

IMPLEMENTATION OF WORKERS' LEGAL RELATIONS IN OUTSOURCED COMPANIES AND PROVISIONS FOR TERMINATION OF EMPLOYMENT AFTER THE ENACTMENT OF LAW NO 6 OF 2023 CONCERNING JOB CREATION

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Abstract

Outsourcing in Indonesia has its advantages and disadvantages. It can create jobs and help reduce unemployment, but it also often creates problems between workers and companies. Every individual needs a job to earn a decent living, in accordance with the principles of the state. The government should ensure the welfare of its citizens by providing employment opportunities, as stipulated in the law. However, in practice, workers often lack adequate protection, especially with types of employment contracts such as non-permanent contracts that are favoured by employers because they reduce wage costs. Contracts such as non-permanent contracts can make workers feel anxious about the stability of their jobs and wages. Government intervention is considered essential to protect workers' rights. Law No. 13 Year 2003 regulates non-permanent contracts, and although it was revised by the Omnibus Law and Law No. 6 Year 2023, many people felt there were no significant changes. There is debate over the article that allows outsourcing of some jobs. In some cases, such as what happened at PT BM Tbk, there were violations of the law's provisions regarding PKWT, which made the employment relationship unclear. This research aims to understand more about the legal relationship of workers in outsourcing companies and the implications of Law No. 6 of 2023, as well as its impact on termination of employment. Therefore, this study aims to discuss the implementation of the legal relationship of workers in outsourcing companies after the enactment of Law No. 6 of 2023 as well as the termination of employment of workers in these companies, in comparison with Decision No. 524 K/Pdt.Sus-Phi/2022.

This research uses the normative legal method, also known as doctrinal legal research, to understand the law as rules in legislation. The method is descriptive analytical, explaining current conditions based on facts. The approach used includes the analysis of relevant laws. The data used is secondary data from the literature, including primary, secondary, and tertiary legal materials, collected through documentation. Data analysis was conducted in a qualitative descriptive manner to answer the research problem.

The research shows that the legal relationship between workers in outsourcing companies and layoffs after Law No. 6 of 2023 still does not provide legal certainty and justice. This is due to the uncertainty in the law and the unfairness of workers' positions. Three factors that impede justice are the lack of application of the principle of judicial

independence, the vacuum of norms, and the utilisation of legal weaknesses by employers. The author suggests revising the law by involving the community and reminding outsourcing companies to follow the law for the sake of legal certainty and justice for workers.

Keywords: Worker's Law, Outsourcing Company, Termination of Employment, Job Creation Law

INTRODUCTION

Outsourcing in Indonesia has both benefits and drawbacks. It can create jobs, reduce unemployment, and contribute to economic growth, but it often leads to disputes between workers and companies (Marnisah, 2019). Every individual needs to work to earn a decent living, which reflects the principle of 'just and civilised humanity' enshrined in the country's philosophy. The government is responsible for improving the welfare of its citizens by providing decent work opportunities, as stated in Article 27 paragraph (2) of the 1945 Constitution, which guarantees the right to work and a decent livelihood for all citizens. With a large population, effective labour management will greatly assist development efforts (Djumadi, 1995).

Labour law in Indonesia is mainly regulated by various labour regulations, which show the important role of the government. Legal validity in labour matters requires government authorisation, and regulations set by the government serve as minimum and maximum standards (Uwiyono, 2004). In a competitive global market, companies aim to improve their performance by hiring workers at low wages while expecting maximum contributions. This situation has led to the rise of fixed-term contracts (PKWT), which are favoured by employers because they offer lower wages and no severance pay for workers at the end of the contract. However, from the workers' perspective, such contracts are often unfavourable and can be harmful (Malik, 2018).

Contract workers often feel anxious about their low wages and employment status, especially towards the end of the contract. This uncertainty is exacerbated by many companies applying the Fixed-Term Employment Agreement (PKWT) system, leading to protests from workers. The bargaining position of workers is weaker than employers, which makes their rights less protected. In difficult circumstances, workers are forced to fulfil demands that are detrimental to them. Therefore, state intervention becomes necessary to address these injustices in labour relations, in order to protect weaker workers. (Zaeni, 2007)

The Indonesian government issued Law No. 13/2003 on Labour, which regulates non-permanent contracts. Over time, this regulation has been revised through a Constitutional Court decision and supplemented by the Omnibus Law on Job Creation and the Law on the Formation of Laws and Regulations. The Omnibus Law was later changed to Law Number 6 of 2023, but many people feel that there is no significant change with the previous law, Law Number 11 of 2020.

