# Law Protection Of Outsourcing Workers In Employment Law Post The Job Creation Perpu

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***Abstract***

*This research aims to describe how the law position of outsourced workers and the law protection of outsourced workers post the law No.2 of 2022 on Job Creation. The use of outsourcing workers has a strategic position for employers in the unconducive business. But not strategic position for law protection of workers, because the impact of outsourcing is very unlack to workers. Therefore, law protection is needed for outsourcing workers to realize social justice in the employment. This research method, normative juridical based on secondary data and descriptive analysis of qualitative. The results showed that the law position of outsourcing workers in agreement of work with the company contracting and the outsourcing worker on the provision of worker services has a working relationship with the service provider company not to the user/employer. The law protection of outsourced workers post the law No.2 of 2022 on Job Creation has protected outsourcing workers. Because the law No.2 of 2022 on Job Creation have two models agreement of work, such as: PKWTT or PKWT with TUPE.*

## A. Introduction

The use of outsourcing workers has a strategic position for entrepreneurs in the face of an unfavourable business climate. Entrepreneurs who use outsourcing do have strong and reasonable reasons, because it is viewed to be able to cope with situations and conditions that harden the company, and can even benefit the company. Among the entrepreneurs, they go through a variety of ways, including the efficiency and efficiency of the company. Efficiency and effectiveness in the field of human resources (corporate employment policy) included the use of outsourcing.

The term outsourcing began to appear in the business and legal world in Indonesia around the 1990s.[1] Now, with the economic and monetary crisis and the increasingly sophisticated technological development (industrial modernization), outsourcing is increasingly in demand by entrepreneurs. The birth of outsourcing was prompted by the idea of changing the management or management of business from conventional ways, focusing only on the quantity and quality of products, towards more effective and efficient business management patterns by bringing producers (companies) closer to markets and consumers. This business management pattern is called Business Process Reengineering (BPR).[2] BPR as a new approach to management is chosen by entrepreneurs to survive the storm of crisis and global competition. Thus, companies opted for outsourcing as one of the solutions in the face of a complex situation and conditions caused by the economic and monetary crisis, the development of science and technology, and the competition of the global market.

> This system (outsourcing) arises and is used in business activities as one of the attempts to reduce the production costs of the employer's company by reducing the quantity of fixed labour and handing over part of the work (to the provider of labour services) that is not the core work of the company (the employer/user of labour service) to another company. [3]

The entrepreneurs who use outsourcing do have strong and reasonable reasons, because it is viewed to be able to cope with situations and conditions that harden the company, and can even benefit the company. Related to the strategic outsourcing position of the company Richardus Eko Indrajit and Richardus Djokopranoto in Vivien Ariani's Thesis state that outsourcing can: [4]

a. Increase the focus of the company; by doing outsourcing the company can focus on major and general issues and strategies, while the execution of small daily work is handed over to third parties. The job is seen as a productive counter if it has to be handed over to the company. Companies can focus on core business so that companies can core competence.
b. Using world-class capabilities; that the specialization owned and developed by the outsourcing provider has world class capability so potentially to support core business in a competitive core competence.

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[1] Vivien Ariani, "*Tanggung Gugat Perusahaan Penyedia Jasa Pekerja Dalam Kontrak Outsourcing*", Thesis, Program Pascasarjana Unair Surabaya, 2005, Surabaya, Hlm. 2.
[2] *Ibid*.
[3] YLBHI, "Panduan Bantuan Hukum di Indonesia", (Cetakan Kesatu) YLBHI, 2006, Jakarta, Hlm. 197-198.
[4] Vivien Ariani, *Op.cit*, Hlm. 4-5.

c. Accelerate the benefits of reengineering; outsourcing providers with world-class capabilities have the capacity to revolutionize fundamentally the company.
d. Risk sharing; by dividing the work by outsourcing then the company has transferred part of the company's risk to the outsource provider. For example: on the fulfilment of labor normative rights, PHK.
e. Own resources can be used for other needs; with outsourcing then company employees can be more focused on work that leads to hard work.
f. Enables the availability of capital; that the costs spent by the company for both routine and non-core jobs will be greater than if using outsourcing.
g. Create fresh funds; outsourcing usually also leases the tools needed to do the work assigned to it, so that the company can save more on spending.
h. Reducing and controlling operating costs; with outsourcing companies can reduce and control operating cost in which such reduction can be obtained from outsource partners through various things namely specialization, lower financing structures. It's not profitable if it's done by a company because it requires a huge investment to do it.
i. Acquiring resources that they do not own; the company will acquire resources that it does not possess practically without having to develop from scratch.
j. Solving problems that are difficult to control or manage; complex and incapable of solving corporate problems on their own can be transferred to outsourcing partners because they have the reliable and professional resources to do so.

From the above description it is evident that outsourcing has a strategic position for the entrepreneur in the face of an unfavourable business climate. YLBHI stated: "The impact of the outsourcing system practice is more detrimental to workers because of the many violations and discrimination carried out by the labor providers in fulfilling the normative rights of workers according to the existing regulations".[5] Then the impact of Outsourcing that deteriorates workers/workers according to joint Akatiga-Labsosio-TURC research results is:[6]

a. The legal relationship of workers in outsource only with the de facto employer company/service provider not on the company or the user company.
b. The impact is very detrimental to workers, as job security is diminishing and welfare is becoming more uncertain.
c. Flexible employment relations have weakened labour bidding positions, and destroyed labour unions that have lost many of their members due to PHK and/or changes in the status of labour relations from stable to non-stable.
d. The consequences of implementing labour flexibility for workers have increased such as: indecent work due to low job security, a system of short contracts with wages below the minimum wage, the emergence of small groups of permanent/permanent elite workers with very adequate facilities and the enlargement of large groups of workers/unstable workers with minimal facilities, the dilemma for workers between choosing unworthy jobs

[5] YLBHI, *Op. cit*, Hlm.197.
[6] Akatiga-Labsosio-TURC, Rangkuman Eksekutif Akatiga-Labsosio-TURC, *Peraturan Perburuhan Dan Investasi Di Tangerang Dan Pasuruan : Studi Kasus Perusahaan Eropa*, Seminar Hasil Penelitian Bersama Akatiga-Labsosio-TURC Di Hotel Mahadria Serang, Kamis 16 Februari 2006.

or unemployed at all, the creation of increasingly diverse labour groups and increasing labour fragmentation and indirectly the launching of highly effective labour control mechanisms.

e. The outsourcing practices also make workers double vulnerable and a source of exploitation by labor providers and consumers/employers.

