker. This is in accordance with the Labor Law which is generally accepted for all workers and employers in Indonesia.

According to Law No. 13 year 2003 Chapter 1 Article 1 or 2, manpower is any person who is capable of performing work to produce goods and or services either to meet the needs of themselves or for the community. Manpower is the main capital and the implementation of the development of the Pancasila community. The most important goal of the community development is the people's welfare, including the workforce. Manpower as the executor of the development of shall be guaranteed his rights. PER-04/MEN/1994 states that the definition of manpower is any person who works for a company that is not yet obliged to join the social security program of manpower due to the staging of membership.

In general, the definition of a worker is a person who works for others with a wage. In the context of interest within a company there are two groups, they are the owners and the labor groups, namely the people who are ruled and employed and serve as one component in the production process. In Karl Marx's theory about the more value, it is mentioned that the group that owns and enjoys more value is referred to as the employer and the group involved in the process. The creation of more value is called the laborer.

Labors are different from workers. The definition of workers is more pointed to the process and independent. The workers could work for themselves and self-study as farmers who own their own lands, fishermen who have their own fishing vessels, doctors who open their own practice etc. which in the process of working gain additional value from what they make. The term manpower and employees is popularized by the New Order government to replace the word laborers which at that time the meaning of laborers in the community are people who work in "rough" areas such as construction workers, or workers who work in the factory.

Employee is defined as someone who works in an office. It is assumed to be someone who works in a government agency. In general, workers are defined as people who work in one company/institution gets the job and wages in return.

The assumptions are because it takes a long time to make an individual "employee" or an "worker" refuse to be called a labor, let alone called a "coolie" who is assumed to be someone who unloads things in a market, port or terminal. In principle there is no difference among labor, workers, employees, employees and coolies. The difference is only to the term, and all of the terms have in common, that is everyone who works by receiving wages or rewards.

### **Outsourcing**

Many companies are now recruiting their workers through a company of labor services provider or better known as outsourcing. Learn more about work systems of outsourcing. Lately some companies that use services outsourcing are increasing so that the word 'outsourcing' is familiar in our ears. Unfortunately, there are still many worker candidates who do not understand correctly, what is exactly meant with the outsourced workers.

When referring to Law no. 13 year 2003 about employment, outsourcing is known as the provision of labor services as set forth in chapters 64, 65 and 66. In the world of psychological industry, outsourced workers are the contract workers who are supplied from an outsourcing provider. Initially, the outsourcing company provides the type of work that is not directly related to the core business of the company and does not care about the career level, such as telephone operators, call centers, security guards and cleaning personnel or cleaning service. But now, the use of outsourcing is widespread to various lines of corporate activity. By using outsourced workers, the company does not have to bother providing the facilities or food allowances, to the health insurance/BPJS health because the one who is responsible is the outsourcing company itself.

Although it is profitable for the company, but this system is detrimental to outsourcing employees. Besides there is no career level, sometimes their salary is cut by the parent company. We can imagine that the percentage of this pay cut can reach 30 percent, as a service for the outsourcing companies. Unfortunately, not all outsourced workers know how much of a paycheck is taken by an outsourcing company for the services it provides to the other company.

The outsourcing worker recruitment system is actually not much different from the employee recruitment system in general. The difference is that these employees are recruited by a service provider company, not by a company that needs their services directly. Later, the workers will be sent to other companies (clients) who need it by the service provider company. In this work system, the outsourced service providers make payments to the workers first. Next, they charge to the companies who use their service. The outsourced workers usually work based on the contract with the outsourcing service providers, not with the service users. For those who intend

to find a job via an outsourcing company, they should consider the following point before signing a work agreement: Make sure that the agreement is in accordance with the terms of service offered. The employment agreement between an outsourced employee and a service provider company typically follows the term of the agreement between the service provider and the employer. It is intended that the employer of company wishes to terminate its cooperation with the service provider company, at the same time, the employment contract between the employee and the employer company also ends.

