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Legal Protection of Outsourced Workers Under Indonesia's Job Creation Law: Between Labor Market Flexibility and Workers' Rights

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Abstract:

This study examines the legal protection afforded to outsourced workers under Indonesia's Job Creation Law and its implementing regulations. The enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law on Job Creation has significantly transformed Indonesia's labor law framework, particularly in relation to outsourcing practices. One of the most substantial regulatory changes is the removal of restrictions on the categories of work that may be outsourced, which were previously governed under Law Number 13 of 2003 concerning Manpower. The technical implementation of outsourcing arrangements is further regulated under Government Regulation Number 35 of 2021. This research employs a normative legal research method using statutory, conceptual, and comparative approaches. The study is based on the analysis of primary, secondary, and tertiary legal materials, which are

examined qualitatively to evaluate the effectiveness of legal protection mechanisms for outsourced workers within the current labor law regime. The findings reveal that the post-Job Creation regulatory framework reflects a paradigm shift from restricting outsourcing practices toward emphasizing normative labor protection. Legally, outsourced workers continue to receive recognition of fundamental labor rights, including wage protection, social security, occupational health and safety guarantees, and compensation rights under fixed-term employment agreements. However, the elimination of limitations on outsourced work has expanded labor market flexibility and increased the potential use of outsourcing systems, which may consequently weaken job security and employment stability for workers. Furthermore, the trilateral legal relationship among outsourced workers, outsourcing service providers, and user companies continues to create legal ambiguities regarding responsibility and accountability in cases involving violations of workers' rights. This study concludes that although legal protection for outsourced workers is normatively guaranteed under the Job Creation legal framework, its practical effectiveness remains highly dependent on consistent supervision, effective law enforcement, and regulatory compliance by employers. Therefore, a balanced regulatory model is necessary to harmonize economic flexibility with the protection of workers' fundamental rights within Indonesia's industrial relations system.

Keywords: *Outsourced workers; legal protection; labor law; Job Creation Law; industrial relations; labor deregulation; employment security; Indonesia.*

A. INTRODUCTION

The development of globalization and modern economic dynamics encourages the business world to increase efficiency and competitiveness through various management strategies, one of which is through an outsourcing system. This system allows companies to hand over some of the work to other companies that specifically provide labor services. In practice, outsourcing has become an important part of the industrial relations structure in Indonesia.

The phenomenon and practice of industrial relations is a reality and even a necessity. The development of a civilization (including in the world of employment) tends to always lead to modernization. This is a reaction to the demands for change, which is characterized by the growth and development of the industrialization of goods and services, the development of democratization, and the development of capitalism that affects the form and existence of labor relations. Industrialization always affects the production process as well as the shape and development of organizations.¹

Therefore, in the production system, it is always characterized by an increasing escalation of industrial relations between workers and employers where each other has a relationship of mutual dependence and a very strong influence. They have the same goal of maintaining the

¹ Kartawijaya Adjat Daradjat, *Industrial Relations Comprehensive Approach – Inter Discipline Theory-Policy-Practice*, ALFABETA, (Jakarta: Rineka Cipta, 2018), p. Sec. 25.

continuity and development of the company, but they can also have different needs and interests. That is what causes the emergence of dynamics in industrial relations. Along with the development of industrial relations, there is a regulatory system issued by the government through the labor law called outsourcing or outsourcing style.

One of the government's roles in this case is as a function in setting regulations and supervise laws in the field of Manpower. One of the regulations issued by the government in the field of Manpower is Law Number 13 of 2003 concerning Manpower. In the rules of the labor law, there are rules regarding outsourcing or outsourcing. The term outsourcing in Indonesian is known as "outsourcing". This definition is seen as the act of transferring some of the company's activities and decision-making rights to another party, where this action is bound by a cooperation contract.

One of the strategic reasons for the outsourcing system is to use existing personnel for more effective and efficient activities by bringing producers or companies closer to the market or consumers. Through the delegation or outsourcing method, the company only thinks about how the business runs, while the procurement of outsourcing services is left to other parties (companies in the field of outsourcing service providers). The outsourcing service provider has a very broad legal responsibility, not only at the contract implementation stage but also in the pre-contract phase, namely the obligation to conduct in-depth research on the workers who will be employed outside. The practice of outsourcing at this time is increasingly practiced both among entrepreneurs and the

outsourcing service providers themselves. Along with the development of industrial relations with the outsourcing system, many negative things are caused by the development of workers or laborers. Many workers' rights are so ignored by companies that use outsourcing services.

In the world of employment, employees and employers should have a mutually beneficial, harmonious, and balanced relationship. Workers give their energy to products and services, while employers pay appropriate wages for workers' services in creating products, either in the form of goods or services sold to consumers. However, in its development, one of the employment problems is related to the outsourcing system, or often referred to as fixed-time contract work (PKWT), where the flexible work system of social security and living wages is not always considered.

The problems that are often faced by outsourced labor users are, first, the transfer of legal relations in outsourcing that is detrimental to workers, for example, there is no provision of wages and severance pay when workers are laid off (termination of employment), and also the absence of participation for workers and their families in social security. Second, the low legal protection for outsourcing workers, based on a fixed-time employment agreement (PKWT) between the employer and the recipient of workers, is generally limited in validity; there is no certainty of continuity in work so workers have an unsafe situation as workers.²

² Law Number 13 of 2003 concerning Manpower.

The legal rules in Indonesia in the industrial sector continue to undergo changes, especially in the regulatory sector for outsourcing, which runs very dynamically. The change is shown in related facts, ranging from law number 13 of 2003, law number 11 of 2020, perpu number 2 of 2022, to law number 6 of 2023, which has just been passed and used to compare the law or regulation of outsourced labor in law number 13 of 2003 with Law No. 6 of 2023.

However, currently, the new Perpu and laws still do not have implementing rules. In this study, the author tries to find out and make a comparison or comparative study related to the regulation on outsourced personnel in Law Number 13 of 2003 with Law Number 6 of 2023. This research is classified as literature research, which is research that emphasizes information from books, journals, papers, newspapers and examines various kinds of literature that have a relevant relationship with

Normatively, the regulation regarding outsourcing in Indonesia was first comprehensively regulated in Law Number 13 of 2003 concerning Manpower. In the regulation, outsourcing is limited only to supporting work that is not directly related to the company's main activities. However, in its implementation, this provision raises various problems, especially related to the protection of workers' rights.