Therefore, in the face of the counterproductive outsourcing impact, it is necessary to protect the legal protection of the workers in order to realize the purpose of labour law, which according to Soepomo's belief has the fundamental purpose of the implementation of social justice in the field of labour and its implementation is organized in the way of protecting the workers from unlimited power on the part of the entrepreneur.[7] Protection of workers is any effort to guarantee legal certainty to provide protection to workers. An outsourcing worker, also working by receiving salary or remuneration in other forms, requires legal protection.

The legal protection of such outsourcing workers is in the Employment Act No. 13 of 2003, which can be done through employment bribery agreements or through the provision of employee services. However, the legal protection of outsourcing workers in the Act is felt by the workers have not protected them, then carried out a material examination to the Constitutional Court (MK) and passed through the Decision of the Constitution Court No. 27/Law-IX/2011. Previously, thousands of workers activists, labour unions, non-governmental organizations and labour alliances in various places have campaigned against the contractual labour system (PKWT) and outsourcing regulated by Act No. 13 of 2003.[8] The MK judgment essentially stated that the phrase "...a fixed-term employment agreement" in Article 65 para. (7) and the sentence "...an agreement of employment for a fixed time" in article 66 para. (2) letter b of the Employment Act No. 13 of 2003 no longer have binding legal force.

Subsequently, the outsourcing regulations in Act No. 13 of 2003 on Employment were amended by the Act no. 11 of 2020 on the creation of employment. This Labour Creation Act has been in force since its adoption, namely on November 2, 2020, and the implementing regulations have been in place namely through Government Regulation No. 35 of 2021 on fixed-term employment agreements, mobility, working hours and rest periods, and termination of employment relations, which comes into force on the adopted date, February 2, 2021. Although the Labour Creation Act is stated not to be valid by the Constitutional Court (MK) through the Decision No. 91/Law-XVIII/2020, but its unconstitutional nature is conditional, namely that the Labours Creation Law remains in force until the establishment improvement is carried out in accordance with the deadline in the judgment is 2 (two) years.[9]

Now as a replacement of the Law No.11 of 2020 on Creating Work, the Government

[7] Iman Soepomo, *Pengantar Hukum Perburuhan*, Djambatan, 2003, Jakarta, Hlm. 9.

[8] Anang Dony Irawan, "Status Hukum Outsourcing Pasca Putusan Mahkamah Konstitusi Perkara Nomor 27/PUU-IX/2011", *Jurnal Arena Hukum*, Vol. 12 No. 2, Agustus 2019, Hlm. 257. DOI: https://doi.org/10.21776/ub.arenahukum.2019.01202.3.

[9] MK, "*Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki dalam jangka Waktu Dua tahun"*, https://www.mkri.id. Kamis, 25 November 2021, diakses 04 Januari 2022, pukul 05.45 WIB.

Regulation No. 2 of 2022 on Creation of Work (Perpu) has been enacted, which has been passed into law by the Act No. 6 of 2023. Perpu is indeed an attempt by the government (in this case the President) to provide legal assurance of post-constitutional status conditional to the Law of Creating Works by the MK.[10] Perpu also deletes and changes the rules of the work system of outsourcing in the Act no.13 of 2003 on the workforce, and according to Juanda Pangaribuan most of the provisions regulated in the Law no. 11 of 2020 about the creation of work were adopted in Perpu No.2 of 2022 jointly with Law No.6 of 2023, but for the unemployment cluster there are new things about the outsource or transfer of power.[11] Therefore, this paper will examine the protection of labour/workers outsourcing (replace power) in the post-employment law in force Perpu No. 2 Year 2022 on the Creation of Jobs.

## 2. Research Method

This research is a type of legal jurisprudence that is conducted to find a solution to a legal issue, and the results obtained give a prescription of what is the subject of the issue.[12] Data used secondary data through the study of the library with the statute approach, i.e. research and examination of employment laws, conceptual approach, that is to understand the concepts of labour and civil law, as well as case approach, to study the Constitutional Court (MK), Industrial Relations Court (PHI) and Supreme Court (MA) decisions relating to workers/workers outsourcing. Data is analyzed using qualitative analysis methods as well as analytical descriptive writing methods.

## 3. Results and Discussion

### A. The Legal Position of Outsourced Workers in Employment Law

Outsourcing comes from a foreign term (English) which can be translated as outsourcing or outside company resources. The word Out means out and source means source,[13] in this case outside the company's resources. Muzni Tambusai provides the definition: "Outsourcing is handing over one part or several parts of a company's activities that were previously managed independently to another company which is then referred to as the recipient of the work."[14] Meanwhile, according to Vivien Ariani: "Outsourcing can literally be interpreted as "outside resources" in this case company resources. Outsourcing can be defined as an attempt to contract out an activity to an outside party

[10] Dede Agus, Eksistensi Hubungan Industrial Pancasila Pasca Disahkannya Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja, *Jurnal Ius Constituendum* 8, No.1, Maret 2023, Hlm. 88, DOI: http://dx.doi.org/10.26623/jic.v8i1.6276.

[11] Hukum online, "*Mengantisipasi Dampak Perubahan Aturan Outsourcing UU Cipta Kerja"* https://www.hukumonline.com/berita, Kamis, 6/7/2023, diakses 10 Pebruari 2024, pukul 21.43 WIB.

[12] Peter Mahmud Marzuki, *Penelitian Hukum,* Kencana Prenada Media Group, 2007, Jakarta, Hlm. 35.

