

JURIDICAL ANALYSIS OF OUTSOURCED WORKERS BASED ON LAW NUMBER 6 OF 2023 ON STIPULATION OF GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 ON JOB CREATION INTO LAW**NDINTA HERRY PRAMANA, HULMAN PANJAITAN, ANDREW BETLEHN
(antaginting.simgroup@gmail.com)
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This research discusses the juridical analysis of outsourced workers in light of Law No. 6 of 2023 on Job Creation Stipulating Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. This study aims to determine the regulation of outsourced workers after the issuance of the 2023 Job Creation Law and whether the regulation is able to protect and fulfil the rights of outsourced workers from the exploitation of employers that continues to occur in Indonesia today. This research uses qualitative research with normative legal research methods. The data sources used are primary data in the form of laws and government regulations of the Republic of Indonesia that are currently in force, and secondary data consisting of books, journals and websites. The results of this research can be concluded that in Law Number 13 of 2003 on Manpower, several provisions have been amended by Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, including provisions relating to outsourced labour. Based on the old comparison between the Manpower Law and the Job Creation Law, it is worth noting that the Job Creation Law has also caused controversy, especially in relation to labour protection. Some provisions, such as those relating to the type of work, working time, and severance pay, are considered to reduce protection for outsourced labour. In addition, the Job Creation Law No. 6 of 2023 regulates the protection of workers from social security, working days and hours, time and holidays, wages and benefits, and provisions for termination of employment. However, in the event of discrepancies experienced by outsourced workers, they can take non-litigation legal action such as bipartite, mediation, conciliation, or arbitration.

Keywords: Workers, Outsourcing, Law Number 6 of 2023 on Job Creation.

INTRODUCTION

Since the growth of the global economy and technological advances, business competition has intensified, forcing businesses to adapt to the demands of an increasingly competitive market that requires better customer service. In this context, many companies in Indonesia are shifting to core businesses to improve responsiveness to market demands. However, this has led to labour issues, including wage issues that are not in line with provincial minimum wage (UMP) or district minimum wage (UMK) standards.

Outsourcing has also become a solution for companies to overcome labour problems. However, there are problems in the relationship between employers and outsourced workers, including wage disparities and violations of outsourced workers' rights. In addition, the existence of outsourcing in Indonesia has both positive and negative sides that need to be evaluated. On the one hand, the outsourcing system frees companies

from heavy administrative burdens, but on the other hand, it causes non-compliance by employers with minimum wage provisions.

Efforts to protect the rights of outsourced workers themselves still have many obstacles. Several regulations that have been implemented, such as Law No. 13/2003 on Labour and Law No. 11/2020 on Job Creation, have not been able to fully fulfil the rights of outsourced workers from exploitation by employers. Therefore, it is necessary to evaluate the legal protection regulations for outsourced workers in the 2023 Job Creation Law to ensure the protection and fulfilment of outsourced workers' rights.

The issue of wages in Indonesia is a major concern as 13 out of 34 provinces experience a wage gap between labourers and workers that is lower than the Provincial Minimum Wage (UMP). Aceh, South Sumatra, South Sulawesi, Gorontalo, and West Sulawesi have the largest wage gaps (Kedepatian III Bidang Perekonomian Kantor Staf Presiden Tim Monitoring dan Evaluasi UUCK Kantor Staf Presiden Evaluasi, 2024, Implementasi PP 51/2023 Tentang Pengupahan. Jakarta, 28 Februari 2024). A total of 70.12% of labourers/employees across Indonesia consider their wages to be inconsistent with the UMP and District Minimum Wage (UMK). The provinces of West Sumatra, NTB, Aceh, South Sulawesi, and Gorontalo have the highest levels of wage discrepancies, reaching almost 80% (Kedepatian III Bidang Perekonomian Kantor Staf Presiden Tim Monitoring dan Evaluasi UUCK Kantor Staf Presiden Evaluasi, 2024).

Thus, the purpose of this study is to analyse the regulation of outsourced workers after the issuance of the Job Creation Law 2023 and identify whether the regulation has been able to protect and fulfil the rights of outsourced workers from the exploitation of employers that continues to occur in Indonesia. By doing so, it is hoped that the outsourcing system can provide better protection for outsourced workers and ensure fairness in labour relations.