Significant changes occurred after the promulgation of Law Number 11 of 2020 concerning Job Creation, which was then updated through Law Number 6 of 2023 concerning the Determination of the Job Creation Perppu. This regulation brings fundamental changes in the regulation of employment

relations, including provisions on outsourcing. One important change is the removal of restrictions on the types of jobs that can be outsourced, thus opening up wider opportunities for companies to implement outsourcing systems across different types of jobs.

As a follow-up, the government issued implementing regulations, including Government Regulation Number 35 of 2021 which regulates fixed-time work agreements (PKWT), outsourcing, working time, rest time, and termination of employment. This regulation is the basis for the technical law for the implementation of outsourcing after the enactment of the Job Creation Law.³

Although the government normatively states that this new regulation aims to improve worker protection while encouraging investment, in practice, there is still debate about the effectiveness of legal protection for outsourced workers. Outsourced workers often face problems of job uncertainty, differences in treatment with permanent workers, vulnerability to termination of employment (PHK), and limited access to social security and welfare.

From the perspective of labor law, outsourcing employment relationships gives rise to a trilateral legal relationship, namely between workers, workers/labor service providers, and user companies. Such a legal relationship structure has the potential to cause a vagueness of responsibility in the event of a violation of workers' rights.

³ Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements.

Therefore, an in-depth analysis is needed on the extent to which the Job Creation Law and its implementing regulations provide adequate legal protection for outsourcing workers.

Based on this description, this study is important to examine normatively and conceptually the legal protection for outsourcing workers from the perspective of the Job Creation Law and its implementing regulations, as well as its implications for certainty and fairness. Outsourcing is one of the strategic choices in supporting business processes in companies. In addition to efficiency, user companies are spoiled with several advantages/benefits from outsourcing activities. One of the most important things is that the user company can focus more on the company's strategy, so that the process of achieving the company's goals can be controlled, measurable, and finally achieved. In outsourcing, especially labor outsourcing in Indonesia, in terms of regulation and its implementation have always been an interesting phenomenon. The issue of outsourcing is always hot, and even warm. This happens because of the impact of a very dynamic work life. On the one hand, companies want to employ resources from outside (outsourcing), but on the other hand, workers (laborers) object and refuse, because the practice is allegedly detrimental to certain parties in industrial relations in Indonesia.

The State of Indonesia protects every citizen to get a job in accordance with the provisions contained in the Constitution of the Unitary State of the Republic of Indonesia in 1945. In Article 27, paragraph (2) of the 1945 Constitution, it

is emphasized that "Every citizen has the right to work and a decent livelihood for humanity".⁴

The existence of the government as the holder of authority in the administration of the state to regulate all aspects of life, should be a protection, guidance, supervision and investigation as well as ensure the fulfillment of workers' rights through pro-worker laws and regulations. But what happened was the opposite, the presence of the state seemed to give flexibility to companies to take care of all labor issues. One example is the legalization of outsourcing practices by the state through Law Number 13 of 2003 concerning Manpower.

Provisions in Law Number 13 of 2003 concerning Manpower require that outsourcing companies must be legal entities intended in order to ensure legal protection for employed workers/laborers.

Outsourcing aims to develop companies in Indonesia, protecting against the occurrence of monopolies in one company. However, since it was enacted in 2003 until today, what is desired from the background of the inclusion of Outsourcing articles in Law No. 13 of 2003 concerning Manpower has not become a reality because the actual meaning of Outsourcing is not carried out according to the law, a good enough regulation will not automatically give birth to good conditions if the implementation of the law and regulations does not run.

⁴ The 1945 Constitution

In this case, what is wrong is not the law but the regulations, but the implementation of the law and regulations themselves. The Ministry of Manpower must be responsible for all these outsourcing problems. Many companies take advantage of the weaknesses of the Ministry of Manpower in the implementation of Law number 13 of 2003. Globalization and fierce business competition demand that companies improve performance through effective and efficient organizational management. One of the efforts made is to hire as little labor as possible, but make the maximum contribution.

As a result, the company's efforts are focused on handling work that is the core business. Meanwhile, the supporting work is handed over to other parties. This activity process is called outsourcing. Many workers are contractors, who are recruited through outsourcing companies that have emerged in industrial centers. This happens because this business is very profitable for contract labor companies.

Some of the things that are considered detrimental to the workers are suspected or related to the organizer/provider of outsourcing services that implement several things such as the existence of a number of fees before work, salary deductions, unclear social security and income tax mechanisms, non-transparent calculations of salaries or overtime, unclear employment relationship mechanisms, or other things that have the potential to harm or abuse the status of workers/laborers. Or at least weaken the position of workers/laborers in the employment relationship. These things are the basis for workers to disband or prohibit outsourcing practices in Indonesia.

In every moment of the labor movement, the issue of outsourcing always seems to be the first and main issue in every action. It is as if there is no afdhol of a movement, if it removes the issue, even temporarily. However, is it appropriate for an outsourcing policy like this, or is it appropriate for outsourcing to be dissolved? For the first option, it is clear that each party agrees that ideally, outsourcing practices are not so, because it will obviously be detrimental to one of the parties. If outsourcing is a business tool, of course, the tool must be useful, not bring losses. For the second option, about dissolution or prohibition of outsourcing, this is what always warms up an issue and attracts the attention of many parties. As long as the parties look from an iterative perspective, the issue of outsourcing will always be a subject of debate with no end or common ground.⁵

In employment development, the government is expected to be able to compile and establish labor planning. Workforce planning is intended to be used as a basis and reference in the formulation of policies, strategies, and the implementation of sustainable employment development programs. The preparation of the workforce is based on the basis of employment information. Employment information that must be compiled at least includes:

- 1) Job opportunities
- 2) Job training
- 3) Labor productivity

⁵ Anatami Darwis, *Employment Law and Outsourcing*, (Yogyakarta: Digital Public, 2019), p. Sec. 34.