Debates have arisen regarding Law Number 6 of 2023, especially regarding articles that directly relate to workers. One important article is Article 64 paragraph 1, which allows companies to outsource some of their work to other companies through outsourcing agreements. PKWT is a recruitment system for contract workers, in accordance with Government Regulation Number 35 of 2021. PKWT is a work agreement between

workers and employers for a work relationship within a certain time or for a certain type of work.

Law No. 13/2003 stipulates that Fixed-Term Employment Agreements (PKWT) can be made for a maximum of 2 years and can be extended by 1 year, while Law No. 6/2003 does not set a time limit. This lack of clarity can disrupt job security and contradict labour principles. As a result, workers' rights and obligations may not be fulfilled, potentially harming outsourced workers. In Decision Number 524 K/Pdt.Sus-Phi/2022, a dispute was discussed between a worker who had security status at PT BM Tbk and the outsourcing company PT JSU. The worker had worked from 2012 to 14 July 2020 with a PKWT status for 8 years. PT JSU, as an outsourcing company, has the responsibility to protect workers, including in terms of wages, welfare, and settlement of disputes in accordance with the law. Law No. 6 of 2023 does not regulate the term of PKWT in detail, but Article 59 paragraph (4) states that further provisions will be regulated in a Government Regulation. Meanwhile, Government Regulation No. 35 of 2021 states that non-permanent contracts can last up to 5 years including extensions. Despite these regulations, there are still abuses in the field, such as contract terminations that are punctuated by a break and then a new agreement is made that seems to restart the employment relationship. Details of the case show that the first PKWT started on 1 May 2012 and ended on 30 April 2013. On 1 May 2013, it was extended without a break until 29 April 2014. The whole is in accordance with the legal provisions that allow for a one-time extension of PKWT for a maximum of 1 year. PT JSU is required to notify the extension in writing to the worker within a maximum of 7 days prior to the expiry of the PKWT.

Under the Fourth PKWT which was valid from 1 June 2016 to 31 May 2018, there was a one month gap before the Fifth PKWT commenced on 1 August 2018 to 31 July 2019. There was also a two-month gap between the expiry of the Fourth PKWT and the commencement of the Fifth PKWT. The Fifth PKWT ended on 31 July 2019, followed by the Sixth PKWT from 1 August 2019 to 31 July 2020. The violation of the provisions of the Labour Law led to a change in the status of the employment relationship to PKWTT since 24 April 2014. Therefore, this research aims to discuss the implementation of the legal relationship of workers in outsourcing companies after the enactment of Law No. 6 of 2023 as well as the termination of employment of workers in these companies, in comparison with Decision No. 524 K/Pdt.Sus-Phi/2022.

LITERATURE REVIEW

Employment Relationship

An employment relationship is a legal bond between a worker and a company, in which the worker performs tasks for a reward, usually in the form of wages (Hoesin, 2014). Everyone has the right to work and get fair treatment in accordance with the 1945 Constitution. This relationship must be structured based on work agreements and applicable regulations, and is reciprocal between workers and companies. According to Tjepi F. Aloewir (1996), employment relations involve employers and workers in a bond, while Iman Soepomo (2002) emphasises the importance of an agreed employment agreement, whereby workers agree to work in exchange for wages from the employer. Overall, the employment relationship is a legal bond governed by agreements and rules that exist in the work environment.

Employment Agreement

The employment relationship arises from the employment agreement between the worker and the company. This agreement contains the terms of employment, along with the rights and obligations of each party, and is valid until termination of the agreement. According to Article 1 point (14) of the Labour Law, a work agreement binds the worker to work in exchange for wages from the employer, who also commits to provide work. It differs from other conventional agreements because it is based on a specific agreement between the worker and the company. Employment agreements form the basis of industrial relations and cover the system of work carried out by workers in accordance with agreed terms (Pranabayu and Ida Ayu Sukihana, 2019). When drafting an employment agreement, it is important to use clear and structured language to avoid different interpretations.