This research has novelty because there has never been a study that discusses the legal arrangements for outsourced workers in the Job Creation Law of 2023, especially in protecting and fulfilling the rights of outsourced workers from the exploitation of employers that continues to occur in Indonesia. Therefore, this research needs to be conducted to evaluate whether the Job Creation Law of 2023 can protect and fulfil the rights of outsourced workers and provide a concept of legal protection that should be given as the rights of outsourced workers in Indonesia.

LITERATURE REVIEW

Labour

In Indonesia, the history of labour is divided into two periods: the period before independence and the period after independence. In the period before independence, Indonesia was ruled by the Dutch and had a difficult time in terms of labour. Indonesian labourers became slaves to the Dutch. Some laws, such as the Regerings Reglement (RR) in 1854, abolished the slavery system. However, there was a form of forced labour during the Japanese colonial period. After independence, labour law was regulated by the Indonesian government through the 1945 Constitution of the Republic of Indonesia. At the beginning of independence, labour issues were not considered a priority by the government. In 1951, the Work Act No. 12/1948 was enacted, which regulated types of work, work schedules, rest periods, workplace procedures, and dispute resolution. In an effort to reform, the House of Representatives has amended several labour-related laws,

including Law No. 21/2000 on Industrial Relations, Law No. 13/2003 on Labour, and Law No. 2/2004 on Industrial Relations Dispute Settlement (Peter Mahmud Marzuki, 2011).

Law of the Republic of Indonesia Number 13 Year 2003 defines labour as a person who is able to produce goods and services to meet personal and community needs. The population of a country can be divided into two groups: Labour and non-labour. Some different definitions of labour include those of Sumarsono, Subri, and Simanjuntak. Ismail Sunny also states that labour includes all people who can produce goods and services, including leaders or directors.

In labour theory, Lewis argues that an excess supply of workers does not pose a problem for economic development; on the contrary, excess workers are capital to accumulate income, assuming that the movement of workers from the subsystem sector to the modern capitalist sector is smooth and will never be a significant number. Employees form labour unions to protect their interests from wage reductions.

Before embarking on investment activities, investors will consider trained and skilled labour and reasonable wages. The basic rights of workers, including the right to wages, protection of working hours, holiday allowances, labour social security (JAMSOSTEK), termination compensation, and leave rights, must be protected in accordance with Law No. 13/2003. The right to wages is regulated in Articles 88 to 97 of Law Number 13 Year 2003 on Labour. Protection of working hours is regulated in Articles 77 to 85 of Law No. 13 of 2003 on Labour, and normal working hours are forty hours a week. Hari Raya allowance Employers are obliged to provide Hari Raya allowance to all their employees. Labour Social Security (JAMSOSTEK) is regulated in Law No. 40/2004 on the National Social Security System. The national social security programme consists of five programmes: Work Accident Insurance, Death Insurance, Old Age Insurance, Health Care Insurance, and Pension Insurance. Compensation for termination of employment is regulated in Law No. 13/2003 on Labour, which includes severance pay, long service pay, indemnity pay, and separation pay. The right to leave is regulated in Article 79 of Law No. 13/2003 on Labour.

By protecting the basic rights of workers and labourers, both in terms of wages, working hours, benefits, social security, and compensation, society can be expected to be just, prosperous, and prosperous for workers and labourers who contribute to the economic development of the country. All of this shows the importance of protecting the basic rights of labour in protecting their welfare in creating a better future for all.

Employment Agreement

Employment agreements are regulated in Chapter VII of the Civil Code and explained in Article 1601a of the Civil Code. A work agreement is an agreement in which one party, the worker, agrees to work for the other party, the employer, for a certain period of time by receiving wages. A work agreement is also regulated in Article 1 point 14 of Law 13/2003, which states that it is an agreement between a worker/labourer and an entrepreneur or employer that includes working conditions, rights, and obligations of the parties (Laurensius Arliman, 2017)

Experts provide different definitions of employment agreements. This relates to the obligations of a worker or labourer to the employer. A work agreement based on the provisions in Law 13/2003 must fulfil the legal requirements of an agreement. In addition, there are conditions that must be met, such as the agreement of both parties,

the ability to perform legal acts, the existence of the work agreed upon, and the work does not conflict with public order, decency, and applicable laws and regulations.