- 4) Industrial relations
- 5) Wages and labor welfare.

Employment information is obtained from all related parties, both from government agencies and private agencies. The procedures for obtaining employment information and the preparation and implementation of labor planning are prepared scientifically and objectively. Most people in Indonesia realize that in the implementation of national development, labor has a very important role and position as an actor in achieving development goals. Employment development is directed to improve the quality and contribution to development and protect its rights and interests in accordance with human dignity.

The company as a symbol of the dominant economic system, becomes inherently clear, its structure and function are anti-thesis for the protection of workers/laborers law, the two contradict each other, there is always a gap between *das sollen* (what should be) and *das sein* (what it really is) and there is always a difference between law in the books and law in action. The gap between *das sollen* and *das sein* is caused by the difference of views between legal interests (protection of workers) and economic interests (company profits), the will to fulfill the rights of workers/laborers to the maximum, for companies it is actually felt as an obstacle because it will reduce profits and profits.

The weak legal protection for workers/laborers can be seen from the problem of outsourcing labor which becomes an actual national issue every labor day commemoration on May 1. The problems of outsourcing vary as its use is increasingly

prevalent in the business world, while so far there has been no regulation to regulate outsourcing that has been running in the midst of economic life with the hegemony of financial capitalism that operates through a "dis-solution subject", which does not view workers as subjects that must be protected, but only as objects to be exploited.

Human Resource management practice, outsourcing practice is a practice that is often carried out. Outsourcing is defined as "The transfer or delegate to an internal service prvider the operation and day to day management of a business process. (Author's free translation: outsourcing is defined as the process of transferring and delegating business services that are operations for internal and are carried out daily by the business management process.)⁶

In addition, outsourcing is the delegation of daily management operations of business processes to external parties (outsourcing service providers). Therefore, resource management is no longer carried out by the company but is handed over to the services of outsourcing labor providers outsourcing practices as covered by the law. No. 13 of 2003 concerning Manpower. For those who agree that outsourcing is beneficial in the development of newly established businesses, provides stimulus for the growth of new forms of business (contractors) that indirectly open up jobs for job seekers, and even in various countries such practices are beneficial in terms of increasing taxes, business growth, alleviating unemployment and poverty and increasing

⁶ Yasar Iftida, *Designing Outsourcing Work Agreements*, (Jakarta: Gramedia Digital, 2013), p. Sec. 15.

people's purchasing power, As for companies, it is certain, because every business policy remains profit-oriented.

The rejection of the outsourcing system is based on the idea that this system is a form of modern capitalism that will bring misery to workers, and provide the widest possible opportunity for employers to dominate industrial relations with the treatment of capitalists that Karl Marx said exploits workers. "In this very paradoxical context, it is necessary to conduct a fundamental study at the level of implementation of basic labor rights and then criticize and even find solutions. Will not financial capitalism, neo-liberalization, economic globalization and free markets on the one hand face diametrically with the principle of human rights on the other?"

An indication of the weak legal protection for workers/laborers, especially contract workers who work in outsourcing companies, can be seen from the many irregularities and/or violations of work norms and Occupational Safety and Health (K3) norms carried out by employers in running an outsourcing business.

Such irregularities and/or violations can be categorized as follows:

1. The company does not classify the main work (core business) and the company's supporting work (non-core business) which is the basis of the implementation of outsourcing (outsourcing), so in practice that outsourced is the nature and type of the company's main work. The absence of classification of the nature and type of work that is outsourced results in workers/laborers being

- employed for the types of main jobs or jobs that are directly related to the production process, not supporting activities as required by law;
2. The company that hands over the work (principal) hands over part of the implementation of its work to another company/company that receives the work (vendor) that is not a legal entity;
 3. Job protection and working conditions for outsourced workers/laborers are very minimal when compared to other workers/laborers who work directly for the Principal company and/or are not in accordance with international trade regulations, which requires to form a labor flexibilatition strategy, one of which is outsourcing. This is to respond to increasingly free and fierce market competition. The labor flexibilatition strategy is said to provide benefits for workers because it provides wider employment opportunities by creating a part-time work system, facilitates negotiations between companies and workers and provides opportunities for workers not to involve third parties and labor unions.

The source of international law is the material and process by which the rules and rules govern the international community. International Law is derived through international treaties and treaties that include any International action or obligation for member states under the United Nations. International agreements create laws or norms for the parties involved in the agreement. Protection of the rights of outsourced workers according to international law, either through international agreements that are hard law or soft law.

Protection of the rights of outsourced workers based on international agreements that the state is obliged to protect its citizens. On December 10, 1948, the United Nations adopted and issued the Universal Declaration of Human Rights 1948 (UDHR) through United Nations General Assembly (UNGA) resolution No. 217 A (III) of 1948. This instrument becomes an international regulation to be included in the law regulations of the ratifying country. The preamble of the DUHAM recognizes inherent rights and recognition of human rights as Jus Cogens (the highest norm) in international law. Especially the work problems regulated in Article 23 of the DUHAM which is mentioned:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay'for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

The DUHAM Declaration stipulates that everyone has the right to work, to choose a job, to the right to fair and favorable work conditions and the right to protection from unemployment. Everyone deserves a fair and favorable wage that guarantees a decent life for himself and his family. Therefore, all forms of discrimination against the earning of

wages are expressly said to be contrary to the principles of human rights.

In addition, to support the fulfillment of the right to work, International Law regulates Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). As stated in Article 6:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

ICESCR strengthens the existence of the right to work and the right to work. The concern of ICESCR is to provide a large space for everyone to realize the right to work, including guarantees to protect workers for the fulfillment of economic, social and cultural rights. The regulation on the protection of outsourced labor is very complex regarding the protection of outsourced workers as stipulated in Articles 65 and 66 of the Manpower Law. The complexity of outsourcing requires serious attention from the government to provide legal

protection and the need for Government Intervention to pursue law as a tool of social engineering

However, a company must have a way of working in using outsourcing services. Every company should provide legal protection for employees and be able to prosper outsourced employees. Therefore, a company must provide protection for outsourced employees and must be biased in solving problems that occur in the company.