Fixed-term Employment Agreement

There are two types of employment agreements: Fixed-Term Employment Agreements (PKWT) and Indefinite-Term Employment Agreements (PKWTT). PKWT is made between the worker and the company with the provision of a certain time or completion of work, which must be stated in a written agreement using Indonesian language. Regulations on non-permanent contracts are stipulated in the Labour Law and Ministerial Decree No. 100/2004. The law states that non-permanent contracts cannot be for permanent jobs. Non-permanent contracts can be extended a maximum of once for one year and the total duration cannot exceed two years. If these provisions are violated, non-permanent contracts will be converted into permanent contracts. Companies are also required to register PKWT with the labour agency within seven days of signing. Additional information on non-permanent contracts is regulated in Government Regulation No. 35 of 2021, which further explains the duration and types of work that can use non-permanent contracts, which do not apply to permanent employment.

Dispute Resolution on Termination of Employment

The relationship between a worker and a company can end through termination of employment (PHK), which can occur at any time. Layoffs are not only detrimental to workers as they lose their livelihoods, but can also be detrimental to the company, especially if the fired workers have important skills (Purnomo, 2019). According to Hasibuan, layoffs are the dismissal of employees from an organisation (Sonhaji, 2019). In the regulations, layoffs are defined as the end of employment relationships that remove the rights and obligations between workers and companies. The result of layoffs for workers is the loss of jobs and income. PHK in Article 1 number 15 of Government Regulation No. 35 of 2021 is the termination of employment due to a certain matter which has the effect of ending the rights and obligations between workers and companies.

Theoretical Overview

The legal theories used in this research are legal protection theory and legal certainty theory. Legal protection, according to Philipus M. Hadjon (1987), is an important concept in state administrative law that protects the rights of citizens from arbitrary government action. Hadjon (1987) emphasises that this protection is important to

provide security to witnesses and victims, as well as to recognise human rights. Legal protection can take various forms, such as restitution, compensation, medical and legal aid. Hadjon (1987) divides legal protection into two main types: preventive and repressive protection. Preventive legal protection aims to prevent rights violations before they occur, among others, by creating transparent regulations so that citizens know their rights and how to protect them. For example, the government must conduct socialisation and consultation before issuing policies that affect the public. Meanwhile, repressive legal protection is provided after a violation occurs. This is done through law enforcement mechanisms and courts to restore violated rights. If the government acts against the law, citizens can sue at the State Administrative Court (PTUN) to restore lost rights and sanction violators. Philipus M. Hadjon (1987) also emphasises the basic principles of legal protection, namely the principles of legality, justice, legal certainty and accountability. The principle of legality states that government actions must be based on valid laws. The principle of justice requires fair treatment of all citizens. The principle of legal certainty demands clarity in rights and obligations, while avoiding arbitrary actions. Hadjon's theory of legal protection is relevant for analysing the legal relations of workers in the context of outsourcing companies and the termination of employment after the enactment of Law No. 6 of 2023.

The theory of legal certainty according to Roscoe Pound, as explained in the book by Peter Mahmud Marzuki (2008), includes two important meanings. First, legal certainty provides general guidance for individuals on what actions they may and may not take. Second, it protects individuals from abuse of government power, thus providing a sense of security (Marzuki, 2008). Legal certainty does not only refer to the law, but also to consistency in judges' decisions for similar cases. Satjipto Rahardjo (2006) argues that society, especially modern ones, craves certainty in social interactions, and the law is responsible for that. Legal certainty becomes an ideology in legal practice, but there is a tendency to mix the statement with the truth. The rule of law serves as a general guide in relations between parties and protects individuals from abuse. The objectives of legal certainty include promoting justice by ensuring fair treatment for all, protecting individual rights, creating social stability, and supporting economic growth.

RESEARCH METHOD

This research uses normative legal methods, also known as doctrinal legal research. Law is understood as written in legislation or norms that guide human action. The research is descriptive analytical, meaning that it explains the current condition of the subject or object of research based on existing facts (Amiruddin, 2008). The approach used is a statutory approach, which involves analysing all laws and regulations related to the legal issues under study (Marzuki, 2013). The type of data used is secondary data, which is obtained from literature and includes primary, secondary, and tertiary legal materials. Primary legal materials consist of various laws related to labour law, such as the Labour Law and related Government Regulations. Secondary legal materials are additional information from books and articles, while tertiary legal materials provide guidance from primary or secondary sources. Data collection is carried out using the documentation method, collecting relevant documents, and data analysis is carried out using a qualitative descriptive method, which aims to explain the data obtained to answer research problems.

