

INDUSTRIAL RELATIONS SERIES

SERI 3  
*OUTSOURCING*

Muzni Tambusai

DIRECTORATE GENERAL OF  
INDUSTRIAL RELATIONS  
MINISTRY OF MANPOWER AND TRANSMIGRATION  
2005

Hak Cipta © Kantor Perburuhan Internasional 2005  
Pertama terbit tahun 2005

Publikasi Kantor Perburuhan Internasional dilindungi oleh Protokol 2 dari Konvensi Hak Cipta Dunia (*Universal Copyright Convention*). Walaupun begitu, kutipan singkat yang diambil dari publikasi tersebut dapat diperbanyak tanpa otorisasi dengan syarat agar menyebutkan sumbernya. Untuk mendapatkan hak perbanyakan dan penerjemahan, surat lamaran harus dialamatkan kepada *Publications Bureau (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland*, atau melalui Kantor ILO di Jakarta. Kantor Perburuhan Internasional akan menyambut baik lamaran tersebut.

---

ILO  
*Seri Pembinaan Hubungan Industrial;*  
*Seri 3: Outsourcing*

Jakarta, Kantor Perburuhan Internasional, 2005

ISBN 92-2-016976-2

---

Sesuai dengan tata cara Perserikatan Bangsa-bangsa, pencantuman informasi dalam publikasi-publikasi ILO beserta sajian bahan tulisan yang terdapat di dalamnya sama sekali tidak mencerminkan opini apapun dari Kantor Perburuhan Internasional mengenai informasi yang berkenaan dengan status hukum suatu negara, daerah atau wilayah atau kekuasaan negara tersebut, atau status hukum pihak-pihak yang berwenang dari negara tersebut, atau yang berkenaan dengan penentuan batas-batas negara tersebut.

Dalam publikasi-publikasi ILO tersebut, setiap opini yang berupa artikel, kajian dan bentuk kontribusi tertulis lainnya, yang telah diakui dan ditandatangani oleh masing-masing penulisnya, sepenuhnya menjadi tanggung jawab masing-masing penulis tersebut. Pemuatan atau publikasi opini tersebut tidak kemudian dapat ditafsirkan bahwa Kantor Perburuhan Internasional menyetujui atau menyarankan opini tersebut.

Penyebutan nama perusahaan, produk dan proses yang bersifat komersil juga tidak berarti bahwa Kantor Perburuhan Internasional mengiklankan atau mendukung perusahaan, produk atau proses tersebut. Sebaliknya, tidak disebutnya suatu perusahaan, produk atau proses tertentu yang bersifat komersil juga tidak kemudian dapat dianggap sebagai tanda tidak adanya dukungan atau persetujuan dari Kantor Perburuhan Internasional.

Publikasi-publikasi ILO dapat diperoleh melalui penyalur-penyalar buku utama atau melalui kantor-kantor perwakilan ILO di berbagai negara atau langsung melalui Kantor Pusat ILO dengan alamat ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland atau melalui Kantor ILO di Jakarta dengan alamat Menara Thamrin, Lantai 22, Jl. M.H. Thamrin Kav. 3, Jakarta 10340. Katalog atau daftar publikasi terbaru dapat diminta secara cuma-cuma pada alamat tersebut, atau melalui e-mail: [pubvente@ilo.org](mailto:pubvente@ilo.org) ; [jakarta@ilo.org](mailto:jakarta@ilo.org)

Kunjungi website kami: [www.ilo.org/publns](http://www.ilo.org/publns) ; [www.un.or.id/ilo](http://www.un.or.id/ilo)

---

Dicetak di Jakarta, Indonesia

# FOREWORD

In the production process of goods and services within a company, minimal there are 2 (two) parties involved, employer and worker. The relations between employer and workers in the manpower laws know as work relations.

In line with the technology advancement and globalization era, it brings effect to the business. To be able to fulfill market demand, the employers tend to change management business structural through outsourcing, with the intention to reduce the management control work so it can be more effective, efficient and productive.

The daily practices of outsourcing is acknowledged detriment the workers, accordingly the work relations always made in Definite Term Work Agreement (Contract Work), in order to give certainty in implementing work relations and to give protection to the workers, it is deemed necessary to regulate outsourcing in Manpower Act No.13 of 2003 through Subcontract Work Agreement or Workers/Laborers Supplier Agreement.