[13] Sonhaji, "Beberapa Permasalahan Perlindungan Pekerja Outsourcing Berdasarkan Permenakertrans Nomor 19 Tahun 2012", *Jurnal masalah-masalah Hukum*, Jilid 46 No.2, April 2017, Fakultas Hukum Undip Semarang, 2017, Semarang, Hlm.190 dan 196, DOI: 10.14710/mmh.46.2.2017.190-197.

[14] Muzni Tambusai, *Pelaksanaan Outsourcing (Alih Daya) Ditinjau dari Aspek Hukum Ketenagakerjaan Tidak Mengaburkan Hubungan Industrial*, www.nakertrans.go.id, dikutip pada 29 Mei 2005, pukul 21.30 WIB.

to obtain the required work services."[15]

Even though the meanings are different, the essence is the same, namely outsourcing is using human resources (workers) from outside the company. In labor law, outsourcing regulations originate from the provisions of article 64 of Law No. 13 of 2003 concerning Manpower, which states that: "Companies can hand over part of the work implementation to other companies through contracts for contracting out work or providing workers/labor services made in writing." Perpu No. 2 of 2022 concerning Job Creation in conjunction with Law Number 6 of 2023 has amended the provisions of article 64 of Law No. 13 of 2003 concerning Employment, so that article 64 paragraph (1) reads: "Companies can hand over part of the work implementation to another company through a transfer agreement power made in writing". However, in practice it still applies as in the provisions of article 64 of Law No. 13 of 2003 concerning Manpower, where outsourcing includes:[16] (1) Handing over part of the work implementation from one company to another company through a work contracting agreement; and (2) Provision of worker services. If Law No. 13 of 2003 does not recognize the term outsourcing,[17] then Perpu Job Creation and Government Regulation Number 35 of 2021 recognize the term outsourcing workers.

So outsourcing can be defined as an attempt to contract out an activity to an outside party, either through a work contracting agreement or through an agreement to provide worker services to obtain work results or obtain required work services. To make it easier to understand, it can be seen in Table 1, Differences in Contracting Work and Providing Worker/Labor Services:[18]

**Table 1**
**Differences in Contracting Work and Providing Worker/Labor Services**

| No | Company Providing Worker/Labor Services | Chartering a job |
|---|---|---|
| 1 | A number of human resources are provided for a particular job whose price or value is based on the worker's own salary plus a commission/fee from the company providing worker/labor services. | What is hired is a particular job whose value is based on the type of work, scope of work, and the object to be employed. The scope of value is wider than that of Companies Providing Worker/Labor Services. What is taken into account is one type of work, for example contracting to construct a building, what is assessed are the materials used to construct the building, the human resources involved in the work, how long it takes to complete, and so on. |

[15] Vivien Ariani, *Op.cit*, Hlm. 2 dan 4.
[16] Hidayat Muharam, *Hukum Ketenagakerjaan Serta Pelaksanaannya di Indonesia*, Citra Aditya Bakti, 2006, Bandung, Hlm.13.
[17] Niru Anita Sinaga, "Perlindungan Hukum Bagi Pekerja/Buruh dan Pengusaha dalam Pelaksanaan Outsourcing Di Indonesia", *Jurnal Ilmiah Hukum Dirgantara* Vol.5 No.2, Maret 2015, Fakultas Hukum Universitas Suryadarma Jakarta, 2015, Jakarta, Hlm. 5, DOI: https://doi.org/10.35968/jh.v5i2.105.
[18] Juanda Pangaribuan, *Perbedaan Pemborongan Pekerjaan dengan Penyediaan Jasa Pekerja*, http://ads.hukumonline.com, Kamis, 04 Januari 2018, diakses 25 Agustus 2022, pukul 20.15 WIB.

| | | |
|---|---|---|
| 2 | The results are assessed from the commission/fee that workers receive from companies providing worker/labor services. | The result is not from the commission the worker gets, but rather the remaining proceeds from the contracted project. |
| 3 | Done with direct orders from the user (the company that uses the worker's services). | Carried out by direct or indirect orders from the employer (user). The workers are directly controlled by the contracting company (the company receiving the contract) itself. |
| 4 | Workers work directly at the user's place and the worker's qualifications are determined by the user. | Workers and their work are not at the user's location. |

**1). Work Contract Agreement**

Codified work contracting agreement arrangements were initially regulated in Book III of the Civil Code concerning Work Contracting, namely articles 1601b, 1604 to 1616, and according to Alrido Ahmad Hidayatullah it was called Outsourcing contracting which was basically carried out on the basis of Burgerlijk Wetboek (BW).[19] Since this work contracting agreement is also related to worker issues, it is also specifically regulated by labor law (UU No. 13 of 2003 and its implementing regulations). Thus, this job contracting agreement is also a type of outsourcing, job outsourcing (business process),[20] namely the company using the outsourcing service provides some of the work that is not the main job to another company (job contracting company), so it can be said that there is a company providing jobs and employing company.

In labor law, work contracting agreements are regulated in Law No. 13 of 2003 articles 64 and 65, and then the implementing regulations are Permenakertrans No. 19 of 2012 concerning Conditions for Handing over Part of the Work to Another Company. However, with the enactment of the Job Creation Perpu, article 64 was amended and article 65 of Law No. 13 of 2003 was deleted. According to Article 1 point 4 of the Minister of Manpower and Transmigration Regulation, a work contracting agreement is an agreement between the company providing the work and the company receiving the contract which contains the rights and obligations of the parties. From the meaning of this work contracting agreement, there are at least 2 (two) parties to this agreement, namely:[21]

a. Employer company: a company that hands over part of its work to the contracting company.

[19] Alrido Ahmad Hidayatullah, "Perlindungan Hukum Bagi Pekerja Outsourcing Pemborongan Pada Pekerjaan Yang Bukan Pada Pekerjaan Penunjang", *Jurnal Jurist-Diction*, Vol. 2 No.1 Januari 2019, Fakultas Hukum Unair Surabaya, 2019, Surabaya, Hlm. 34-35, Doi: https://doi.org/10.20473/jd.v2i1.12096.