RESULT AND DISCUSSION

IMPLEMENTATION OF WORKERS' LEGAL RELATIONS IN OUTSOURCING COMPANIES AND PHK AFTER THE ENACTMENT OF LAW NUMBER 6 OF 2023

1. Outsourcing Work in the Legislation

The development of globalisation, technology, and competition in the field of employment affects the economy in Indonesia. Companies innovate and compete to achieve profits and development. To obtain large profits, good production management is required, so companies make production cost efficiencies. One way for efficiency is to implement the practice of outsourcing, which helps companies reduce labour-related costs and maintain progress within the scope of modern companies. However, there are still problems related to labour, with many workers not receiving protection of their rights and fair treatment. (Muttaqin and Latumahina, 2022)

Outsourcing, also known as outsourcing work, refers to the transfer of authority or part of a company's production process to an outside party (Farida, 2017). This allows companies to delegate some tasks to reduce their production burden. Companies that provide outsourcing services are often called vendors or subcontractors. While there is no specific legal definition for outsourcing, it is understood that companies can transfer some of their tasks to other companies.

The practice involves three parties: the outsourcing company, the employer, and the worker. In Indonesia, outsourcing is regulated by the Labour Law, which has been amended by the Job Creation Law and updated by Government Regulation No. 35 of 2021. The latest amendment was made by Law No. 6 of 2023 regarding the provisions of the Job Creation Law. The following are the provisions related to outsourcing in the laws and regulations:

a. Law No. 13/2003 on Labour (Articles 64 to 66)

The term outsourcing or outsourced work is not definitively regulated in the Labour Law. Article 64 of the Labour Law states that a company can transfer work to another company through a contractor agreement or the provision of work services, under written conditions. In this case, outsourced workers are contracted under a PKWT (Specified Time Work Agreement). Article 65 paragraph (2) mentions the conditions for work that can be transferred, namely: The work must be separate from the main activity, performed at the behest of the employer, be a supporting activity, and not interfere with the production process. Work that can be transferred is only that which is not directly related to the core production (Pratiwi & Andani, 2022).

The Labour Law prohibits the use of outsourced labour for the company's core activities. The company providing the work must hand over the work to a contracting company that is incorporated. If there is a violation and the company is not incorporated, then the employment relationship can return to the employer company. After the Labour Law was born, there was a Minister of Manpower and Transmigration decree that stipulates that the employer company must make a work process flow. (Farida, 2017)

Outsourcing can also be done through a worker service provider company (PJP), which must be a legal entity and have a licence from the relevant agency. If not,

the status of the worker's employment relationship changes to that with the employer company. There are two legal relationships in this practice: between the employer and the PJP, and between the worker and the PJP. Work that can be outsourced is supporting work that is not included in the main activity, such as security, cleaning, food providers, and services related to mining or petroleum. (Farida, 2017)

Employment relationships can be based on PKWT or PKWTT if they meet the conditions stipulated in the Labour Law. However, the law does not clearly protect the rights of workers in this outsourcing practice, so the status of the employment relationship is often uncertain. Many of the responses to the Labour Law relate to outsourcing, and this prompted the government to issue a Presidential Instruction on investment policy, which emphasises the importance of outsourcing in the investment climate. (Milinum, 2022)

The practice of outsourcing has raised many pros and cons, involving various parties such as the government, companies, and workers. This led to a judicial review in the Constitutional Court, which issued Decision No. 27/OUU-IX/2011. In response to labour demonstrations demanding the abolition of outsourcing, the government issued Minister of Manpower and Transmigration Regulation No. 19/2012, which regulates the conditions for the transfer of part of work to another company.

b. Law Number 11 of 2020 on Job Creation

The Job Creation Law regulates the practice of outsourcing by removing some provisions in the Labour Law and amending the provisions related to outsourcing. The focus is on the rights and obligations between outsourcing companies and workers. In outsourcing, the working relationship must be based on a written agreement and includes worker protection, wages, welfare, and conflict resolution. If the outsourcing company changes, the protection of workers' rights must also be transferred. (Muttaqin and Latumahina, 2022)

Revised Article 66 requires outsourcing companies to be incorporated and have a business licence from the government, in accordance with established norms. The government expects outsourcing companies to be responsible for workers, protect their rights, achieve welfare, and avoid arbitrary actions. (Muttaqin and Latumahina, 2022)