There are two classifications of work agreements based on the duration agreed upon, namely the Fixed-Term Work Agreement (PKWT) and the Indefinite-Term Work Agreement (PKWTT). PKWT is designed to protect the workforce, while PKWTT has a trial period of 3 months at most, and workers immediately become permanent workers after the trial period is over. The essence of a work agreement is to regulate the relationship between the worker and the employer. In addition, the outsourcing system is also regulated in Law 13/2003 and its derivative regulations. Outsourcing refers to the handing over of part of the execution of work to another company through a work contracting agreement or the provision of worker services. Companies can use outsourcing to save on production costs and concentrate on their core competencies.

However, outsourcing only applies to production support work, such as security services, maintenance, transport, and provision of food for employees. This regulation also stipulates that the working conditions of outsourced workers must be at least the same as those of workers in the employing company, or in accordance with the prevailing laws and regulations. As such, employment agreements have regulations governing various aspects, including their legal requirements, classification based on time duration, and outsourcing systems. All of these aim to protect the rights and obligations of the parties, both workers and employers, in their employment relationship.

Outsourcing Work

Law 13/2003 and its derivative regulations regulate the term outsourcing. Outsourcing is a system in which an outsourcing company hires workers who then work for a user company (Sentosa Sembiring, 2005). The type of work that can be outsourced is work that is not directly related to the production process or outside the core business of a company, such as cleaning, security, support work in mining, provision of food for employees, and others. This allows companies to concentrate on their core competencies and save on production costs, as well as produce quality products and services with market competitiveness.

Permenaker 19/2012 further regulates outsourcing, which is defined as the transfer of part of the implementation of work to another company through a work contracting agreement or the provision of worker or labor services. However, not all types of work can be outsourced in accordance with existing regulations. The working conditions of outsourced workers must be at least the same as the work protection and working conditions of the company providing the work or in accordance with applicable laws and regulations. This is reinforced by Constitutional Court Decision No. 27/2011, which confirms that outsourced workers must still receive adequate job protection, even if the company that provides the work is replaced by another company. Thus, outsourcing in labor relations is currently a trend in the business world to increase efficiency and focus on the company's main competencies (Iftida Yasar, 2008)

Theoretical Overview

The legal theory used in this research is the theory of legal protection. Pancasila forms the principles of Indonesian legal protection from the recognition of human dignity. The concept of human rights recognition places responsibility on society and government.

Soetjipto Rahardjo explains legal protection as an effort to protect a person's interests by giving him the power to act in his interests. In addition, it is stated that one of the characteristics of law is to provide protection (pengayoman) to the community. Therefore, legal certainty must be provided to protect the community (Husni, Any Suryani Hamzah, 2018). Legal protection is a rule that protects the subject of law and enforces it with sanctions. There is preventive protection to prevent violations and repressive protection as sanctions after violations occur. Preventive protection gives people the opportunity to raise objections before a definitive government decision, while repressive protection is aimed at resolving disputes with sanctions in the form of fines, imprisonment, and additional penalties.

In addition, the legal theory of employment agreements. An employment agreement is an agreement in which the worker commits to work for the employer for a certain period in exchange for wages. Employment agreements are regulated by applicable laws such as BW, Wetboek Van Koop Handel, Employment Law, Trade Union/Labor Union Law, Job Creation Law 2023, and Industrial Relations Dispute Resolution Law. The agreement covers the terms of employment, rights, and obligations of the parties, and is considered coercive because the parties cannot establish their own will. In labor practice, Law 13/2003 regulates industrial relations stemming from employment agreements. According to labor law, there are two types of employment agreements: Specified Time Work Agreement (PKWT) and Indefinite Time Work Agreement (PKWTT). Article 1320 of the Civil Code regulates the legal requirements of employment agreements. The elements are work (Arbeid), elements under orders (In Diest/Gezag Verhouding), certain wages (loon) and time period (tijd). A valid employment agreement must also be made between the parties to the employment agreement, and the work promised is not contrary to public order, decency, or the regulations of the Law (Soetjipto Rahardjo, 1983)

RESEARCH METHOD

The research method used in this research is the normative juridical method by using literature as a source of data or research theory. This research is descriptive in nature and aims to explain issues related to the regulation of outsourced workers after the 2023 Job Creation Law takes effect. In this research, the Legislation approach is used to identify all regulations related to the legal issues addressed. The types and sources of data for this research consist of primary, secondary and tertiary legal materials. The data collection technique used is document study, while the data analysis technique uses a qualitative approach. The research location will be conducted in Indonesia with a research period of 2023 to 2024.

