

The Dilemma of Employment Relationship Compared to Partnership of Drivers in Logistics Business: Analytical Study from Contract Law and Indonesian Labor Law

Yayan Hernayanto and Adi Riki Fauzi
Legal Office Manufacturing Industry, Jakarta, Indonesia
(yayan.hernayanto,adirikifauzi.sh@gmail.com)

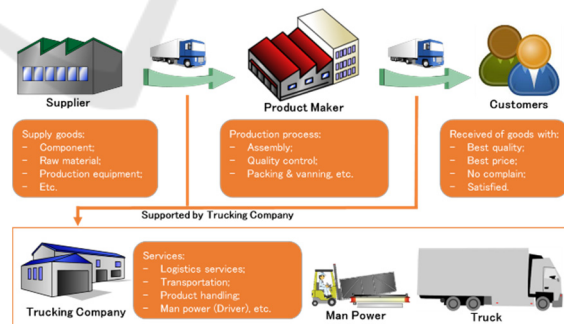
Keywords: Contract, Employment, Logistic, Outsourcing, Partnership.

Abstract: Supply chain activities is the backbone to run a business especially in the manufacturing industry. However, logistic work is not the core business in their line of business. Therefore, manufacturing companies outsource their logistic activities to outsourcing service providers. Indonesian labor laws covers two types of outsourcing: Business Process Outsourcing and Manpower Outsourcing. In terms of relationship between the outsourcing providers and their workers, the Laws regulates temporary contract and permanent contract scheme for both types of outsourcing, with each terms and conditions. Since outsourcing first introduced in 2003, it has been the most common/ favorable cooperation scheme used to support company's non-core activities. However, it may not be as popular as outsourcing scheme, partnership has also been favorable choice of cooperation scheme under Indonesian contract law. This type of cooperation emphasizes professional relationship between company and workers without engaging any “employment relationship and/or responsibilities”. In terms of logistic work, partnership nowadays is commonly used by the modern so-called Mobility Service Providers in Indonesia such as Go-Jek, Grab, Uber, etc. Based on latest research, it is recorded as much as 180 thousands drivers have engaged partnership with those mobility service provider. Through this paper, the writers would like to figure out which cooperation scheme is better for logistics work in the company’s perspective as the user. Does the business today against the prevailing provisions? How the best business should be done in term of comply with prevailing regulations.

1 INTRODUCTION

The success of a company will depend on how it can manage the relations along the supply chain management. Therefore, supply chain activities is the backbone to run a business especially in the manufacturing industry. However, logistics activity is not the core business in their line of business.

The company as the user could hire supporting company for non-core activities especially in logistics area. As you can see the Flow Process of Supply Chain in Manufacturing Industry below, Trucking Company as a Service Provider Company in logistics area can support the logistics activities to deliver component, raw material, and production equipment to Product Maker as well as finished product to Customers.



Picture 1: Flow Process of Supply Chain in Manufacturing Industry

2 CLASSIFICATION OF CORE BUSINESS AND NON-CORE BUSINESS IN INDONESIA

2.1 Core Business

Article 64 of Law No. 13 of 2003 on Employment, stated that Companies may outsource a part of its work operations to another company under a business process outsourcing agreement or labour outsourcing agreement. In the Article 65 mentioned about core business. Core Business means all activities that cannot be done separately from the main activity. The concept and definition of core business and non-core business is a concept that changes and develops dynamically. The following are the minimum criteria on core business¹:

- Processes are directly related to product or service activities;
- The Company will be disturbed if the related process is disrupted; and
- Customer “is willing to pay” to the company to do the process.

Slightly different from the criteria above, Alexander and Young argued that there are 4 definitions that are related with core business and core activity as follows:²

- Activities traditionally done within the company;
- Activities that are critical to business performance;
- Activities that create competitive advantage both now and in the future;
- Activities that will encourage development, innovation or rejuvenation.

As for the example of core business activities in manufacturing companies are as follows:

- Machining;
- Casting, Stamping, Welding;
- Quality Assurance;
- Assembling.

The activities as mentioned above shall be done by the company itself and shall not be transferred to the outsourcing company.