The Job Creation Law expands the scope of outsourcing practices in Indonesia without restriction, so that workers can do any type of work requested by the company (Azhara and Agista, 2022). This law does not regulate the calculation of wages for outsourced workers, but companies can give bonuses if the work results are satisfactory, so it is important for outsourced workers to understand the work agreement before signing it (Azhara and Agista, 2022). At the end of the PKWT work period, workers are entitled to compensation and social security, as mentioned in Article 61A of the Job Creation Law. In addition, there is a new provision on Job Loss Guarantee (JKP). Although the aim of the Job Creation Law is to improve outsourcing practices, the reality is that there are still many disputes between workers and companies.

c. Government Regulation No. 35 of 2021 on PKWT and Outsourcing

PP No. 35/2021 regulates outsourcing work, as part of the Job Creation Law, and explains that the working relationship between outsourcing companies and

workers can be done through two types of agreements: PKWT (specific time work agreement) and PKWTT (indefinite time work agreement). This regulation emphasises protection for workers in terms of wages, working conditions, welfare, as well as dispute resolution, all of which must be regulated in documents such as Work Agreements and Company Regulations. Workers who are bound by PKWT must have a guarantee of continuity of employment when there is a change of company, and the new company must protect their rights on par with the previous company. If workers do not get such guarantees, the new company is responsible for fulfilling workers' rights. Outsourcing companies are also required to be incorporated and licensed by the Central Government.

Another section of this regulation regulates compensation for non-permanent workers. Workers whose contracts end are entitled to compensation calculated based on length of service: one month's wage for non-permanent contracts lasting 12 months, or proportionally for contracts lasting less than 12 months. In addition to compensation, workers on both non-permanent and fixed-term contracts are entitled to social security programmes from BPJS Kesehatan and Ketenagakerjaan, minimum wage, annual leave, and THR. However, there is still negligence from outsourcing companies towards the protection of workers' rights, especially regarding the payment of rights and compensation when the employment relationship ends.

d. Law No. 6 of 2023 on Stipulating Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law

Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation was passed by the President of Indonesia in late 2022 and promulgated in March 2023 through Law No. 6 of 2023. This law amends the provisions on outsourcing work again. Article 64, which was previously removed, now applies again with changes. In Article 64 paragraph (1), companies are allowed to hand over part of the work to other companies with a written agreement, and the implementation is regulated by the government. However, Article 65 remains deleted, so Law No. 6 Year 2023 does not further regulate outsourcing agreements or the types of work that can be transferred.

2. Implementation of Workers' Legal Relations in Outsourcing Companies After the Enactment of Law Number 6 Year 2023

Outsourcing work in Indonesia is regulated by Law No. 13 Year 2003, which has been amended through Law No. 11 Year 2020 and Law No. 6 Year 2023. These changes tighten the types of work that can be outsourced. Outsourcing companies, such as PT, Koperasi, or Yayasan, can collaborate with employer companies (users) to carry out some of their tasks. However, a direct relationship between the outsourced worker and the user company does not exist, as the work contract must be registered and refer to legal provisions. Furthermore, outsourcing provisions are regulated in Government Regulation No. 35 of 2021, which states that outsourcing companies are responsible for protection, wages, and disputes that arise.

Outsourcing companies need to have a business licence issued by the Government. If the outsourcing practice is not reported, administrative sanctions will be imposed and the employment relationship will be between the worker and the user company. Through Constitutional Court Decision No. 27/PUU-IX/2011, Indonesia implemented the TUPE principle to protect workers' rights in the event of a

company transfer. In the event of termination of employment (PHK), workers' rights must be protected, including fair procedures and severance pay. The PHK process involves negotiations and can proceed to mediation or court if there is no agreement. The author reveals that the law related to workers in outsourcing companies and PHK has not fully provided justice and legal certainty, contrary to the 1945 Constitution which guarantees the right to work. There is uncertainty in the status of labour relations between workers and outsourcing companies, and injustice due to differences in the length of contracts allowed. Legal uncertainty is exacerbated by the fact that there is no new government regulation after Law No. 6 of 2023, although the old regulation is still valid.