RESULTS AND DISCUSSION

B. Legal Regulations on Outsourcing Workers Before and After the Enactment of the Job Creation Law.

The regulation regarding outsourcing workers in Indonesia has undergone significant changes since the enactment of the Job Creation Law. These changes mainly concern the scope of work that can be outsourced as well as the form of employment relationship between workers and companies.

1. Regulations Before the Job Creation Act

Prior to the enactment of the Job Creation Law, regulations regarding outsourcing were regulated in Law Number 13 of 2003 concerning Manpower, especially in Article 64, Article 65, and Article 66. In this provision, outsourcing is defined as handing over part of the implementation of work to another company through two mechanisms, namely the outsourcing of work and the provision of workers/laborer services.

The setting at this time has several key characteristics. First, there are strict restrictions on the types of work that can be outsourced. Outsourcing is only allowed for supporting work or work that is not directly related to the production process (non-core business). Thus, the main job in a company should not be transferred to a third party.

Second, worker service providers companies must be legal entities and must meet certain administrative requirements. This is intended to provide legal certainty for workers and ensure that there is a party responsible for the fulfillment of workers' rights.

Third, the employment relationship between workers and outsourcing companies must be clearly stated in the employment agreement, both in the form of a Fixed Time Work Agreement (PKWT) and an Indefinite Time Work Agreement (PKWTT). In addition, the protection of workers' normative rights, such as wages, social security, and working conditions, remains the responsibility of service providers. Normatively, this arrangement aims to limit outsourcing practices so as not to harm workers. However, in practice, there are still many irregularities, such as the use of outsourcing for core work and unclear work status of workers.

2. Regulations after the Job Creation Act

After the enactment of Law Number 11 of 2020 concerning Job Creation, which was later updated through Law Number 6 of 2023, the regulation regarding outsourcing underwent fundamental changes. These changes can be seen from the removal of Article 64 and Article 65 of the Manpower

Law, as well as changes to Article 66. In addition, the implementation provisions are further regulated in Government Regulation Number 35 of 2021.⁷

One of the most significant changes is the removal of restrictions on the types of work that can be outsourced. In this new regime, there are no longer any provisions that explicitly limit outsourcing only to supporting work. This means that all types of jobs, including core jobs, can be outsourced to other companies. In addition, outsourcing arrangements have become simpler because they no longer explicitly distinguish between the outsourcing of work and the provision of worker services. The main focus of the arrangement shifts to the working relationship between workers and outsourcing companies.

Under the new provisions, outsourcing companies remain responsible for the protection of workers, including the fulfillment of normative rights such as wages, social security, and decent working conditions. The employment relationship can be based on PKWT or PKWTT, according to the company's needs. Government Regulation Number 35 of 2021 also introduces several additional provisions, such as providing compensation for workers with PKWT and more detailed arrangements regarding termination of employment.

Nevertheless, this change has drawn criticism, especially because it is considered to reduce protections for workers. With the removal of restrictions on the type of work, companies have greater flexibility to use outsourced labor,

⁷ Law Number 11 of 2020 concerning Job Creation

which has the potential to increase job uncertainty for workers.

3. Comparison of Settings

In general, the difference in regulation before and after the Job Creation Law lies in the policy orientation. Prior to the Job Creation Act, the regulation placed more emphasis on restricting and protecting workers through restrictions on the types of jobs that could be outsourced. Meanwhile, after the Job Creation Law, the regulation emphasizes more on the flexibility of the job market by giving companies greater freedom in implementing an outsourcing system.

The outsourcing system was previously regulated in Law Number 13 of 2003 concerning Manpower, which was later amended in Law 11 of 2020 concerning Job Creation. Indonesia does not yet have its own law regulating outsourcing, although the rules on outsourcing are regulated in Articles 64 to 66 of Law 13 of 2003 concerning Manpower, which states that "companies may hand over part of the implementation of work to other companies through a contract for the outsourcing of work or the provision of workers/laborer services made in writing."

Law 13 of 2003 concerning Manpower does not expressly regulate the criteria and limitations of supporting work in the outsourcing of work. Article 65 paragraph (2) stipulates that the nature of the work that can be handed over to the work outsourcing company is 1) carried out separately from the main activity; 2) it is carried out by direct or indirect order from the employer; 3) is a supporting activity for the

company as a whole; and 4) does not hinder the production process directly. These requirements are cumulative requirements that must be met in their entirety. Failure to meet one of the conditions results in the work that is outsourced not being handed over to other companies. This results in flexibility for employers to hand over part of the implementation of the work to the company receiving the wholesaler in their company.

If the company has determined the type of supporting work, then the employer company only needs to report and ask for approval from the local Manpower Office. Employment relations have a meaning, namely a relationship between a worker/laborer and an employer based on the elements of command, wages, and employment. This describes the issuance of workers' rights and obligations to their employers and vice versa. In outsourcing, workers only have a working relationship with the outsourcing company (outsourcing company) and not with the employer company (user company).

The provisions in Article 65 paragraph (2) b which stipulate that work that can be handed over to other companies can be done with direct or indirect orders from the employer can cause criticism, namely how can a company that has handed over the implementation of the work to another person still has the authority to give orders either directly or indirectly to work that has been outsourced to another company. The provisions of Article 65 paragraph (6) of Law 13 of 2003 concerning Manpower state that employment relations through employment contracts are regulated in a written

agreement between the company receiving the outsourcing of work (outsourcing company) and the employed worker.

This article shows that the employment relationship does not occur between the worker and the employer company, but with the company receiving the outsourcing of the work. The employment relationship can be transferred to the employer company in the event of a violation, as mentioned in Article 65 paragraph (8) of Law 13 of 2003 concerning Manpower. In the event that the provisions as referred to in Article 65 paragraph (2) and paragraph (3) are not fulfilled, for the sake of the law of employment status, the worker with the company receiving the outsourcing of work (outsourcing company) turns into an employment relationship with the employer company. This means that:⁸

- 1) If the work done is not a supporting job or an employment that can be outsourced and
- 2) If the work outsourcing company is not a legal entity, then the employment relationship between the worker and the work outsourcing company will automatically change to a PKWTT worker at the employer company. The employer is obliged to recruit him as a permanent employee. This provision is considered burdensome for the employer company.