2.2 Non-core Business

Article 65 and 66 of Law No. 13 of 2003 on Employment, stated that outsourcing is permitted

¹<https://breath4justice.wordpress.com/2012/01/09/core-business-dan-non-core-business-dalam-outsourcing>

²<http://jurnalhukum.blogspot.com/2007/05/outourcing-dan-tenaga-kerja.html>

only for non-core business activities and activities not directly related to the production process.

R.Djokopranoto said that:³

“In the text of Law No. 13 of 2003 is stated and differentiated between the core of business and supporting/outsourcing activities. There is a principal similarity between the statement of the Employment Law and the practice of industry, that the outsourced generally (not all) are non-core business, however the core of business in general (not all) remains to be done by the company itself. But there are potential problems that arise. The potential problem that arises is whether regulators and law enforcement on the one hand and entrepreneurs and industrialists on the other hand have the same understanding and interpretation of those terms.”⁴

The similarity of interpretation is important, because under the labour law, outsourcing is only allowed if it do not concern the core business. Article 17 Minister of Labour Regulation No. 19 of 2012 on Outsourcing stated that:

- (1) *The employer company may subcontract part of the work to the service provider company worker / labor through contracts of worker / laborer in written;*
- (2) *The work can be outsourced to the service provider company workers / laborers as referred to in paragraph (1) shall constitute auxiliary service activities or that are not directly related to the production process;*
- (3) *The activities of supporting services as referred to paragraph (2) shall include:*
 - a. *cleaning service;*
 - b. *catering;*
 - c. *security personnel;*
 - d. *supporting services in mining and petroleum; and*
 - e. *providing transportation for workers / laborers.*

In manufacturing company’s business activities, there are non-core business activities as follow:

- Tooling maintenance;
- Building maintenance;
- Mailing service;
- Driver, etc.

The activities as mentioned above may be outsourced through a service provider company with an outsourcing work scheme. In this regard, logistic

³ R.Djokopranoto, Outsourcing (Alih Daya) dalam No.13/2003 tentang Ketenagakerjaan (Perspektif Pengusaha), 2005, hal.5.

⁴<http://jurnalhukum.blogspot.com/2007/05/outourcing-dan-tenaga-kerja.html>

activities also include non-core business activities which may also be undertaken by service providers.

3 THE OUTLINE OF COOPERATION IN LOGISTICS BUSINESS

Outsourcing Scheme is divided into 2 Scheme there are Manpower Outsourcing / Labor Supply (LS) and Business Process Outsourcing/ Job Supply (JS).

3.1 Manpower Outsourcing / Labor Supply (LS)

Based on Article 66 of Law No. 13 of 2003 on Employment, Labor Supply (LS) is the subcontract of part of work to another company shall be performed under a written worker/labourer outsourcing agreement.

3.1.1 Type of Work of Manpower Outsourcing / Labor Supply (LS)

Based on Article 17 paragraph (3) Minister of Labour Regulation No. 19 of 2012 on Outsourcing, type of supporting service activities, as follows:

The activities of supporting services as referred to paragraph (2) shall include:

- a. *cleaning service;*
- b. *catering;*
- c. *security personnel;*
- d. *supporting services in mining and petroleum;*
and
- e. *providing transportation for workers / laborers.*

3.2 Business Process Outsourcing/ Job Supply (JS)

Based on Article 66 Law No. 13 of 2003 on Employment, Job Supply (JS) is the subcontract of part of work to another company shall be performed under a written outsourcing agreement.

3.2.1 Type of Work of Business Process Outsourcing/ Job Supply (JS)

Based on Article 3 paragraph (2) c Minister of Labour Regulation No. 19 of 2012 on Outsourcing, as follows:

“supporting activity of the company as a whole, meaning that the activity is an activity that supports and expedite the implementation of the core business

in accordance with the flow of activities of the implementation process of work specified by the business sector associations established in accordance with legislation”.

In the provision is explained that the supporting activities of the company by outsourcing can be done with the following conditions:

1. Activities that support and facilitate the implementation of core business;
2. In accordance with the work flow of the implementation process of work established by the business sector associations.

3.3 Partnership Scheme

This scheme is a new concept in the logistics business, which is based on the Indonesian Civil Code as contained in the following Articles:

1. Article 1338 on the principle of freedom of contract;
2. Article 1320 on the legal terms of the agreement, as follows:
 - dealing of the parties;
 - ability to create an engagement;
 - a certain subject matter;
 - not unlawful cause.
3. Article 1601b on outsourcing work agreement; and
4. Article 1618 until 1641 on civil partnership.