In its implementation, there is injustice between workers and outsourcing companies, which is felt by workers who lose their rights when layoffs occur. The author also points out the disparity in the example of severance pay, which is lower in Law No. 6 Year 2023 than in the Labour Law. The existence of government policies that do not involve public participation in the regulation of labour law indicates the absence of legal expediency for workers. The author argues that Law No. 6 of 2023 should not reduce the protections that exist in the earlier Labour Law.

TERMINATION OF EMPLOYMENT OF WORKERS IN OUTSOURCING COMPANIES AFTER THE ENACTMENT OF LAW NO. 6 OF 2023 COMPARED TO DECISION NO. 524 K/PDT.SUS-PHI/2022

1. Termination of employment of workers in outsourcing companies after the enactment of Law Number 6 of 2023

Labour has an important role in national development in Indonesia, which is affirmed in the 1945 Constitution of the Republic of Indonesia. Work is a constitutional right of the people, and the state is responsible for protecting those rights for the sake of welfare. Employment contributes to productivity and welfare, where a good quality workforce accelerates development and creates new jobs, reducing unemployment. However, labour problems in Indonesia still exist, despite various efforts. Key issues include an imbalance between employment opportunities and the labour force, low skills and productivity, unequal distribution of labour, and worker protection and welfare. This can lead to issues in industrial relations, such as termination of employment (PHK), which is often detrimental to workers who lose their livelihoods.

Layoffs can occur due to the will of employers or workers, and can also be decided by third parties such as mediators or courts. The regulation of layoffs is important in industrial relations, especially in outsourcing companies. Law No. 6 of 2023 on Job Creation amends labour regulations, including provisions on outsourcing and layoffs. Under this law, outsourced workers have the same rights as permanent workers. The protection of workers' rights includes the right to wages, social security, and a form of work agreement that can be either time-specific or indefinite. Regarding layoffs, the law stipulates several rules: Layoffs must be the last step after unsuccessful dialogue; employers are obliged to notify the reasons for layoffs in writing; and layoffs are prohibited on the basis of discrimination. Dismissed workers are entitled to severance pay, long service awards, and other rights. Dispute resolution must be done through mediation, conciliation, or arbitration before going to court.

2. Termination of employment in law no 6 of 2023 compared to Decision No. 524 K/Pdt.Sus-PHI/2022

a. Industrial relations dispute in case of decision number 524 K/Pdt.Sus-PHI/2022

Termination of employment can occur by agreement or can become a dispute. The case between Polman Napitupulu and PT JSU illustrates this, where the employment relationship is based on a fixed-term employment agreement (PKWT). PT JSU, as an outsourcing company, is responsible for the protection, wages, and welfare of workers. Law No. 6 of 2023 has not specified the term of PKWT, but mentions that it can last a maximum of five years. In decision 524 K/Pdt.Sus-PHI/2022, the termination occurred before the Job Creation Law and PP No. 35 of 2021 came into effect, but the judge combined the old and new regulations. The working relationship started in 2012, and due to the violation of the PKWT, it turned into a permanent working relationship (PKWTT) after more than five years. The shift in the PKWT made by PT JSU does not preclude the calculation of the length of service which remains valid, despite the change of outsourcing company. In the event of a dispute, resolution begins with bipartite negotiations. Law No. 6 of 2023 confirms that the outsourcing company is responsible for disputes.

In this case, PT JSU terminated the employment relationship by terminating the employment contract and stating that the worker was too old. The worker's disagreement led to unsuccessful negotiations and an application for mediation to the Manpower Office. After several mediation calls without agreement, the worker took the case to the Industrial Relations Court, following the procedures of the PPHI Law. Workers agreed with the Disnaker's recommendation requesting payment of workers' rights, while PT JSU did not respond. As a result, workers filed a lawsuit to resolve this dispute legally, and all settlement steps were in accordance with the provisions of the law. The calculations related to workers' rights when using Article 56 paragraph (1) of Government Regulation No. 35 of 2021 are as follows:

Table 1
Calculation of Workers' Rights Based on Government Regulation No. 35 of 2021

No.	Labour Rights	Amount
1	Severance pay $1,75 \times 9 \times \text{Rp. } 4.277.000,-$	Rp. 67.362.750,-
2	Long service pay $1 \times 3 \times \text{Rp. } 4.277.000,-$	Rp. 12.681.000,-
3	Reimbursement of rights $\text{Rp. } 4,227,000,- / 25 \text{ days (in 1 month)} \times 6 \text{ days}$	Rp. 1.014.480,-
4	Wages for the month of July 2020	Rp. 4.277.000,-