The employment relationship between workers and companies receiving work outsourcing can be based on PKWTT if they meet the requirements stipulated in Article 59

⁸ Goenawan, *Introduction to Labor Law*, (Jakarta: Gradika Binangkit Press, 2014), p. Sec. 57.

of Law Number 13 of 2003 concerning Manpower. This provision shows that the type of work in the company receiving the wholesale work regulated in PKWT must be temporary. Law 13 of 2003 concerning Manpower does not regulate in detail the protection of the rights of employed workers.⁹

Protection of workers is regulated in Article 65 paragraph (4) that the work protection and working conditions of outsourced workers must be the same as the work protection and working conditions of the employer company or in accordance with the applicable laws and regulations. Kepmenakertrans Number 220 of 2004 regulates the protection of the rights of outsourced workers, and the terms of work agreed in the employment agreement must not be lower than the provisions in the applicable laws and regulations. Article 5 of the Ministry of Labor and Transmigration Number 220 of 2004 stipulates that every employment outsourcing agreement must ensure the fulfillment of the rights of workers/laborers in the employment relationship as stipulated in laws and regulations. Budhiarta stated that there is an unclear norm in the outsourcing arrangement which creates a space for multiple interpretations that is vulnerable to having an impact on the disharmony of the employment relationship between workers and companies in the outsourcing system.

The ambiguity of the regulation in question is related to the legal certainty of employment relations in Law Number

⁹ Law Number 13 of 2003 concerning Manpower.

13 of 2003 concerning Manpower, namely it can be with the employment relationship of PKWT and/or PKWTT, as stipulated in Article 65 paragraph (6) and paragraph (7) and Article 66 paragraph (2) b and d jo Article 59 in Law 13 of 2003 concerning Manpower. Based on these provisions, the employment relationship that occurs in the outsourcing agreement is between an outsourced worker or labor and an outsourcing company (the recipient of the job).

If a number of requirements specified in the law are not met, then, for the sake of the law, the status of the employment relationship between the worker or laborer and the labor service provider company or labor (outsourcing company) turns into an employment relationship between the worker or laborer and the employer company. The practice in outsourcing employment agreements tends to use PKWT/contract, so it is easy for companies to lay off if they no longer need them. An indication of the weak legal protection arrangements for workers with an outsourcing system is the many irregularities and violations that occur and harm workers. As time goes by, outsourcing practices are considered not to be in accordance with applicable laws and regulations, especially in the field of wages and discriminatory treatment of permanent workers and outsourced workers, therefore the Non-Governmental Organization Alliance of Indonesian Electric Meter Reader Officers (AP2M) submitted a request for a material test to the Constitutional Court (MK) on Articles 59, 64, 65, and 66.¹⁰

¹⁰ Alan J. Boulton, *The Structure of Industrial Relations in Indonesia in the Future*, (Jakarta: Sinar Grafika, 2020), p. Sec. 21.

The provisions in Article 66 of Law Number 11 of 2020 concerning Job Creation are no longer included regarding the limitations of jobs that are prohibited from being carried out by workers with an outsourcing system. The revision of the outsourcing system regulation opens up the possibility for Worker Service Provider companies to hire workers for various tasks that are not regulated in Law Number 11 of 2020 concerning Job Creation. In fact, in Article 65 paragraph (2) of Law Number 13 of 2003 concerning Manpower, it was previously regulated regarding work that can be handed over to other companies that must meet the requirements, namely carried out separately from the main activity; carried out by direct or indirect order from the employer; is a supporting activity for the company as a whole; and does not hinder the production process directly.

This provision also allows for no time limit for outsourced workers, and even a lifetime. This provision can, of course, make companies able to hire workers with an outsourcing system in all lines of work. This will have an impact on the free use of outsourcing labor if there are no rules or regulations derived from Law Number 11 of 2020 concerning Job Creation. Outsourced labor can also be used to carry out main activities or activities related to the production process, which means that in all types of work, you can use a Worker Service Provider (PJP) company. Protection for workers with an outsourcing system, in Law Number 11 of 2020 concerning Job Creation, the protection of rights for outsourced workers still exists which is regulated in Article 66 paragraph (5) of Law Number 11 of 2020 concerning Job Creation which is related to wages and

welfare, working conditions and disputes that arise are the responsibility of the outsourcing company (PJP Company).¹¹

The provisions of Law Number 11 of 2020 concerning Job Creation which delete Articles 64 and 65 of Law Number 13 of 2003 concerning Manpower and retain Article 66 indicate that outsourcing provisions are still allowed by the Law. The provisions result in further opening up opportunities for the proliferation of types of outsourcing work relationships, even though it has been proven that this form of triangular relationship like outsourcing is very unprofitable for workers. In Law Number 11 of 2020 concerning Job Creation, the relationship established between outsourcing companies and workers/laborers is based on a Fixed-Time Work Agreement (PKWT) or Indefinite Time Work Agreement (PKWTT). Meanwhile, if you look at the provisions regarding PKWT in Law Number 11 of 2020 concerning Job Creation, it is regulated in Article 56 which states:

- (1) Employment agreements are made for a specific time or for an indefinite period of time
- (2) A Specific Time Work Agreement is based on the term or completion of a particular job.
- (3) The period or completion of a certain work as intended in paragraph (2) is determined based on the agreement of the parties.

¹¹ Law Number 11 of 2020 concerning Job Creation.

- (4) Further provisions regarding a fixed-time employment agreement based on the term or completion of a job are regulated with the Government Government.