### **Disputes between Company and Labor**

The settlement of industrial relations is regulated in Law Number 2 Year 2004 about Industrial Relations Dispute Settlement ("PHI Act"). What is meant by industrial relations disputes is the disagreement between an entrepreneur or a business association with a worker/laborer or a trade union/labor union because of the disputes over rights, disputes of interest, dismissal disputes and the disputes between the unions in one company. Based on the Article 2 of the IRC Law, the types of industrial relations include:

#### **a. Rights Disputes**

Rights disputes are the disputes that arise from non-fulfillment of rights, due to the differences in the implementation or interpretation of the provisions of laws and regulations, employment agreements, company regulations or cooperative agreements. For examples; (i) in the Company Regulations ("PP"), Collective Labor Agreements ("CLA"), and employment agreements; (ii) there is an agreement that is not implemented; and (iii) there is normative provision which is not enforced.

#### **b. Interest Disputes**

Interest disputes are the disputes that arise in the employment relationship in the absence of opinion conformity concerning the making, and/or changes to the terms of employment applied in the employment agreement, or the PP or PKB. For examples: wage increases, transport, meal allowance, and so on.

#### **c. Termination Disputes**

Termination disputes are disputes that arise from the absence of opinion conformity concerning the termination of a work relations made by one of the parties. For examples: the disagreement on the reasons for layoffs and differences in severance pay.

#### **d. Disputes of Inter-Labor Unions in only One Company**

The disputes of inter labor Union are the disputes between the labor unions and other labor unions in only one company, in the absence of a conformity understanding of membership, rights implementation, and obligations of work union.

### **Salary**

Salary is a form of periodic payment of an employer to an employee which is performed in a work contract. From the point of view of business execution, salary can be considered as the cost needed to get the human resources to run the operation, and hence called the cost of personnel or salary costs. In accounting, salaries are recorded in the salary account.

Another term of salary is honorarium and wages. Salary, honorarium or wages may be accepted by employees in the office or workplace owned by a state or private place. The worker may be a civil servant or private employee (honorary worker) working in a state-owned office. For civil servants, salary is calculated monthly; meanwhile honorary staff is more appropriate if the salary is calculated according to the amount of work or the number of tasks. For example, an honorary teacher has only two hours of teaching for a week with an honorarium of Rp.2.500, - per hour, then within four weeks or a month he will only get an honorarium of Rp 20,000. If he has a burden of teaching tasks in a two-hour day for a full week (6 days effective), then he will receive a fee of Rp.120.000, - for four weeks or a month.

The calculation of salary or honorarium for the honorary teachers as mentioned above is more accurate than the daily calculation. The calculation of salaries or honorariums for daily-based honorary teachers, whereas the burden of teaching which is only two hours a day (for example only) will put a burden on the workplace (e.g. foundations) that will ultimately burden the state. Likewise if the honorary staff does not enter, then the honor must be cut according to the absence.

In the scope of civil servants, salaries have their own definition that is expenditures for compensation to be paid to the government employees in the form of basic salary plus eligible legal allowances to be accepted by the payee under applicable laws and regulations. The wage system in economics, namely:

### **Wage system by time**

According to this system, the amount of wages is based on the length of one's work. The time units are calculated per hour, per day, per week or per month. For example, the construction workers are paid per day or per week. If a builder in one day is given compensation of Rp. 50.000 then if he is working for 10 times, the builder must be compensated Rp. 500,000.

### **Wage system by produced unit**

According to this system, the amount of wages is based on the amount of goods produced by a person. The unit of results is calculated per piece of goods, per unit length, or per unit weight. For example, the wage of tea leaf picker is calculated per kilogram.

### **Wholesale wage system**

According to this system, wage payments are based on agreement between employers and workers. For example, wages to repair damaged cars, build houses, etc. The wage of this model should be clear not only should the size of the agreed wage, but also the duration of the job assigned to the recipient of the charter be completed.

### **Participation wage system or commonly called bonus wage**

Bonus system is an additional payment beyond wages or salaries which is intended to stimulate (incentivize) so that the workers can perform their duties better and full of responsibility, in the hope of higher profits. The higher the profit earned the greater the bonus given to the worker. This bonus system is more likely to be accomplished if the employer is generous.



### **Business partner systems**

In this system the wage payment is partly given in the form of the company's shares, but the shares are not given to individuals but to the workers' organizations in the company. Thus the working relationship between the company and the worker can be increased to the relationship between the company and its partners. A simple example of this system is cooperative.