[20] Julyatika Fitriyaningrum, "Implementasi Sistem Alih Daya atau Outsourcing Dalam Mencapai Kesejahteraan Pekerja Indonesia Ditinjau Dari Undang Undang Nomor 13 Tahun 2003", *Indonesian State Law Review*, Vol. 2 No.1, Oktober 2019, Fakultas Hukum Universitas Negeri Semarang, 2019, Semarang, Hlm. 93. DOI: https://doi.org /10.15294/islrev.v2i1.38448.

[21] Juanda Pangaribuan, *Perbedaan Pemborongan Pekerjaan dengan Penyediaan Jasa Pekerja*, http://ads.hukumonline.com, Kamis, 04 Januari 2018, diakses 25 Agustus 2022, pukul 20.15 WIB.

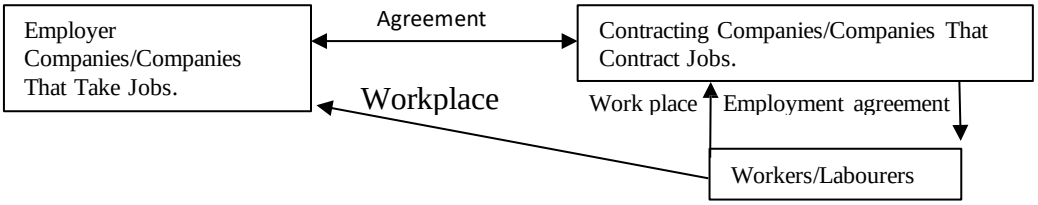
b. Contracting company: a company in the form of a legal entity that meets the requirements to accept the implementation of part of the work.

Based on Permenakertrans No.19 of 2012, work contracting agreements must meet the following provisions:

a. Article 9, the work contracting agreement is made in writing which contains at least: (i) the rights and obligations of each party; (ii) guarantee the fulfillment of work protection and work conditions for workers in accordance with statutory regulations; and (iii) have workers who are competent in their fields;
b. Article 3 paragraph (2), job requirements that can be submitted:
   (1) carried out separately from the main activities, both management and work implementation activities;
   (2) carried out with direct or indirect orders from the employer;
   (3) is a company-wide supporting activity, meaning that the activity is an activity that supports and facilitates the implementation of main activities in accordance with the flow of work implementation process activities determined by the business sector association; And
   (4) does not directly hinder the production process, meaning that the activity is an additional activity.
c. Article 12, another company (employer company) must have a legal entity, if this is not fulfilled, then by law the status of the employment relationship changes to the employee's employment relationship with the employer company;
d. MK Decision Number 27/PUU-IX/2011 jo. Articles 14 and 15 of the Minister of Manpower and Transmigration Regulation, the employment relationship in the implementation of work between the work contracting company and its workers is made in a written work agreement, either PKWTT or PKWT with TUPE, even if there is a change in the work contracting company or company providing worker services.

In a contracting agreement, the work that is the object of the agreement is work, namely carrying out work by contracting. The contracting company immediately carries out the work in question until it is finished, and according to Alrido Ahmad Hidayatullah, this contracting agreement focuses on material products (product outsourcing).[22] Following Figure 1, the work contracting agreement can clarify:

Figure 1: Job Contracting Agreement




[22] Alrido Ahmad Hidayatullah, *Op.Cit*, Hlm.35.

**2). Agreement for the Provision of Worker Services (Outsourcing)**

General regulations are regulated in Book III of the Civil Code, and specifically Law No. 13 of 2003 concerning Employment, Chapter IV Part Two of Employment Article 81 of Perpu No. 2 of 2022 concerning Job Creation in conjunction with Law Number 6 of 2023 and Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. In the Employment Cluster Job Creation Regulation article 66 and PP No.35 of 2021 only massively regulates the legal relationship between outsourcing companies and outsourcing workers, while the legal relationship is between outsourcing companies and employing companies. /users of outsourced workers and the legal relationship between employers/users of outsourced workers and outsourced workers is not massively regulated. This means that in the concept of outsourcing, the employment relationship only binds the worker to the outsourcing company, not to the user/employer company, making the concept of outsourcing in the Job Creation Perpu still not provide clarity in terms of employment relationships.[23] The legal relationship referred to is the existence of an agreement for the provision of worker services (outsourcing) that exists between the parties and the existence of work norms that must be heeded by the parties.

The legal relationship between companies providing employee services (outsourcing) and outsourcing workers (outsourcing) is an employment relationship due to the existence of a work agreement. An employment relationship occurs after a work agreement is established, and a work agreement is an agreement made between workers and employers. This is based on article 66 paragraph (1) Perpu no. 2 of 2022 concerning Job Creation in conjunction with Law no. 6 of 2023 and article 18 paragraphs (1) and (2) PP No.35 of 2021, which basically states that the work relationship between outsourcing companies and outsourcing workers is based on a certain time work agreement (PKWT) or a non-time work agreement. certain (PKWTT) made in writing. The legal relationship between the outsourcing company and the employer/user of the outsourced workers is an agreement also regulated by Book III of the Civil Code, and specifically Article 81 of Perpu No. 2 of 2022 concerning Job Creation, and PP No.35 of 2021, although they do not regulate it massively. This can be concluded from the provisions of Article 1 point 14 PP No.35 of 2021, which states that an outsourcing company is a legal entity that meets the requirements to carry out certain work based on an agreement agreed with the company providing the work. In contrast to the previous regulation, Permenakertrans No.19 of 2012 concerning Conditions for Handing over Part of the Work to Another Company, it provides a massive provision of what is meant by an agreement for the provision of worker services in article 1 number 5, which is basically an agreement between the company providing the work and the company providing the worker services. which contains the rights and obligations of the parties. From the meaning of this agreement for the provision of worker services, there are at least 2 (two) parties to this agreement,