Based on the provisions in Article 56 of Law Number 11 of 2020 concerning Job Creation, outsourcing in its implementation is based on a certain period of time or the completion of certain agreed work. Regarding outsourcing work, the period of implementation of the work is not limited by time and is an agreement between the parties. Especially for outsourcing based on a Fixed-Time Work Agreement (PKWT) is regulated in the provisions of Article 57 of Law Number 11 of 2020 concerning Job Creation which states that:

- (1) Employment agreements for a certain period of time are made in writing and must be in Indonesian and Latin letters.
- (2) In the event that a certain time work agreement is made in Indonesian and foreign languages, if there is a difference in interpretation between the two, then the specific time work agreement made in Indonesian applies. Still related to the provisions in PKWT, in Article 58 of Law Number 11 of 2020 concerning Job Creation states:
 - (1) A fixed-term employment agreement cannot require a probationary period.
 - (2) In the event that the work probationary period as intended in paragraph (1) is required, the required probationary period is null and void for the sake of law and the working period is still calculated. Based on the provisions on PKWT in Articles 57 and 58 of Law Number 11 of 2020 concerning Job Creation related to

outsourcing activities, in its implementation, an outsourcing agreement is made in writing between the outsourcing company and workers and made using Indonesian and Latin letters. Outsourcing work agreements made in two languages, namely Indonesian and English, if in the future there is a difference in interpretation, then the applicable agreement is an agreement made in Bahasa Indonesia.

C. Forms of legal protection for outsourcing workers in the Job Creation Law and its implementing regulations.

The Job Creation Law brings significant changes in employment regulations, including those related to outsourcing workers. Although it provides greater flexibility to companies, this regulation still contains various forms of legal protection for outsourced workers regulated in the Job Creation Law and its implementing regulations, especially Government Regulation Number 35 of 2021.¹²

1. Protection of Workers' Normative Rights

One of the main forms of protection for outsourcing workers is the guarantee of normative rights. In the provisions of Article 66 of the Job Creation Law, it is emphasized that outsourced workers are still entitled to the same protection as workers in general.

These rights include:

¹² Alan J. Boulton, *The Structure of Industrial Relations in Indonesia in the Future*, (Jakarta: Sinar Grafika, 2021), p. Fig. 66.

- 1) the right to wages in accordance with the provisions of laws and regulations, including the minimum wage;
- 2) the right to employment, social security, and health insurance;
- 3) occupational safety and health protection (K3);
- 4) the right to treatment in accordance with human dignity and values.

Thus, even if workers are employed through outsourcing companies, they still have a recognized and protected legal standing.

2. Certainty of Employment Relationship

Legal protection is also provided through the clarity of the employment relationship. In the Job Creation Law, the employment relationship of outsourced workers is emphasized to be with the labor service provider company (outsourcing company), not with the user company.

The employment relationship must be outlined in the employment agreement, either in the form of:

- 1) Fixed-Time Work Agreement (PKWT), or
- 2) Indefinite Time Work Agreement (PKWTT).

Through this arrangement, there is certainty regarding the party responsible for fulfilling the rights and obligations of workers.

3. Responsibilities of Outsourcing Companies

Outsourcing companies as employers have full responsibility for workers, including:

- 1) pay wages and provide welfare;
- 2) enroll workers in social security programs;
- 3) provide job protection and decent working conditions;
- 4) resolving industrial relations disputes.

This provision aims to prevent the transfer of responsibility from the user company to the worker.

4. Protection in the Event of Outsourcing Company Turnover

One of the important forms of protection regulated in the implementing regulations is the principle of transfer of worker protection (often referred to as the principle of protection sustainability).

In the event of a change of outsourcing company, then:

- 1) the rights of permanent workers must be protected;
- 2) the working period can be calculated on an ongoing basis;
- 3) Workers must not be harmed as a result of changing companies.

This provision is intended to provide certainty and continuity of protection for outsourcing workers.

5. Protection for PKWT Employees (Contract)

Government Regulation Number 35 of 2021 provides additional protection for workers with PKWT status, namely:

- 1) the existence of limitations and provisions regarding the term of the contract;
- 2) the obligation to provide compensation for workers whose contracts have expired;

- 3) clearer arrangements regarding rights and obligations during the contract period.

This becomes important because most outsourced workers work with contract systems.

6. Protection in Termination of Employment (PHK)

The Job Creation Law and its implementing regulations also regulate protection in the event of Termination of Employment (PHK), including:

- 1) the obligation to provide severance pay or compensation according to the provisions;
- 2) layoff procedures that must be carried out legally;
- 3) workers' right to file objections through the industrial relations dispute settlement mechanism.

Thus, outsourced workers still have access to justice in the event of a dispute with the company.

7. Dispute Resolution Mechanism

Outsourcing workers have the right to resolve industrial relations disputes through the mechanisms regulated in laws and regulations, namely:

- 1) bipartite negotiations;
- 2) mediation or conciliation;
- 3) settlement through the Industrial Relations Court.

This mechanism provides a guarantee that workers can claim their rights legally in the event of a violation. The form of legal protection for outsourced workers in the Job Creation

Law and its implementing regulations basically still includes the protection of normative rights, certainty of employment relations, and guarantees in terms of termination of employment and dispute resolution.¹³

However, even though the protection has been normatively regulated, in practice, there are still challenges, especially related to job security and workers' bargaining positions, which tend to be weaker. Therefore, the effectiveness of legal protection is highly dependent on the implementation and supervision carried out by the government.

After the enactment of the Job Creation Law and Government Regulation 35 of 2021, there are several Articles in the Manpower Law that regulate outsourcing (outsourcing), such as Articles 64 and 65 of the Manpower Law being abolished and the regulation of the provision of workers/laborers services in Article 66 was changed to a regulation on the employment relationship between an outsourced company and the worker/laborer it employs based on a fixed-time work agreement or a non-employment agreement made in writing. Thus, the Job Creation Law abolishes the division of outsourcing into the type of work outsourcing or the type of provision of workers/laborer services.

The Job Creation Law also abolishes articles in the Manpower Law that regulate the requirements and

¹³ Abdul Latif, *Legal Protection for Outsourcing Workers*, (Jakarta: Sinar Grafika, 2021), p. Sec. 51.

restrictions on the types of supporting work and/or supporting service activities that can be partially handed over to other companies. In Article 1 number 14 of Government Regulation 35 of 2021, outsourcing companies are: "Outsourcing companies are business entities in the form of legal entities that are qualified to carry out certain work based on agreements agreed with employer companies."

Government Regulation 35 of 2021 concerning PKWT, Outsourcing, Working Time, and Rest Time and Layoffs is a government regulation to implement the provisions of Article 81 and Article 185 letter b of Law 11 of 2020 concerning Job Creation, so it is necessary to establish Government Regulations on Fixed-Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment.