The provisions in those Articles shall constitute the basis of the Partnership Scheme which is implemented in a partnership agreement. In this partnership agreement, the provisions on labour law and outsourcing do not apply to this partnership agreement.

3.4 The Cooperation Scheme between Trucking Company and its Workers

In addition to the cooperation with the company (user), trucking company as a company that runs logistics business also has cooperation with its workers that is with the following forms:

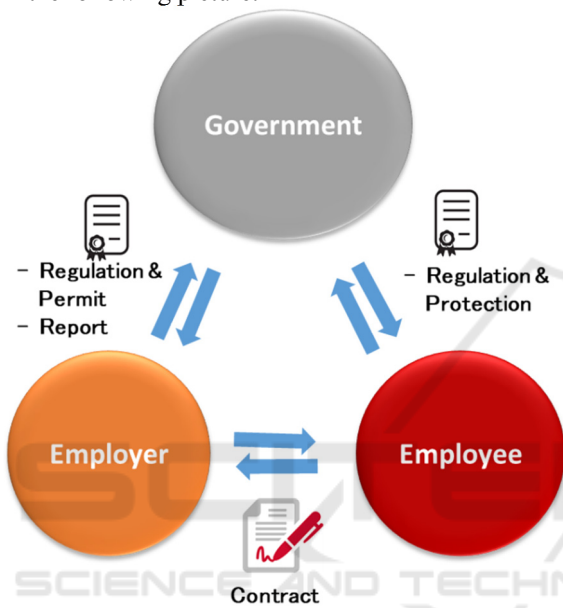
- 1) *Perjanjian Kerja Waktu Tertentu (PKWT)/ Temporary Contract;*
- 2) *Perjanjian Kerja Waktu Tidak Tertentu (PKWTT)/ Permanent Contract;* and
- 3) Partnership Agreement.

As mentioned above, the provisions concerning employment law and outsourcing do not apply to the partnership agreement. It can be interpreted that all rights and obligations set forth in labour law and

outsourcing do not apply to parties binding in partnership agreement.

4 STAKEHOLDERS IN INDONESIA LABOUR LAW

Based on Law no. 13 of 2003 on Employment, the existing parties (stakeholders) is divided into 3 or commonly referred to as tripartite, that is as described in the following picture:



Picture 1: Stakeholders (Tripartite) in Indonesia Labour Law

4.1 Government

The role of government in the labor law is enormous, beside regulators as well as licensing entrepreneurs who want to run their business in Indonesia. The supervisory function is also carried out by the Government with the obligation of employment reporting for entrepreneurs. From these reports can be seen how far the entrepreneurs can comply with the rules of legislation on employment. In addition, the government is also obliged to protect the rights of workers, for example the Government has issued a policy to protect the rights of workers, that regulations on BPJS Employment and BPJS Health, pension guarantee, severance pay, holiday allowance, and so forth. This is done by the Government because to protect the rights of the workers.

4.2 Employer

Based on Article 1 paragraph (5) Law No. 13 of 2003 on Employment, definition of Employer as follows:

- Persons, Legal Entities, or Other Entities;
- Hires Employee;
- Paying wages or other remunerations.

4.3 Employee

Based on Article 1 paragraph (3) Law No. 13 of 2003 on Employment, definition of Employee as follows:

- Persons;
- Employed;
- Receiving wages or other remunerations.

5 COMPARING OUTSOURCING SCHEME AND PARTNERSHIP SCHEME

As mentioned above, there are 2 cooperation schemes that can be done by companies doing business in logistics, that Outsourcing Scheme and Partnership Scheme. Before determining the choice of the scheme, the company should know and compare it in order to be wrong in apply the two schemes.

Outsourcing scheme based on Law No. 13 of 2003 on Employment and MoL Regulation No. 19 of 2012 on Outsourcing. There are two type of outsourcing scheme that is Labor Supply (LS) and Job Supply (JS). LS has 5 type of work that are Oil & Mining Supporting, Security, Cleaning Service, Catering, Transportation (Driver) and for JS based on List of Business Proses Outsourcing (BPO) from Association.

