

## **ANALISIS PENERAPAN ASAS KEBEBASAN BERKONTRAK DALAM PROSES OUTSOURCING PENYEDIA JASA TENAGA KERJA ANTARA PT. PERTAMA ARUN GAS DENGAN PT. PERTAMINA TRAINING & CONSULTING**

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### **INTISARI**

Penelitian ini bertujuan untuk mengetahui dan menganalisis penerapan asas kebebasan berkontrak dalam proses *outsourcing* penyedia jasa tenaga kerja antara PT. Perta Arun Gas (PT. PAG) dan PT. Pertamina Training & Consulting (PT. PTC) dengan Qanun Aceh Nomor 7 Tahun 2014 tentang Ketenagakerjaan. Tujuan lain dari penelitian ini adalah untuk mengetahui dan menganalisis kepastian hukum perlindungan pekerja *outsourcing* terhadap asas kebebasan berkontrak dalam proses *outsourcing* penyedia jasa tenaga kerja.

Penelitian ini merupakan penelitian normatif-empiris. Penelitian normatif dilakukan dengan melakukan penelitian kepustakaan untuk mendapatkan data sekunder yang didapatkan dengan mempelajari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Penelitian empiris dilakukan melalui penelitian lapangan dengan cara wawancara kepada subjek penelitian menggunakan pedoman wawancara untuk mendapatkan data primer. Data yang diperoleh dari hasil penelitian kepustakaan dan lapangan dianalisis secara kualitatif. Hasil analisis data disajikan secara deskriptif.

Hasil penelitian pertama menunjukkan bawah penerapan asas kebebasan berkontrak dalam proses *outsourcing* penyedia jasa tenaga kerja antara PT. PAG dengan PT. PTC belum sesuai dengan Qanun Aceh Nomor 7 Tahun 2014 tentang Ketenagakerjaan serta peraturan perundang-undangan pada umumnya. Perjanjian *outsourcing* penyedia jasa tenaga kerja yang dilakukan PT. PAG dan PT. PTC yang merupakan anak perusahaan dari perusahaan induk yang sama dilarang dalam Qanun Aceh Nomor 7 Tahun 2014. Sistem *outsourcing* antara PT. PAG dan PT. PTC juga belum memberikan perlindungan atas jaminan kelangsungan pekerjaan bagi pekerja *outsourcing security* sebagaimana disebutkan dalam Qanun Aceh Nomor 7 Tahun 2014. Hasil penelitian yang kedua menunjukkan bahwa peraturan perundang-undangan yang ada belum cukup memberikan kepastian hukum atas perlindungan pekerja *outsourcing* dari asas kebebasan berkontrak dalam proses *outsourcing* penyedia jasa tenaga kerja. Jaminan keberlangsungan pekerjaan yang objek kerjanya tetap ada tidak melindungi pekerja *outsourcing* dari PHK akibat berakhirnya PKWT oleh perusahaan *outsourcing*.

**Kata Kunci: Asas Kebebasan Berkontrak, *Outsourcing*, Penyedia Jasa Tenaga Kerja**

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**ANALYSIS FREEDOM OF CONTRACTS PRINCIPLE APPLICATION IN THE  
OUTSOURCING PROCESS OF LABOR SERVICE PROVIDERS  
BETWEEN PT. PERTA ARUN GAS WITH PT. PERTAMINA  
TRAINING & CONSULTATION**

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**ABSTRACT**

This study aims to find out and analyze the freedom of contract principle application in the outsourcing process of labor service providers between PT. Perta Arun Gas (PT. PAG) and PT. Pertamina Training & Consulting (PT. PTC) with Aceh Qanun Number 7 of 2014 concerning about Employment. Another purpose of this research is to find out and analyze the legal certainty of the outsourced workers protection on freedom of contract principle application in the outsourcing process of labor service providers.

This research is a normative-empirical study. Normative research is carried out by conducting library research to obtain secondary data by studying primary, secondary and tertiary legal materials. Empirical research was conducted through field research by interview with research subjects using interview guidelines to obtain primary data. Data from library and field research were analyzed qualitatively. The results of data analysis are presented descriptively.

The first results of the study indicate that the freedom of contract principle application in the outsourcing process of labor service providers between PT. PAG with PT. PTC has not been in accordance with Aceh Qanun Number 7 of 2014 which concerning about employment and general legislation. Agreement on outsourcing labor service providers conducted by PT. PAG and PT. PTC which is a subsidiary of the same holding company is banned in Aceh Qanun Number 7 of 2014. he outsourcing system between PT. PAG and PT. PTC has also not provided protection for the continuity of employment guarantees for outsourcing security workers as mentioned in Aceh Qanun Number 7 of 2014. The second results of this study show that the existing legislation does not provide sufficient legal certainty for the outsourced workers protection from the freedom of contract principle in the outsourcing process of labor service providers. Guaranteed work continuity which is the work object still exists does not protect outsourcing workers from layoffs due to the end of fixed-term employment contract by outsourcing companies.

**Keywords: Freedom of Contracting Principle, Outsourcing, Labor Service Provider**

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