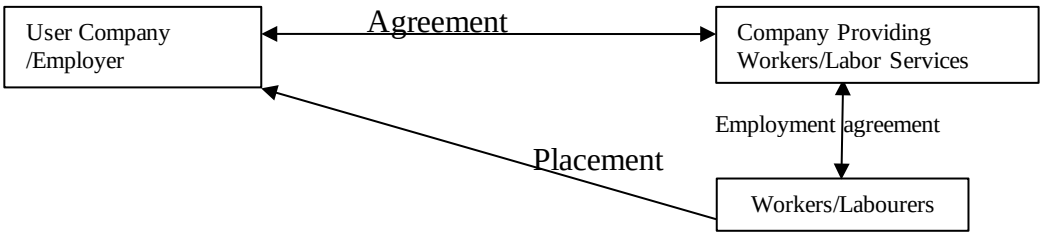
[23] Lidia Febrianti dkk, "Komparasi Alih Daya Undang-Undang Ketenagakerjaan dengan Undang-Undang Cipta Kerja Tahun 2023", *Jurnal USM Law Review*, Vol.6 No.3 Tahun 2023, Hlm. 1206-1207, DOI: http://dx.doi .org/10.26623/julr.v6i3.7965.

namely:[24]

a. Employer company: a company that hands over part of its work to a company that provides employee services (outsourcing company).
b. Company providing worker/labor services (outsourcing company), namely a company in the form of a Limited Liability Company (PT) legal entity that meets the requirements. The new regulations are in the form of legal entities only (Article 66 paragraph (4) Perpu No. 2 of 2022 concerning Job Creation and Article 20 paragraph (1) PP No. 35 of 2021).

The object of the service provision agreement is service performance, namely services to carry out the activities provided to him. According to Alrido Ahmad Hidayatullah, the emphasis is more on the individual whose services are needed, namely outsourcing agreements in the form of employing/taking individual services, people are more aware of service/worker provision agreements.[25] Then, according to Khairani, workers are employed by companies providing services to user companies, not working for the company.[26] In outsourcing, workers enter into a work agreement not with the employing company, but with the service provider company (outsourcing company), but there is no element of employment, so rights and obligations will not exist.[27] Furthermore, to facilitate the explanation of this agreement, it is explained in Figure 2, regarding the Agreement for the Provision of Worker/Labor Services, as follows:

**Figure 2: Agreement for the Provision of Worker/Labor Services**




## 2. Legal Protection for Outsourced Workers in Employment Law After the Implementation of the Job Creation Perpu

Worker protection means all efforts to ensure legal certainty to provide protection to workers. A worker is anyone who works and receives wages or other forms of compensation. Worker protection can be carried out by various statutory regulations in the field of employment regarding workers' normative rights. Normative rights are the basic rights of workers in employment relationships which are protected and guaranteed in applicable laws and regulations. Employers are obliged to fulfill and comply with the normative rights of workers in every job assignment, which

[24] Juanda Pangaribuan, 2018. *Loc.cit.*
[25] Alrido Ahmad Hidayatullah, *Loc.cit*.
[26] Khairani, "Analisis Permasalahan Outsourcing (Alih Daya) Dari Perspektif Hukum dan Penerapannya", *Kanun Jurnal Ilmu Hukum*, Vol.56 No.1, April 2012, Fakultas Hukum Unsyiah Aceh, 2012, Aceh, Hlm. 60-61, DOI: https://jurnal.usk.ac.id/kanun/article/view/6199.
[27] *Ibid*, Hlm. 61.

can be classified as:[28]

a. Economic rights, such as: wages, THR, old age allowance, housing facilities and others.
b. Political rights, such as: the right to form a labor union, the right to be or not to be a member of a labor union, the right to strike, the right to non-discrimination, etc.
c. Medical rights, such as: the right to occupational safety and health, the right to give birth, the right to rest, the right to breastfeed children, the right to job security, the prohibition on employing children, and others.
d. Social rights, such as: the right to leave, marriage, official holidays, restrictions on children's and women's work at night, and others.

Normative rights are protected and guaranteed in applicable laws and regulations, namely Law No. 13 of 2003 concerning Employment which contains general and main policies in the field of employment, where employment is all matters relating to labor before, during and after the employment period. . According to Sonhaji, normatively outsourced workers are also sufficiently protected by Law No.13 of 2003 concerning Manpower, the more detailed regulations of which are regulated in Permenakertrans No.19 of 2012 concerning the conditions for handing over part of the work to another company, only in the context of carrying out a relationship. work through outsourcing in order to truly protect workers requires strict supervision from the government, so that violations of outsourcing provisions can be minimized. Before the issuance of Permenakertrans No.19 of 2012, workers submitted a judicial review of Law no. 13 of 2003 against the 1945 Constitution to the Constitutional Court (MK) because in their view there are still provisions in Law No. 13 of 2003 that do not provide protection to agency workers, in fact according to them it is contrary to the provisions of the 1945 Constitution, and this was granted through the Constitutional Court Decision Number 27/PUU-IX/2011.

Now, in accordance with the dynamics of the demands of the times and life in the world of business and work, new regulations have been issued in the form of Omnibuslaw through Perpu No. 2 of 2022 concerning Job Creation in conjunction with Law Number 6 of 2023. What is meant by job creation in the Job Creation Regulation article 1 number 1 is efforts to create jobs through efforts to facilitate, protect and empower cooperatives and micro, small and medium enterprises, increase investment ecosystem and ease of doing business, and Central Government investment and acceleration of national strategic projects. Based on consideration in letter (b), it is stated: "that with job creation it is hoped that we will be able to absorb as wide a workforce as possible in Indonesia amidst increasingly competitive competition and the demands of economic globalization, the global economic crisis which is disrupting the national economy." This Job Creation Perpu has a broad scope, not only in the field of employment, but also in other fields that support job creation. The scope according to article 4 of the Job Creation Perpu: (a) improving the investment ecosystem and business activities; (b) employment; (c) convenience, protection and empowerment of cooperatives and MSMEs; (d) ease of doing business; (e) research and innovation support; (f) land acquisition;

[28] YLBHI, *Op.cit*, Hlm.183.