We should consider the cost considerations while using outsourcing scheme, among others basic salary & overtime (uncontrolled), job guarantee & health insurance, holiday allowance (THR), pension/severance pay, operational cost and management fee. Then we should aware of potential risk while using outsourcing scheme, among others claims to be permanent employee, operational is not flexible, drivers have annual leave, drivers allowed to request separation pay. Based on the explanation of outsourcing scheme as mentioned above, generally been applied by outsourcing companies.

Partnership scheme based on Article 1338 on the principle of freedom of contract, Article 1320 on the legal terms of the agreement, Article 1601b on outsourcing work agreement, Article 1618 until 1641 on civil partnership. Since the legal basis for

partnership scheme is derived from the Indonesian Civil Code, the provisions related with employment do not apply to the partnership scheme. Outsourcing scheme that has two types of cooperation, there are Job Supply agreement and Labor Supply agreement and partnership scheme has one type of cooperation, there is partnership agreement. Partnership agreement has type of work that is consultant/expert, logistics driver, driver from mobility service provider (Gojek, Grab, Uber), etc.

We should consider the cost considerations when using partnership scheme, among others operational cost, management fee, commission for driver/trip, considered the cost, partnership scheme cost less than outsourcing scheme. Then we should aware of potential risk considerations when using a partnership scheme, among others driver can deny job assignment, if driver deny several job assignment, driver will be dismissed, based on that potential risk, is smaller than outsourcing scheme.

6 MERIT DEMERIT OF OUTSOURCING SCHEME AND PARTNERSHIP SCHEME

Based on comparison of outsourcing scheme and partnership scheme above, we can see the difference. By knowing the difference between the two we can calculate merit demerit over both schemes. The merit of outsourcing scheme among others driver can't deny job assignment, there is a punishment if driver deny the order / resign and demerit of outsourcing scheme among others overtime cost (uncontrolled) like stuck in traffic jam, queuing production, operational is not flexible, the provisions of Labour Law shall apply to Outsourcing Scheme (Pension / Severance Pay, annual leave), claims to be permanent employee. The merit of partnership scheme among others no overtime cost, driver always available (ready to use) & operational flexible, the provisions of Labour Law shall not apply to Partnership Scheme (No Pension / Severance Pay, annual leave), without engaging any employment relationship and/or responsibilities and demerit of partnership scheme is if driver deny several job assignment, driver will be dismissed.

7 CONCLUSION

1. To support company's non-core business, the company should comply with outsourcing regulations; and
2. Partnership scheme is a new favourable choice of cooperation scheme under Indonesian contract law for logistic activities.

REFERENCES

- Atmasasmita, Misbach, Radhie, Seminar Hubungan Hukum Kemitraan, Sunlake Hotel, Jakarta, Indonesia, 13 March 2018
- Chen, Greg, Driver Compliance Seminar for Logistic Vendor, Sunlake Hotel, Jakarta, Indonesia, 13 March 2018
- Gassmann, Oliver, and Frankenberger, Karolin, and Csik, Michaela, The Business Model Navigator, PT Elex Media Komputindo, Jakarta, Indonesia, 2016
- Hukumonline.com, Undang-undang Republik Indonesia No. 13 Tahun 2003 tentang Ketenagakerjaan Plus Komentar Pasal-pasal yang dibatalkan oleh Mahkamah Konstitusi, Literati, Jakarta, Indonesia, 2014
- Husni, Lalu, Pengantar Hukum Ketenagakerjaan, PT Raja Grafindo Persada, Jakarta, Indonesia, 2003
- Rahman, Hasanuddin, Contract Drafting, PT. Citra Aditya Bakti, Bandung Indonesia, 2003
- Suwarto, Hubungan Industrial Dalam Praktek, Asosiasi Hubungan Industrial Indonesia, Jakarta, Indonesia, 2003
- Tunggal, Sjahputra, Iman, Teoridan Kasus Hukum Ketenagakerjaan Indonesia, Harvarindo, Jakarta, Indonesia, 2009
- Yasar, Iftida, Apakah Benar Outsourcing Bisa Dihapus, Pohon Cahaya, Yogyakarta, Indonesia, 2013