To prevent the different interpretation among the industrial society, it is necessary to give explanation on the implementation of work relations in the frame of subcontract work of workers/laborers supplier agreement.

Finally, we would like to convey our appreciation and gratitude to the ILO/USA Declaration project for making the publication of this book possible. May the good cooperation between ILO (especially ILO Jakarta) and the Government of the Republic of Indonesia (especially Ministry of Manpower and Transmigration) to promote sound industrial relations in Indonesia be further nurtured and enhanced.

I hope this book will be beneficial for the concerned parties. Thank you.

Jakarta, Januari 2005

A handwritten signature in black ink, appearing to read 'Muzni Tambusai', written in a cursive style.

**Muzni Tambusai**

# CONTENTS

	pages
Foreword .....	iii
Introduction .....	1
Outsourcing Implementation .....	2
Legal Protection .....	4
Closing .....	5
Curriculum Vitae .....	6
References .....	8

# OUTSOURCING

## INTRODUCTION

The development of global economy and technology happen very fast resulting tight business competition and it happens in all sectors. The competitive atmosphere requires business world to adjust with market demand requiring a fast and flexible response in increasing the services to customers. Therefore it is necessary to change business management structural by reducing barriers of management control as many as possible so it can be effective, efficient and productive. In relating with such condition, it can be understood that it appears a tendency of outsourcing, it means hand-over one or more parts of company activities (which previously handled by itself) to other company which herein after called as provider company.

Nowadays, many people admit that the daily practices applied in outsourcing system have damaged the workers much more because working relation is always in a non-permanent form /contract (PKWT or Working Agreement for Specified Time), lower wages, social security (if any) is on minimum limit, no job security and no guarantee on carrier development, etc. Therefore it is correct that in such condition the outsourcing practices will make workers/laborers suffer and make Industrial Relations unclear.

It happens due to before the Manpower Act No. 13 Year 2003 enacted, there was not any regulation regarding the legal protection to the workers/laborers in the implementation of outsourcing. If any, perhaps it was Manpower Minister Decree No. 2 Year 1993 on Working Agreement for Specified Time (KKWT), and it was merely as one of many aspects of outsourcing.

Although it is admitted that the regulation concerning outsourcing in

the Manpower Act No. 13 Year 2003 is not sufficient to settle all outsourcing matters which are so wide and complex, but at least it can give legal protection to the workers/laborers especially regarding the working requirement, working condition and social security and other working protection that can be a reference to settle any dispute.

## **OUTSOURCING IMPLEMENTATION**

In the last several years outsourcing implementation related with working relations becomes an interesting issue discussed by the parties in production processing of goods or service and by the observers. It happens due to outsourcing is undertaken intentionally to reduce labor cost and by giving protection and working condition which is lower than what is required, it damages the workers/laborers.

The outsourcing implementation potentially generates the sense of dissatisfaction of the workers/laborers and often followed by a strike, accordingly the purpose of outsourcing as mentioned above is not reached, because there is obstacle in production process of goods or service.

Terminology of outsourcing is found in Article 1601 b of Civil Code regulating agreement on working contract, i.e., an agreement in which a party roles as a service provider binding itself to do specified work for other party whose giving such work to the first party by receiving a specified payment. Meanwhile in the Manpower Act No. 13 Year 2003 explicitly there is not outsourcing terminology, but outsourcing practices as meant in the Act is introduced in two (2) forms, namely working contract and providing of worker/laborer service as stipulated in Article 64, Article 65 and Article 66.

The outsourcing practices pursuant to the Manpower Act can be implemented with strict conditions as follows:

- 1) The agreement on working contract shall be made in writing;
- 2) Parts of work to be assigned to the provider company have to meet with the following conditions:
  - a. If the work is separated from the main activities;
  - b. The parts of work constitutes the company supporting activities

of a whole activities, so if they are carried out by other party it is not directly hamper the production process; and

- c. It is carried out through a direct or indirect order from the user company.

All conditions above are cumulative so if there is one of the conditions are not fulfilled, the parts of work can not be outsourced.