(g) economic area; (h) Central Government investment and acceleration of national strategic projects; (i) implementation of government administration; and (j) imposition of sanctions.

Regulation of the outsourcing work system in Perpu no. 2 of 2022 concerning Job Creation in conjunction with Law no. 6 of 2023 is by deleting and changing or revising the articles governing outsourced workers in Law No. 13 of 2003 concerning Manpower, namely deleting article 65 and changing or revising articles 64 and 66. So that the regulation of the outsourcing work system in the law Currently there are only two (2) articles left in the law, namely articles 64 and 66 which have been amended or revised by the Job Creation Perpu. The main difference between the Manpower Law and the Job Creation Perpu is in the outsourcing work relationship (outsourced workers), apart from the Manpower Law and its implementing regulations, outsourcing is a term that comes from contracts for contracting work or providing worker/labor services and according to Hari Gunarto, in these provisions the use of outsourcing is limited and only for workers outside the main business (non core business). Meanwhile, the Job Creation Law refers to the term outsourcing as outsourcing, and opens up the possibility for outsourcing institutions to employ workers for various tasks.[29] Not regulating the qualification limits for jobs hired outsourced can result in entrepreneurs/employers freely taking arbitrary actions in outsourcing practices.[30] Then the Job Creation Perpu also mentions the term outsourcing and there are restrictions in accordance with the provisions of article 64 of the Job Creation Perpu, some of the work implementation is determined by the government through its implementing regulations. Juanda Pangaribuan there are potential restrictions on the types of work that can be transferred to outsourcing companies which are regulated by Article 64 of Perpu 2 of 2022 in conjunction with Law 6 of 2023 which essentially mandates the government to determine some of the work that can be carried out through outsourcing mechanisms which will be regulated in Government Regulations.[31] The new provisions of articles 64 and 66 of Law No. 13 of 2003 concerning Employment after being amended by the Job Creation Perpu are:

Article 64

(1) The Company may hand over part of the work implementation to another Company through an outsourcing agreement made in writing.
(2) The government determines some of the work implementation as intended in paragraph (1).
(3) Further provisions regarding the determination of part of the work implementation as intended in paragraph (2) are regulated in government regulations.

Article 66

[29] Hari Gunarto, Gimbar Maulana, Ini Perbandingan UU Ketenagakerjaan dan UU Cipta Kerja, https://www.beritasatu.com, Rabu, 7 Oktober 2020, diunduh 27/07/2021, pukul 9.20 WIB.
[30] Ni Putu Eka Madeni Apriliani dan Putri Triari Dwijayanthi, "Penghapusan Jenis Pekerjaan Yang Dapat Dialihdayakan (Outsourcing): Perspektif Undang-Undang Cipta Kerja", *Jurnal Kertha Semaya*, Vol. 10 No. 10 Tahun 2022, Hlm. 2334-2335, DOI: https://doi.org/10.24843/KS.2022.v10.i10.p11.
[31] Hukum online, "*Mengantisipasi Dampak Perubahan Aturan Outsourcing UU Cipta Kerja",* https://www.hukumonline.com/berita, Kamis, 6/7/2023, diakses 10 Pebruari 2024, pukul 21.43 WIB.

(1) The work relationship between the outsourcing company and the workers/laborers it employs is based on a work agreement made in writing, either a work agreement for a certain time or a work agreement for an indefinite time.
(2) Protection of workers/laborers, wages and welfare, working conditions, as well as disputes that arise are carried out at least in accordance with the provisions of laws and regulations and are the responsibility of the outsourcing company.
(3) In the event that an outsourcing company employs workers/laborers based on a certain term work agreement as intended in paragraph (1), the employment agreement must require the transfer of protection of rights for workers/laborers in the event of a change in the outsourcing company and as long as the object of employment remains.
(4) The outsourcing company as referred to in paragraph (1) is in the form of a legal entity and is required to comply with a Business License issued by the Central Government.
(5) Business Licensing as intended in paragraph (4) must meet the norms, standards, procedures and criteria set by the Central Government.
(6) Further provisions regarding the protection of workers/laborers as referred to in paragraph (2) and Business Licensing as referred to in paragraph (4) are regulated in Government Regulations.

There are no implementing regulations for Articles 64 and 66 of Law No. 13 of 2003 concerning Employment after the amendment or revision of the Job Creation Perpu, but there are implementing regulations for Law No. 11 of 2020 concerning Job Creation, namely PP No. 35 of 2021 concerning Agreements. Certain Time Work, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. The articles that regulate the outsourcing work system from this government regulation are articles 18 to article 20. If explained from article 66 of Law No. 13 of 2003 concerning Employment after changes or revisions by the Job Creation Perpu in conjunction with article 18 s /d Article 20 of the government regulations governing the outsourcing work system is basically as follows:

1. Form of legal relationship between outsourced workers and outsourcing company: Employment relationship, namely a relationship that occurs based on a written work agreement, either a fixed-term work agreement (PKWT) or an indefinite-term work agreement (PKWTT). This is based on article 66 paragraph (1) of Law No.13 of 2003 as a result of amendments or revisions by the Job Creation Perpu, and article 18 paragraphs (1) and (2) of PP No.35 of 2021. However, in this Perpu the concept of outsourcing is still does not provide clarity in terms of employment relationships, employment relationships only bind workers to the outsourcing company, not to the user/employer company.
2. Protection of the welfare of outsourced workers: Protection of outsourced workers' normative rights. Normative rights are the basic rights of workers in employment relationships which are protected and guaranteed in applicable laws and regulations. Employers are obliged to fulfill and comply with workers' normative rights in every job assignment. Based on article 66 paragraph (2) of the Job Creation Perpu and article 18

paragraph (3) of PP No.35 of 2021, worker protection, wages and welfare, work conditions, as well as disputes that arise are carried out at least in accordance with the provisions of statutory regulations. invitation and is the responsibility of the outsourcing company. Based on article 18 paragraph (4) PP No.35 of 2021, these protection arrangements are further regulated in the Work Agreement, Company Regulations, or Collective Work Agreement. So in the outsourcing system based on the Job Creation Regulation, de facto he still works for another company (user/employer), but de jure he remains the responsibility of the outsourcing company.