Based on Article 154A of Law No. 6 Year 2023, workers who have reached retirement age can be dismissed. The calculation of workers' rights according to

Government Regulation No. 35 of 2021 calculates severance pay and long service awards in the context of termination of employment. In the example case, a worker with a final salary of IDR 4,277,000 gets a severance pay of IDR 67,362,750 and a long service award of IDR 12,681,000. The worker also received money from untaken annual leave, totalling an estimated IDR 1,014,480. This case refers to a security guard who worked for PT JSU until July 2020, with the employment relationship being based on a Fixed Term Employment Agreement (PKWT). The worker claimed that he was dismissed without clear cause and without the rights he was supposed to receive, filing a lawsuit with the Industrial Relations Court. The court partially granted the lawsuit and declared the employment relationship ended on 3 July 2020, ordering the company to pay compensation of Rp. 29,939,000. The company filed an appeal, but the Supreme Court refused, affirming that the termination of employment was not based on worker misconduct and workers' rights must be respected. The Supreme Court, through its ruling, supported workers who are entitled to compensation and valued fairness and protection of labour rights in the context of unilateral termination of employment.

b. Analysis of Supreme Court Decision No. 524 K/Pdt.Sus-PHI/2022

This verdict rejected an appeal from PT Jasa Swadaya Utama regarding the unilateral dismissal of Polman Napitupulu. The Supreme Court (MA) considered that the dismissal was not in accordance with applicable procedures and strengthened workers' rights under the Labour Law. In the context of Law No. 6 of 2023, which amends the Job Creation Law, there is attention to the protection of workers' rights and the resolution of labour disputes. The Supreme Court reflects legal certainty by ensuring that dismissals must follow a clear procedure, to avoid uncertainty for workers.

In addition, this decision also reflects legal protection for workers in accordance with the theory proposed by Philipus M. Hadjon, by responding to violations of workers' rights in a repressive manner. The previous decision, No. 524 K/Pdt.Sus-PHI/2022, also emphasised the importance of legal certainty and protection in employment relations, where termination must be carried out according to the rules.

Theoretically, this decision strengthens legal protection from abuse of power and creates consistent legal clarity. Discussions among labour law experts regarding the length of Fixed-Term Employment Agreements (PKWT) that can last up to 5 years point to concerns over the potential exploitation of workers. Law No. 6 Year 2023 provides greater flexibility than Law No. 13 Year 2003, which previously limited PKWT to 3 years with one extension. Concerns arise because the lack of clarity on the maximum time limit for PKWT extension could cause uncertainty for workers who have no guarantee of being appointed as permanent workers.

Ida Fauziyah (Minister of Manpower) argued that this regulation provides legal certainty and flexibility for short-term work, emphasising that PKWT should not be used for permanent work. However, Surya Tjandra (labour law academic) and Andi Gani Nena Wea (President of KSPSI) are concerned that lengthy contract extensions could harm workers' rights and increase uncertainty, especially for those in vulnerable positions.

CONCLUSION

The conclusion of this study states that the implementation of legal relations between workers in outsourcing companies and termination of employment after the enactment of Law Number 6 Year 2023 has not yet provided legal certainty, justice, and expediency. This is due to the legal uncertainty in the law, as well as the unfair position of workers compared to outsourcing parties. There is a lack of clarity in the reasons for the expiry of PKWT, which allows it to be extended if the work is considered unfinished, as well as a decrease in the regulation of workers' normative rights upon termination of employment, resulting in a lack of legal benefits for workers. In addition, the termination of employment in outsourcing companies after Law No. 6/2003 has not yet created justice, as shown by three factors: first, the lack of application of the principle of freedom by judges who only pay attention to juridical aspects without considering the philosophical, historical, and sociological sides; second, the vacuum of norms because the government has not issued new regulations; and third, the utilisation of legal weaknesses by employers.

SUGGESTION

The author suggests that the Government and Parliament revise Law No. 6 of 2023 and Government Regulation No. 35 of 2021, by involving communities such as Trade Unions and Employers. This is important so that the regulations that are made fulfil the needs of all parties and can be implemented properly. In addition, the author also reminds outsourcing companies to prioritise good governance and comply with the law, in order to provide legal certainty and a sense of justice for outsourcing workers.

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