RESULT AND DISCUSSION

Regulation of Outsourced Workers After The Issuance of Labor Copyright Law in 2023

1. Outsourced Workers Work Contract According to Law Number 13 of 2003 concerning Manpower

Law No. 13/2003 on Manpower in Indonesia regulates the practice of outsourcing. There are two categories of outsourcing, namely work contracting and the provision of worker/labor services. Articles 64 to 66 regulate the legal relationship between

outsourced employees and the employer company. Article 64 states that a company can hand over part of the execution of work to another company through a written contractor or service provision agreement. Article 65 has provisions that cover terms related to outsourcing, among other things, regarding the delivery of work, work protection, working relationships in the performance of work, and working conditions at other companies. Article 66 stipulates that workers from companies providing labor services may not be used to carry out basic activities or directly related to the production process.

Service provider companies must also fulfill requirements regarding labor relations, wage protection, and written agreements between service user companies and service providers. In the case of company-internal employee contracts, the agreement is regulated based on aspects of the scope of work, the term of the agreement, duties, remuneration, working time, work appraisal, applicable law, intellectual rights, confidentiality, expiration of the agreement, and closing. The practice of theoretical research on outsourcing in the community is often not in accordance with and even contradicts the framework of the Labor Law. The working relationship in an agreement to provide services to workers requires a working relationship between the company that provides services to workers and the transaction with the worker, even though the work performed by the employee is in the company providing the work. This occurs because of factors related to work, orders, and money (Suwarti, 2018).

2. Law of the Republic of Indonesia Number 6 of 2023 on Job Creation

The 2023 Job Creation Law changes some of the rights of outsourced workers. Firstly, the type of outsourced work becomes more flexible, where outsourced workers can do main or production-related work. Regarding the working period, PKWT is responsible for ensuring that employers do not continuously extend workers' contracts under PKWT indefinitely. Second, wage rules have become more flexible. The 2023 Job Creation Law allows micro and small employers to pay wages below the minimum wage, reducing the burden on small businesses to grow but also posing a risk of violating the rights of outsourced workers, including the right to decent overtime pay. Third, the enactment of the Job Creation Law of 2023 also changed the provisions of labor social security by adding a Job Loss Guarantee (JKP), which provides more protection to outsourced workers, especially after layoffs, but employers' awareness of the importance of social security is still low. Fourth, the enactment of the Job Creation Law of 2023 changed the calculation of compensation money, where employers can now lay off workers without the reason of company closure and the amount of severance pay received by outsourced workers can be reduced.

3. Analysis of Legal Protection for Data Transfer Workers Based on Legal Protection Theory

Legal protection is given to legal subjects as preventive and repressive protection, with the aim of providing certainty, justice, benefit, order, and peace (Edi Supriyanto, 2019). Legal protection for workers, consisting of economic, social, and technical protection, aims to ensure that workers' basic rights are fulfilled and justice is achieved (Barzah Latupono, 2011). Workers have the right to adequate wages, freedom of association, occupational health insurance, and occupational safety and security. The legal protection of workers also includes working time, rest periods,

leave, overtime work, workers with disabilities, women/pregnant/maternity workers, child labor, layoffs, social security, morals, decency, and treatment in accordance with religious values. Palesti Workers also have the same position as employers juridically, but socio-economically, employers have a superior position, so legal protection is needed to ensure justice for workers whose position is weaker. The legal protection of workers is regulated in labor legislation, and is based on the principle of recognition and protection of human dignity with Pancasila as its source. The principle of legal protection for workers also involves the progress of the business world and the interests of employers, to achieve welfare for workers and their families.

4. Fulfillment of Rights and Legal Protection of Outsourced Workers

Regulations related to outsourcing in Indonesia are regulated in Government Regulation Number 35 of 2021. Article 18 stipulates that outsourcing service companies can recruit workers through two types of agreements, namely a Fixed-Term Work Agreement (PKWT) and an Indefinite Time Work Agreement (PKWTT). Article 19 stipulates that outsourcing companies that employ workers/laborers under non-permanent contracts must require the transfer of protection of rights for workers/laborers. Meanwhile, Article 20 stipulates that Outsourcing Companies must be legal entities and fulfill business licenses. Prior to the Job Creation Law and PP 35/2021, there were work contracting and worker/labor service providers with certain conditions. After the amendment, the working relationship between outsourcing companies and workers/laborers is regulated based on PKWT or PKWTT in writing, with protection borne by the outsourcing company.