3. Guarantee of continuity of work for outsourced (outsourced) workers: In the event that the legal relationship between outsourced (outsourced) workers and the outsourcing company is a certain time work agreement (PKWT) then based on the provisions of article 66 paragraph (3) of the Job Creation and Article 19 paragraphs (1) and (2) PP No.35 of 2021, must require the transfer of protection of workers' rights if there is a change in outsourcing company and as long as the object of work remains. The existence of these transfer conditions is a guarantee of continuity of work for workers whose employment relationship is based on PKWT in the outsourcing company. If the PKWT that is made does not meet the requirements and the outsourced worker does not receive a guarantee of continuity of work even though the object of the work is still there, based on the provisions of article 19 paragraph (3) PP No.35 of 2021, then the outsourcing company is responsible for fulfilling the workers' rights. /laborer.
4. Licensing for outsourcing companies: requirements for companies that recruit and employ workers/workers using an outsourcing system in accordance with the provisions of article 66 paragraphs (4) and (5) Perpu Job Creation and article 20 PP No.35 of 2021, must be a legal entity and must comply with the Business Licensing issued by the Central Government. Regarding outsourcing companies that must be legal entities, these provisions are not regulated or explained, thus what is meant by legal entities can be PT (Limited Liability Company), Foundation and Cooperative.

The regulation of the outsourcing work system, such as the provisions of article 66 of the Job Creation Perpu in conjunction with articles 18 to article 20 of PP No.35 of 2021, is in principle the same as the Constitutional Court (MK) Decision No.27/PUU-IX/2011 concerning Material Test of Law No. 13 of 2003 concerning Manpower and Minister of Manpower and Transmigration Regulation No. 19 of 2012 concerning Conditions for Handing Over Part of Work Implementation to Another Company. The Constitutional Court's decision stipulates two models, namely PKWTT or PKWT with TUPE. Constitutional Court Decision No. 27/PUU-IX/2011 concerning Outsourcing, does not eliminate the outsourcing system as regulated by Law No. 13 of 2003 concerning Manpower (articles 64 to 66), but only toughens/tightens the conditions that must be fulfilled by the company if will use an outsourcing work system. In this way, the Constitutional Court still recognizes the existence of the outsourcing system in employment relations, it could even be said that the Constitutional Court has legalized the

application of the outsourcing system in employment relations.[32]

The Constitutional Court emphasized that outsourcing is a reasonable business policy of a company in the context of business efficiency. However, outsourced workers must not lose their constitutionally protected rights, so the Constitutional Court offers two models of protection for outsourced workers, namely work agreements in the form of PKWTT or PKWT with the principle of transferring protection measures for workers/laborers (transfer of undertaking protection of employment/TUPE). Likewise, in Permenakertrans No.19 of 2012 concerning Conditions for Handing Over Part of Work Implementation to Another Company, article 28 of the Permenakertrans reads: "Every work agreement providing worker/labor services must contain provisions that guarantee the fulfillment of the rights of workers/laborers in the employment relationship as regulated in statutory regulations". The Constitutional Court's decision was followed up by the Circular Letter of the Director General of PHI and Social Security, Ministry of Manpower and Transmigration of the Republic of Indonesia No: B.31/PHIJSK/I/2012 concerning the Implementation of Constitutional Court Decision No. 27/PUU-IX/2011 and then issued Minister of Manpower and Transmigration Regulation No. 19 of 2012 concerning Requirements for Handing Over Part of Work Implementation to Other Companies, as well as guidelines for the Minister of Manpower and Transmigration through Minister of Manpower Circular Letter Number SE.04/MEN/VIII/2013 concerning Guidelines for Implementing the Minister of Manpower and Transmigration Regulation No.19 of 2012 in the context of optimizing the implementation of handovers to other companies. The purpose of making these guidelines is as a reference for parties in implementing Permenakertrans No.19 of 2012. Meanwhile, the aim is to equalize understanding in implementing the provisions of Permenakertrans.[33]

If we analyze 2 (two) cases of outsourcing worker disputes which are still relevant to several regulations in Law No. 13 of 2003 concerning Employment and its amendments both by Law No. 11 of 2020 concerning Job Creation and Perpu No. 2 of 2022 concerning Job Creation in conjunction with Law No. 6 of 2023 and its implementing regulations are as follows:

1. PKWT outsourcing work agreement without transfer of protection measures for workers/TUPE (transfer of undertaking protection of employment): According to article 66 paragraph (3) of the Job Creation Perpu, and article 19 of PP No.35 of 2021 in the event that the outsourcing company employs workers based on PKWT (specific time work agreement) must require the transfer of protection of rights for outsourced workers (outsourced) if there is a change in outsourcing company and as long as the object of work remains. In this case, loading and unloading workers at the Jakarta International Container Terminal (JICT) held a demonstration to reject JICT's plan to lay off 400 (four

[32] Hukum Online*,"Perbedaan Pemborongan Pekerjaan dengan Penyediaan Jasa Pekerja",* http://ads.hukumonline.com, Kamis, 04 Januari 2018, diakses 25 Agustus 2022, pukul 20.15 WIB.
[33] Disnakertrans Provinsi Banten, *Buku Pedoman Pelaksanaan Penyerahan Sebagian Pelaksanaan Pekerjaan Kepada Perusahaan Lain*, Disnakertrans Provinsi Banten, 2013, Banten, Hlm. 4-5

hundred) outsourcing workers.[34] "Hundreds of workers are threatened with not working as of January 1 2018 after JICT's collaboration with the old vendor, namely PT Empco Trans Logistic, where the workers were sheltered, ended and was replaced by PT Multi Tally Indonesia as the new vendor or partner for loading and unloading labor (Ukum Online, 2017)," The new vendor refuses to use employees who work at the old vendor," this is not in accordance with existing regulations, including article 66 paragraph (3) of the Job Creation Perpu and article 19 of PP No.35 of 2021, which essentially means that the new vendor is willing to accept workers from the company providing the previous worker services in the event of a change of vendor. Likewise, JICT as the employer company does not comply with the above provisions.