### **DISCUSSION**

Demonstration for salary increases has become a culture every year. UMR (regional minimum wage) is the minimum standard used by employers or industry players to provide wages to employees, employees or workers in the business or work environment. Usually a group of people who often perform demonstrations to ask for a wage increase are among the workers. The workers averagely are skilled workers who have the skills of each but do not have a high educational experience. This implementation is motivated by the calculation of a standard of life that has less than 1 year of work experience and without having another member of family. UMR can be stated as a minimum wage for a novice worker.

Every year the workers in Indonesia are always fighting for wages as well as Liable Living Needs (KHL). The factors affecting the workers or laborers to demonstrate, among others are rising the fuel prices, rising the costs of living from time to time, increasing the numbers of people, the number of cheats such as collusion corruption and nepotism, the corruptors who corrupts the tax money, increasingly the expensive school fees, social high and so on. The impact of these demonstrations is often detrimental to companies that employ them, such as hunger strikes, working strikes and so on. Besides harming the company, demonstration often ends in anarchy which involves physical clashes between the workers and the security personnel.

When UMR is raised, automatically the employee and top-level managers will rise. This is called a jumping wage which means that when the workers at lower levels experience an increase in wages, automatically the workers who have higher levels will also experience an increase in wages or salaries so that this issue may also have detrimental effects on the firms. The company covers all the expenses and costs from material purchases, building taxes, advertising costs, production costs, and other costs that drive business activities. Amidst the rising raw material production costs due to various factors such as the effect of fuel price rise, the company must also pay wages or a large salary.

The wage increases will not be too much of a problem for the internal company if the performance of workers, employees, and employees also increases. The loyalty of the employees to the company should increase along with the wage or salary increases. Besides companies that must improve product quality and raise wages, employees, laborers and employees also need to improve their performance in order to balance and align between the employee performance and the amount of wages earned after the increase. If the employee works the same as before the wage is raised, this will bring harm to the company. The most feared impact is that the investors and foreign capital owners withdraw their assets from companies in Indonesia which will ultimately affect the national economy.

The Federation of Labor Unions, PT Tiara Gada Pratama, reported the employment termination of the company to 10 employees out of a total of 15 workers. The termination was the aftermath of a strike by the employees for the unfair pay increases.

The Chairman of the Working Unit of Labor Union, said that the incident started when workers received discriminatory treatment by the company on the difference in the percentage of salary increases for each employee class.

He revealed that the employees of PT Tiara Gada Pratama level from 1-4, security department until staffs only got 5 percent salary increase, meanwhile the employees of 5-6 managers level got 170 percent increase. "The incident in our place started in April 2016 where our company discriminated on the issue of wages and salary increases," Zainal said in Medan on Saturday (7/1).

According to him, the discrimination of wage increase is not in accordance with the Seventh Joint Agreement (PB) and the Collective Labor Agreement (PKB) between the management and the workers because, in the previous year the increase in salaries was based on inflation and work performance. "The increase is not in accordance with the agreement that we made that is through a collective agreement between us and the company," said Zainal.

Up to the end of the 8th PKB negotiations on 6 January 2017, the negotiations between the company and the union were deadlocked. Finally, the Labor Union member represented by Zaenal, sent a strike notice to management. However, during the strike which began on January 19, the workers who were going to strike were blocked by the management. The workers were not allowed into the office and as many as 700 police officers guarded for security. To avoid the conflicts with the police, Labor Unions went on strike outside the office. During the strike, the management then issued an intimidation in the form of Warning Letter (SP) that brought to unilateral termination.

The employees urged the Ministry of Manpower to settle the case of wage discrimination and termination of PT Tiara Gada Pratama against the operational workers, team leaders, and engineers. Zainal claimed that he reported this problem to the Office of Manpower and Transmigration of East Java. However, there is no solution for the settlement of this case. "We have reported to the Manpower Office of East Java but there is no follow-up and we also question the role of the government," he said. This employee strike issue had previously disrupted the company's performance process. It caused the complaints from the consumers. Until now, there has been no confirmation from PT Tiara Gada Pratama related to the termination of its employees.

## CONCLUSION

The dispute between PT Tiara Gada Pratama and its employees actually can be solved well as long as there is a good communication between the employees and the company. This is very needed for the establishment of good work synergy and will result in high profit of the company.



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