Government Regulation 35 of 2021 not only applies to the implementing rules of Law 11 of 2021, but is still valid and used for the implementing rules in Perpu 2 of 2022, which replaces Law 11 of 2020. Until now it is still valid in the new Job Creation Law as the implementing rules of Law 6 of 2023.

The position of Government Regulation 35 of 2021 is an answer to bridge problems and strategic issues regarding Employment Relations which include the regulation of the implementation of PKWT and the protection of Workers/Laborers in it, including PKWT Workers/Laborers who are employed in outsourcing activities, the regulation of working hours and rest time for Workers/Laborers, especially in business sectors and certain types of work that emphasize occupational safety and health aspects as well as regulation

regarding the mechanism for Termination of Employment, including how to ensure the fulfillment of rights for Workers/Laborers who experience Termination of Employment (PHK).

Prior to the enactment of Government Regulation 35 of 2021, according to the Manpower Law 13 of 2003, it was said that a work agreement must be made in writing between a company that uses workers' services and a company that provides workers' services. After the enactment of Government Regulation 35 of 2021, the employment relationship between the outsourcing company and the employed workers is based on PKWT or PKWTT. Workers/Labor Protection, Wages, Welfare, Working Conditions, and Disputes are regulated in Employment Agreements, Company Regulations, or Collective Labor Agreements.¹⁴

Based on Government Regulation No. 35 of 2021, Article 18. Prior to the enactment of Government Regulation 35 of 2021, the Manpower Law 13 of 2003 stated that, if the employer company does not continue the worker/labor service agreement and transfers the work of providing workers/laborers services to a new worker/labor service provider company, then the new worker/labor service provider company must continue the existing employment agreement without reducing the provisions in the existing employment agreement that has been agreed. If there is a transfer of work to a worker/laborer service provider

¹⁴ Government Regulation 35 of 2021 concerning Fixed-Time Work Agreements.

company, the working period that has been passed by the workers/laborers must still be considered existing and taken into account by the new worker/labor service provider company.

After the enactment of Government Regulation 35 of 2021 in the PKWT regulation, it requires the transfer of rights protection for Workers/Laborers in the event of a change of Outsourcing Company, and as long as the object of work remains. These requirements are a guarantee of continuity of work for Workers/Laborers. If the Worker / Laborer does not obtain a guarantee of the continuity of work, then the Outsourcing Company is responsible for the fulfillment of the rights of the Worker/Laborer. Based on Implementing Regulation 35 of 2021, Article 19.

D. Analysis of Legal Arrangements and Legal Protection Regarding Outsourcing Workers Before and After the Enactment of the Job Creation Law.

After the enactment of Law Number 11 of 2020 concerning Job Creation, which was later updated through Law Number 6 of 2023, the regulation regarding outsourcing underwent fundamental changes. These changes can be seen from the removal of Article 64 and Article 65 of the Manpower Law, as well as changes to Article 66. In addition, the implementation provisions are further regulated in Government Regulation Number 35 of 2021.

One of the most significant changes is the removal of restrictions on the types of work that can be outsourced. In this new regime, there are no longer any provisions that

explicitly limit outsourcing only to supporting work. This means that all types of jobs, including core jobs, can be outsourced to other companies. In addition, outsourcing arrangements have become simpler because they no longer explicitly distinguish between the outsourcing of work and the provision of worker services. The main focus of the arrangement shifts to the working relationship between workers and outsourcing companies.

Under the new provisions, outsourcing companies remain responsible for the protection of workers, including the fulfillment of normative rights such as wages, social security, and decent working conditions. The employment relationship can be based on PKWT or PKWTT, according to the company's needs. Government Regulation Number 35 of 2021 also introduces several additional provisions, such as providing compensation for workers with PKWT and more detailed arrangements regarding termination of employment.

Nevertheless, this change has drawn criticism, especially because it is considered to reduce protections for workers. With the removal of restrictions on the type of work, companies have greater flexibility to use outsourced labor, which has the potential to increase job uncertainty for workers.

In general, the difference in regulation before and after the Job Creation Law lies in the policy orientation. Before the Job Creation Act, the regulation placed more emphasis on restricting and protecting workers through restrictions on the types of jobs that could be outsourced. Meanwhile, after the Job Creation Law, the regulation emphasizes more on the

flexibility of the job market by giving companies greater freedom in implementing an outsourcing system.

The outsourcing system was previously regulated in Law Number 13 of 2003 concerning Manpower, which was later amended in Law 11 of 2020 concerning Job Creation. Indonesia does not yet have its own law regulating outsourcing, although the rules on outsourcing are regulated in Articles 64 to 66 of Law 13 of 2003 concerning Manpower, which states that "companies may hand over part of the implementation of work to other companies through a contract for the outsourcing of work or the provision of workers/laborer services made in writing."

Law 13 of 2003 concerning Manpower does not expressly regulate the criteria and limitations of supporting work in the outsourcing of work. Article 65 paragraph (2) stipulates that the nature of the work that can be handed over to the work outsourcing company is 1) carried out separately from the main activity; 2) it is carried out by direct or indirect order from the employer; 3) is a supporting activity for the company as a whole; and 4) does not hinder the production process directly. These requirements are cumulative requirements that must be met in their entirety. Failure to meet one of the conditions results in the outsourced work being unable to be handed over to other companies. This results in flexibility for employers to hand over part of the implementation of the work to the company receiving the wholesaler in their company.

If the company has determined the type of supporting work, then the employer company only needs to report and

ask for approval from the local Manpower Office. Employment relations have a meaning, namely a relationship between a worker/laborer and an employer based on the elements of command, wages, and employment. This describes the issuance of workers' rights and obligations to their employers and vice versa. In outsourcing, workers only have a working relationship with the outsourcing company (outsourcing company) and not with the employer company (user company).

However, even though the protection has been normatively regulated, in practice, there are still challenges, especially related to job security and workers' bargaining positions, which tend to be weaker. Therefore, the effectiveness of legal protection is highly dependent on the implementation and supervision carried out by the government.