- 3) Provider Company must be a legal entity. This provision is necessary due to many provider companies are not responsible in fulfilling their obligation properly against their workers/laborers rights; it makes workers/laborers suffer. Therefore “being legal entity” is very important in order that to prevent the provider company avoid its responsible. In case of the provider company is not a legal entity and parts of work in the outsourcing is not fulfilling the requirements mentioned above, the status of working relation which previously is with the provider company, by law it is shifted to the user company;
- 4) Working protection and working conditions of workers/laborers provided by the provider company are at least similar with the conditions at the user company. It is purposed that the workers/laborer get the similar treatment both at the provider company and the user company because principally they have the similar purpose, so there should not have lower working condition, wage, working protection;
- 5) Working relations in the outsourcing is a working relation between workers/laborers with the provider company and it is stipulated in the written Working Contract. The working relations basically is PKWTT (Working Agreement for Indefinite Time)/Permanent and not contract but it can be implemented as PKWT (Working Agreement for Definite Time)/ Contract if it meets with all requirements formally or substantially as meant in Article 59 of the Manpower Act No. 13 Year 2003. Therefore working relations at outsourcing is not always in form of PKWT/Contract, and it is a wrong opinion if any person assumes that outsourcing is always and equal with PKWT.

“Worker/Labour provider company” constituting a form of outsourcing, it must be distinguish with “Private Manpower Placement Institution” (Labor Supplier) as regulated in Articles 35, 36, 37 and 38 of the Manpower Act



No. 13 Year 2003 stating that if any manpower having been placed, the type of working relations is completely between worker/laborer with the user company, not with the Private Manpower Placement Institution.

The implementation of providing worker/laborer service, the user company may not employ the worker/laborer to undertake the main activities or activities in relation to the production process and may be employed to undertake supporting activities or activities which are not directly related to the production process. The activities include cleaning service, catering for workers/laborers, security, supporting service in mining and oil sectors and transportation for workers/laborers.

Beside the conditions applied to the working contract, worker/laborer service providing company is responsible for the workers/laborer wage protection and welfare, working conditions and industrial relations dispute.

## LEGAL PROTECTION

Regulation of outsourcing implementation in view of the manpower laws as mentioned above intended to give legal certainty of outsourcing implementation and at the same time to give protection to workers/laborers. So it will be an incorrect assumption stating that outsourcing working relations is always based on Working Agreement for Definite Time/Contract so it confuses industrial relations. The implementations of outsourcing working relations are regulated clearly in Article 65 paragraphs (6) and (7) and Article 66 paragraphs (2) and (4) of the Manpower Act. In the special condition, it is very difficult to define/determine types of work classified as a supporting activity. Such condition occurs due to different perception, and sometimes it is backed by the interest to obtain profit from such condition. Beside such condition, the forms of business management are various and several multinational companies in globalization era generate new forms of partnership, they improve the complexity of chaos condition. Therefore through the Ministerial Decree as meant in Article 65 paragraph (5) Act No. 13 Year 2003, it is hoped to accommodate and answer all matters resulting such condition by considering inputs from all parties in the production process of goods or service.

Beside the above effort, in order to reduce any condition, scheme of production process of any goods or service can be made to determine main

activities (core business) beyond the scheme, it is meant as a supporting activity. In this case in order to make similar perception it is necessary to communicate with workers/laborers and worker/labor union and relevant institution to be stipulated in Company Regulations/ Collective Labor Agreement.

## **CLOSING**

Regulations of outsourcing in the Manpower Act and its implementing regulation are meant to give legal certainty and protection to the workers/laborers. In practices if there is something having not been implemented properly, it is other problem and it is not because of the regulation itself.

Therefore, to secure the good implementation, so the goal to protect workers/laborer can be achieved, it is required intensive supervising both by Manpower Inspection Officials and society as well as the awareness and good faith of all parties.