In terms of licensing, previously licenses were granted by the agency responsible for labor, whereas after the Job Creation Law, business licenses were issued by the Central Government. The changes to this regulation provide clarity on the procedures for outsourcing in Indonesia. It is hoped that this regulation can provide better protection for workers/laborers who work through outsourcing companies and provide clarity on the procedures for business licensing in outsourcing practices in Indonesia. In accordance with the spirit of the Job Creation Law that prioritizes increasing investment and simplifying business licensing, this regulation is expected to provide clear direction for business actors in organizing outsourcing practices in Indonesia in accordance with applicable regulations.

5. Legal Remedies for Dispute between Outsourced Worker and Company

Employment agreements give rise to rights and obligations for workers. Matters agreed upon in the employment agreement are binding as law for workers and cannot be withdrawn unilaterally except on the basis of the agreement of both parties. Work agreements made orally are considered weak and have not been able to optimally provide legal protection for workers. Legal protection is in the form of legal remedies in the form of actions that can be taken by workers to obtain their rights that are violated by the company or employer.

These legal remedies can be conducted through non-litigation or litigation channels, such as bipartite, mediation, conciliation, or arbitration. Arbitration is a dispute resolution method that involves an arbitrator or arbitral tribunal as a neutral party facilitating the process, while legal remedies for mediation and conciliation are legal processes that occur in industrial relations courts. The settlement of industrial

relations disputes through the courts is one of the settlement methods stipulated in Law No. 2/2004 on Industrial Relations Dispute Resolution (PPHI Law).¹en become workers with PKWTT. This legal remedy aims to resolve industrial relations disputes by deliberation and consensus. As for litigation, it is a legal process that takes place through a court institution and aims to request a court decision in resolving disputes that occur in industrial relations.

In the process of dispute resolution through the courts, a lawsuit that is not accompanied by minutes of settlement through mediation or conciliation is returned to the plaintiff. In addition, legal remedies against industrial relations court decisions can only be made in the form of cassation and there is no appeal option. This aims to accelerate the settlement of industrial relations disputes. Therefore, it is necessary to have a good understanding of the legal process in resolving industrial relations disputes, both through non-litigation and litigation channels, in order to provide optimal legal protection for workers.

6. **Fulfillment of Outsourced Workers' Rights in Legal Protection Theory**

Legal protection of workers can be provided and enforced through 2 (two) forms of legal protection according to Philipus M. Hadjon, namely preventive and repressive legal protection (Imam Soepomo, 2003). Preventive legal protection for workers aims to prevent violations of workers' rights. This is done by making work agreements in writing in order to provide legal certainty and provide space for workers to file objections if they feel their rights have been violated. This protection also applies to areas of worker welfare such as wages, health, and work safety. Meanwhile, repressive legal protection is carried out by strengthening the government's control function in supervising the implementation of labor, ensuring that workers' rights are fulfilled, and resolving disputes between workers and employers.

Repressive legal protection is also carried out to ensure the settlement of industrial relations disputes through bipartite negotiations, mediation, conciliation, arbitration, and industrial relations courts. This aims to ensure that workers' rights are protected and any disputes can be resolved fairly. This legal protection is expected to create a safe, comfortable, and calm working environment for workers, so as to increase production and mutual welfare between workers and employers. Therefore, the government needs to ensure the implementation of these two forms of legal protection so that workers' rights can be well protected (Agus Antara Putra, dkk, 2020)

CONCLUSION

The results of the analysis and discussion of this research conclude that the 2023 Job Creation Law amends the provisions in Law No. 13/2003 on Manpower, including the provisions on outsourced labor. GR 35/2021 is the first time the government has made the official nomenclature of outsourcing as outsourcing. The regulation on outsourcing is also contained in Chapter III of PP 35/2021. It is necessary to thoroughly monitor the implementation of the Job Creation Law and PP 35/2021 for outsourced workers and outsourcing companies. The protection of workers in terms of social security, working days and hours, time and holidays, wages and benefits has been regulated in the Job Creation Law 2023. In case of discrepancies, workers can take non-litigation legal remedies such as bipartite, mediation, conciliation, and arbitration.

SUGGESTION

Suggestions for outsourcing companies are to update and improve outsourcing employee employment contracts in accordance with the 2023 Job Creation Law. As for outsourced employees, it is important to read and understand the contents of the employment agreement so that future rights and obligations can be fulfilled in accordance with laws and regulations.

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