After the enactment of the Job Creation Law and Government Regulation 35 of 2021, several Articles in the Manpower Law regulate outsourcing (outsourcing), such as Articles 64 and 65 of the Manpower Law being abolished and the regulation of the provision of workers/laborers services in Article 66 was changed to a regulation on the employment relationship between an outsourced company and the worker/laborer it employs based on a fixed-time work agreement or a non-employment agreement made in writing. Thus, the Job Creation Law abolishes the division of outsourcing into the type of work outsourcing or the type of provision of workers/laborer services.

The Job Creation Law also abolishes articles in the Manpower Law that regulate the requirements and restrictions on the types of supporting work and/or supporting service activities that can be partially handed over to other companies. In Article 1, number 14 of Government Regulation 35 of 2021, outsourcing companies are: "Outsourcing companies are business entities in the form of legal entities that are qualified to carry out certain work based on agreements agreed with employer companies."

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in business sectors and certain types of work that emphasize occupational safety and health aspects as well as regulation regarding the mechanism for Termination of Employment, including how to ensure the fulfillment of rights for Workers/Laborers who experience Termination of Employment (PHK).

Before the enactment of Government Regulation 35 of 2021, according to the Manpower Law 13 of 2003, it was said that a work agreement must be made in writing between a company that uses workers' services and a company that provides workers' services. After the enactment of Government Regulation 35 of 2021, the employment relationship between the outsourcing company and the employed workers is based on PKWT or PKWTT. Workers/Labor Protection, Wages, Welfare, Working Conditions, and Disputes are regulated in Employment Agreements, Company Regulations or Collective Labor Agreements.

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company, the working period that has been passed by the workers/laborers must still be considered existing and taken into account by the new worker/labor service provider company.

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With the enactment of Law No. 13 of 2003, it can be referred to as a codification of various labor provisions that were previously separate. Before this law came into effect, there were around 15 labor regulations that applied to regulate labor issues. With the enactment of Law No. 13 of 2003, the 15 regulations have been declared invalid.

From the definition of outsourcing as mentioned above, in the field of labor law, the provisions that govern outsourcing are implicitly determined in Articles 64 to 66 of Law No. 13 of 2003. Article 64 states that: The company may hand over part of the implementation of the work to another company through a contract for the outsourcing of work or a worker/labor service provider made in writing.

The provisions in Article 64 of Law No. 13 of 2003 are often called outsourcing. The provisions of outsourcing as Article 64 of Law No. 13 of 2003 mentioned above are not something that is mandatory, but rather the provision is more of a free choice, in its implementation, the use of outsourcing is left to the calculation of profit and loss from the company.

Prior to the enactment of Law No. 13 of 2003, outsourcing arrangements could be found in the Criminal Code. Civil. Article 1601b states: Work outsourcing is an agreement, by which one party, the wholesaler, undertakes to perform a job for the other party, the contracting party, by accepting a specified price. Then the term outsourcing is translated as "outsourcing part of its work to another company (wholesaler)", by the Circular Letter of the Minister of Manpower No. SE-08/MEN/1990 concerning the Responsibility of Companies Providing Wholesale Work to the Protection and Welfare of Workers of Wholesale Companies.

Finally, through Law No. 13 of 2003, outsourcing was introduced to partially hand over part of the implementation of work to other companies through a contract to wholesale work or a service provider for workers or laborers. So that outsourcing includes the handover of part of the implementation of workers by a company with a wholesale agreement to a wholesaler company or the delivery of part of the implementation of work by a company with a worker service provider agreement to a worker/labor service provider company.

The handover or delegation of part of the work to an outsourcing company, first begins with negotiations between

the outsourcing worker user company (the employer company) and the outsourcing company (the hiring company) until an agreement is reached between the two parties which is then outlined in an agreement or agreement, which is made and signed by both parties which lists how the work procedures, implementation, and the possibility that will occur or disputes arise in such outsourcing practices.

From the above explanation, it can be said that formal juridical outsourcing in terms of employment law has the following elements:

1. Partial handover of the implementation of the work by the company.
2. To other companies; and
3. Through a work outsourcing agreement or a worker/labor service provider agreement.

Workers/laborers are part of the workforce, namely workers who work in an employment relationship, under the order of the employer (can be individuals, employers, legal entities, or other bodies) and for their services, in working the person concerned receives wages or other forms of rewards.

E. CONCLUSION

The legal arrangement regarding outsourced workers in Indonesia underwent fundamental changes after the enactment of the Job Creation Law. Prior to the enactment of the Job Creation Law, the outsourcing regulation in Law Number 13 of 2003 concerning Manpower tended to be

restrictive, especially with the provision that outsourcing was only allowed for supporting work (non-core business). In addition, there is a clear separation between the outsourcing of work and the provision of worker services, as well as relatively strict requirements for outsourcing companies. After the enactment of the Job Creation Law, there was a significant change in the form of the abolition of restrictions on the types of jobs that can be outsourced. This gives companies greater flexibility to assign different types of work, including core jobs, to third parties. The regulation is also more focused on the working relationship between workers and outsourcing companies, as well as the affirmation of the responsibility of service providers for the fulfillment of workers' rights. Although the Job Creation Law still regulates normative protections for outsourced workers, such as wages, social security, and job protection, these changes tend to lead to increased labor market flexibility which has implications for reduced job security for workers. Thus, it can be concluded that there is a paradigm shift from restrictions to flexibility, which requires stricter supervision so as not to harm workers.

Legal protection for outsourced workers in the Job Creation Law and its implementing regulations basically still guarantees the normative rights of workers. This protection includes the right to wages according to the provisions, social security, occupational safety and health, and protection in the event of termination of employment. In addition, there is clarity regarding the working relationship between workers and outsourcing companies as the party directly responsible for the fulfillment of workers' rights. The Job Creation Law also provides additional protection through provisions in

implementing regulations, such as providing compensation for workers with Fixed-Time Work Agreements (PKWT) and the principle of sustainability protection in the event of a change of outsourcing company. However, even though the protection has been normatively regulated, in practice there are still challenges, such as the weak bargaining position of workers, the potential for job uncertainty, and the possibility of misuse of the outsourcing system. Therefore, the effectiveness of legal protection is highly dependent on implementation and supervision in the field.

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