# CURRICULUM VITAE

Name : Dr. Muzni Tambusai, MSc  
Employee No.(NIP) : 140058574  
Grade Position : Main Advisor (IV/e)  
Place and Date of Birthday : Sedinginan (Riau Prov.), 18 December 1946  
Position : Director General of Industrial Relations  
Ministry of Manpower and Transmigration

## I. EDUCATION BACKGROUND

1. Year 1967 until 1973 : Medical Faculty UGM in Yogyakarta
2. Year 1974 : Public Health Faculty UI Majoring at Hygiene
3. Year 1998 : Master of Science on Management Curtin University

## I. WORKING EXPERIENCES

1. Year 1973 : Inspector of Work Health at Manpower Office Riau Province
2. Year 1982 – 1987 : Member of Parliament of the Republic of Indonesia in Jakarta
3. Year 1994 – 1997 : Head of Manpower Office Riau Province
4. Year 1997 – 2001 : Head of Manpower Office East Java Province, Surabaya

- 5. Year 2001 – 2003 : Director General of Inspection, MOMT
- 6. Year 2003 - Now : Director General of Industrial Relations, MOMT

### III. TRAININGS AND COURSES

- 1. Year 1986 : Planning Course at National Level
- 2. Year 1989 : 1) Course on Chemical Safety and Major Hazard Inspection in School of Community Health, Curtin University of Technology, Perth, Australia;  
2) Symposium on Government Controls in Occupational Health and Safety and Welfare of Western Australian in Perth.
- 3. Year 1995 : 1) Symposium on Tripartism by ILO in Penang, Malaysia;  
2) Comparative Study on Dual System on Vocational Training in Austria and German.
- 4. Year 2001 : 1) Comparative Study on Implementation of Industrial Relations in Japan;  
2) Some International Seminars in Various Countries.

### IV. ORGANIZATIONAL EXPERIENCES

- 1. IPR Chairman in Yogyakarta
- 2. KODEMA Chairman of Medical Faculty UGM
- 3. KNPI Chairman of Riau Province
- 4. Vice Chairman of IDI Riau
- 5. Member of Advisory Council of GOLKAR Riau

## REFERENCES

1. Abdul Kadir Muhamamd, 2000. Hukum Acara Perdata Indonesia, Bandung, Penerbit PT. Citra Aditya Bakti.
2. Batubara Cosmos, 2000. "Hubungan Industrial di Indonesia Aspek Politik dari Perubahan di Tempat Kerja Dekade Sembilan Puluhan dan Awal Dua Ribu," Dis Depok, niversitas Indonesia.
3. Djunaedi, 1992. Hukum Perburuhan Perjanjian Kerja. Jakarta, Rajawali Pers.
4. F.J.H.M. Vann den Van 1969. Persyaratan Hukum kerja. Terjemahan Sridadi, Yogyakarta. Penerbit Yayasan Kanisius.
5. Rajagukguk Erman, 1997. "Peranan Hukum dalam Pembangunan Pada Era Globalisasi Implikasinya Bagi Pendidikan ukum di Indonesia." Pidato pengukuhan diucapkan pada Fakultas Hukum Universitas Indonesia, Jakarta 4 Juni 1947.
6. Rajagukguk Humal Pandamean, 1993. "Perlindungan Terhadap Pemutusan Hubungan Kerja ditinjau dari sudut Sejarah Hukum." Dis Jakarta Universitas Indonesia.
7. Soepomo Imam, 1985. Pengaturan Hukum Perburuhan. Jakarta. Penerbit Jakarta.
8. \_\_\_\_ 1982. Hukum Perburuhan Bidang Hubungan Kerja, Jakarta. Penerbit Jakarta.
9. \_\_\_\_ 1978. Hukum Perburuhan Bidang Aneka utusan (P4), Jakarta Pradya Paramita.
10. Suwanto, 2003. Hubungan Industrial dalam Praktek, Jakarta. penerbit Asosiasi Hubungan Industrial Indonesia.
11. Tambusai Muzni, 2004. Penyelesaian Perselisihan Hubungan Industrial di Indonesia, Jakarta. DPP IPHII kerjasama dengan Karya Unggul Persada.
12. Uwiyono Aloysius, 2001. Hak Mogok di Indonesia, Jakarta, Universitas Indonesia Fakultas Hukum Program Pasca Sarjana.
13. \_\_\_\_ 2003. "Peranan Hukum Perburuhan Dalam pemulihan Ekonomi dan Peningkatan Kesejahteraan Buruh." Orasi pada Upacara Pengukuhan Guru Besar Tetap dalam Bidang Ilmu ukum Perburuhan Fakultas Hukum Universitas Indonesia di Balai Sidang UI Depok 11 Juni 2003.
14. Warr Peter, 1984. Psikologi Perburuhan dan Perundingan Kolektif, Jakarta. PT. Pustaka Binaman Pressindo.