2. PKWT outsourcing work agreement without transfer of protection measures for workers/TUPE (transfer of undertaking protection of employment): this is even more clearly illustrated in the decision of the Central Jakarta PHI and the Supreme Court, in PHI decision No.171/171/Pdt.Sus-PHI .G/2016/PN.Jkt.Pst, punished PT.Arjuna Plaza (employee service provider company) to pay severance pay as layoff compensation, amounting to twice the statutory provisions (Rp.80.8) million to Nachrudin (outsourced worker ). PT Arjuna filed an appeal to the Supreme Court, because Nachrudin's first employment relationship was with PT. Tjipta was built from December 2008 to October 2010. Then it was continued by PT. Arjuna until February 2016, so PHI is considered wrong on two things, first regarding Nachrudin's work period with PT. Building it is PT Arjuna's responsibility and secondly, PT is not demanding. Wake up as a party that must also be sued. Due to this resistance, PHI remains in its decision and the Supreme Court in its Decision No. 930 K/Pdt.Sus-PHI/2017, rejecting the cassation request submitted by PT. Arjuna Plaza. The Supreme Court also confirmed that the responsibility for all legal consequences arising from layoffs was the responsibility of the new company (PT Arjuna) and the Supreme Court considered that there had never been any evidence of an end to the employment relationship between Nachrudin and PT. Wake up Tjipta, so that the employment relationship must be declared to have continued continuously from December 2008 to February 2016, "That Judex Facti has correctly implemented the provisions of Article 61 paragraph (3) of Law No.13 of 2003 jo. "Article 61 paragraph (3) of the Job Creation Perpu, because the Petitioner for Cassation/Opponent as the last entrepreneur who received the transfer of employment relations from the previous employer is responsible for the rights." In this case, it is in accordance with the Constitutional Court's decision, Perpu Job Creation and PP No.35 of 2021, in which the judge applied TUPE (the principle of transfer of protective measures for workers) in the work agreement for the provision of worker services. Article 61 paragraph (3) Law No.13 of 2003 UUK jo. Article 61 paragraph (3) of the Job Creation Perpu reads: "In the event of a company transfer, the rights of the workers/laborers become the responsibility of the

[34] Hukum Online, *PHK 400 Outsourching, JICT Tidak Manusiawi*, www.hukum.online, Rabu, 27 Desember 2017, diakses 20 Juli 2021, pukul 20.15 WIB.

new entrepreneur, unless otherwise stipulated in the transfer agreement which does not reduce the rights of the workers/laborers."

## 4. Conclusion

The legal position of outsourced workers in employment law is that outsourced workers in contracting out jobs have an employment relationship with the company contracting out the work, not the company providing the work, while outsourced workers in providing labor services have an employment relationship with the company providing the labor services, not with the company that uses/provides the work. Perpu No. 2 of 2022 concerning Job Creation jo. UU no. 6 of 2023 employment cluster articles 64 and 66 which regulate the outsourcing work system and its implementing regulations (PP No.35 of 2021) use the term outsourcing for this outsourcing system and no longer divide work contracting agreements and worker service provision agreements. There is no explanation regarding the term outsourcing in these two regulations, what is referred to is an outsourcing company, namely a business entity in the form of a legal entity that meets the requirements to carry out certain work based on an agreement agreed with the company providing the work.

Legal protection for outsourced workers after the enactment of Job Creation Regulation and PP No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations has in principle legally protected outsourced (outsourced) workers. This is because Perpu no. 2 of 2022 concerning Job Creation jo. UU no. 6 of 2023 and its implementing regulations (PP No.35 of 2021) regulate as follows: (i) based on article 64 of the Job Creation Perpu, there are restrictions on work that is outsourced to an outsourcing company, namely that part of the work is carried out through an outsourcing agreement made in writing. , the type of which is determined by the government through government regulations; (ii) Based on article 66 paragraph (1) of the Job Creation Perpu and article 18 paragraphs (1) and (2) PP No.35 of 2021, the form of employment relationship between outsourced workers and outsourcing companies is in the form of a written work agreement, either a work agreement certain time (PKWT) or work agreement for a certain time (PKWTT); (iii) Outsourcing (outsourcing) companies are obliged to fulfill and comply with the normative rights of workers in every work assignment in accordance with the provisions of article 66 paragraph (2) of the Job Creation Perpu and article 18 paragraph (3) of PP No.35 of 2021, namely worker protection, wages and welfare, working conditions, as well as disputes that arise, are carried out at least in accordance with the provisions of laws and regulations and are the responsibility of the outsourcing company, and based on article 18 paragraph (4) PP No.35 of 2021, these protection arrangements further regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement; (iv) There is a guarantee of continuity of work for outsourced (outsourced) workers in the event that the legal relationship between outsourced (outsourced) workers and the outsourcing company is a certain time work agreement (PKWT) then based on the provisions of article 66 paragraph (3) of the Job Creation Perpu and article 19 paragraphs (1) and (2) PP No.35 of 2021, must require the transfer of protection of workers' rights if there is a change in outsourcing company and as long as the object

of work remains. If the PKWT that is made does not meet the requirements and the outsourced worker does not receive a guarantee of continuity of work even though the object of the work is still there, based on the provisions of article 19 paragraph (3) PP No.35 of 2021, then the outsourcing company is responsible for fulfilling the workers' rights. ; and (v) companies that recruit and employ workers using an outsourcing system in accordance with the provisions of article 66 paragraphs (4) and (5) of the Job Creation Perpu and article 20 PP No.35 of 2021, must be a legal entity and must comply with licensing Business issued by the Central Government.

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