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Legal Protection of Outsourced Workers/Laborers in the Issue of Termination of Employment According to Labor Law (Case Study of Case Number 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst)

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ABSTRACT: Termination of employment (PHK) is the termination of employment caused by a certain thing and has an impact on the termination of rights and obligations between workers and the company. PHK itself causes a lot of injustice, especially for outsourcing workers who have unclear employment relationships. There are many deviations in the application of the Fixed Term Employment Agreement (PKWT) work contract, causing the employment relationship to change into an Indefinite Term Employment Agreement (PKWTT) and the implementation of PHK which should be carried out by the recipient company and the outsourcing company. This research method uses a normative legal approach, so the research approach used in this study is the Statute approach, the Case approach and the Conceptual approach. Legal protection in this case is a form of work that is permanent and continuous and is not a job that is finished once or is temporary in nature, so it must change its status to PKWTT and is entitled to PHK Rights. Protection of Workers/Laborers, Wages and welfare, working conditions, and disputes that arise are implemented at least in accordance with the provisions of the law and are the responsibility of the outsourcing company, but because the PKWT is not based on law, it is therefore null and void so that all agreements between workers and outsourcing companies are set aside and all Worker/Laborer Rights and payment of wage shortfalls below the UMP become the responsibility of the company where they work. Therefore, the agreement between company the employee service provider and the employing company is also considered to have never occurred. The ambiguity regarding the limitations of work seems to be considered to expand the scope of outsourcing work and eliminate the guarantee of permanent job certainty or indirectly eliminate the guarantee that workers can work as permanent employees. The initial concept of outsourcing must be work that is not directly related to the production process, so this outsourcing concept is no longer appropriate. Maximum firmness is needed from the Manpower Service in providing legal protection and supervision to outsourced workers so that problems of deviations in standard PKWT employment contracts no longer arise, causing the employment relationship to change to PKWTT. The form of an outsourcing work agreement does not contain an element of order because the company providing worker services does not have the authority to give orders at all. The authority to give orders lies with the company using the outsourcing service, namely where the worker works, so that problems do not arise in the future. The government requires provide definite and clear regulations to provide legal protection for outsourced workers.

KEYWORDS: legal protection, outsourcing, termination of employment

I. INTRODUCTION

Basically, the working relationship between companies and workers is a mutually needy relationship where on the one hand workers need employment as a source of income that can be used to meet their family and personal interests, while companies need labor to maintain the continuity of company activities. The continuity of company activities today runs strictly, therefore companies try to improve their business performance by managing everything efficiently. With this tight business competition climate, companies must innovate related to a series of processes or activities in terms of their main competencies.

In a climate of increasingly fierce business competition, companies are trying to make cost of production efficiency.[1] One effort is made by employing the minimum number of workers to be able to make the maximum contribution according to the company's goals. For this reason, the company seeks to focus on handling work that is core business only, while supporting work is delegated to other parties. This activity process is known as "outsourcing". Outsourcing has the meaning of contracting one part or several

[1] Wirawan, Rubrik Hukum Teropong, Apa yang dimaksud dengan sistem outsourcing?, http://www.pikiran-rakyat.com/cetak/0504/31/teropong/komenhukum.htm, diakses tanggal 19 November 2023.

parts of the company's activities that were previously managed by itself to another company which is then called the recipient company.[2]

Outsourcing in the field of labor is actually already known in the Civil Code (hereinafter referred to as the Civil Code) in Article 1601 b, which regulates work contracting agreements, namely an agreement in which the first party, the contractor, binds himself to make a certain work for the other party, the contractor, by receiving a certain payment. The provisions of the Civil Code that regulate work contracting agreements are only one aspect of outsourcing.[3]

It can be seen in Law 13 of 2003 concerning labor that the practice of outsourcing is the transfer of part of the implementation of work from a company to another company through a work contracting agreement or a worker service provider agreement.[4] Thus Law No. 13/2003 has provided justification for the assignment of part of the performance of work to another company or a company providing worker/labor services, which is popularly called outsourcing.[5] Law No. 13/2003 can be said to be the Legacy of Outsourcing Labor, the term used is a work contracting agreement or worker/labor service provider, as it states that a company can hand over part of the implementation of work to another company through a work contracting agreement or worker/labor service provider made in writing.[6]

In outsourcing work relations, it can be understood that: The working relationship between a worker/laborer and a work contracting company in carrying out work contracting is regulated in a written work agreement between the work contractor and the worker/laborer employed, which can be outlined in a non-permanent work agreement (PKWTT) or a specific time work agreement (PKWT) as referred to in Article 59 of Law No. 13/2003. The practice in outsourcing work agreements tends to be to use a fixed-term work agreement (PKWT)/contract so that it is easy for the company to terminate the employment relationship (PHK) if the company no longer needs it. This is what makes the position of outsourced workers weak.[7]

Until now, the Outsourcing system has employed 16 million people or 40% of the total workforce in Indonesia and provided benefits to the Indonesian economy[8] Even so, in its implementation, the outsourcing system is still reaping the pros and cons, where those who agree with the outsourcing system state that the implementation of the outsourcing system offers efficiency in the cost of production (cost of production) and on the other hand, the cons complain that the current supervisory function is not yet optimal. Facts in the field show that there are still outsourced workers who are paid below the district/city minimum wage (UMK) and the provincial minimum wage (UMP). These problems occur because the supervisory function has not been optimized, where the number of labor inspectors is still limited, namely around 1600 supervisory officers to supervise 130 million workers.[9]

Outsourced workers should still receive the same rights and protections as those given to contract workers and permanent workers such as annual bonuses, overtime pay, (K3), and the amount of compensation for dismissal.[10] However, in reality, the outsourced work field raises questions about the status of the fulfillment of individual normative rights such as salary, working hours, social security, and the right of workers to organize in the company.[11] This is also explained by Samau, Wahongan and Pinangkaan, who say that outsourced workers are concerned about low welfare levels and responsibility.[12] In the process of hiring workers, where workers' salaries are paid by the outsourcing company after the outsourcing company has received payment from the company that uses the outsourced labor from the outsourcing company, of course a deduction has been made by the outsourcing company.[13] This is also a problem, where the facts on the ground show that the issue of worker welfare has become a hot topic from year to year in the absence of transparency from the company in the wage system.[14]

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[2] Adrian Sutedi, Hukum Perburuhan, (Jakarta, Sinar Grafika, 2011), hlm. 219.

[3] I Nyoman Putu Budiartha, *Hukum Outsourcing*, (Malang: Setara Press, 2016), hal. 2

[4] Hidayat Muharam, *Panduan Memahami Hukum Ketenagakerjaan Serta Pelaksanaanya di Indonesia*, (Bandung: Citra Aditya Bakti, 2006), hal. 13

[5] Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, (Bandung, Citra Aditya Bakti, 2009), hal. 74

[6] Lalu Husni, *Hukum Ketenagakerjaan Indonesia*, (Jakarta: Raja Grafindo Persada, 2008), hal. 179

[7] Adrian Sutedi, Hukum Perburuhan, Sinar Grafika, Jakarta, 2021, hlm.219.

[8] Izzati, N.R. (2018). Improving outsourcing system in Indonesia : Fixxing the Gap of Labor Regulation. Jurnal. Mimbar Hukum – Fakultas Hukum Universitas Gadjah Mada, 29(3),528. *http://doi.org/10.26555/novelty.v8i2.a5552.*

[9] Zubaidah, N. (2018). Jumlah Pengawas Ketenagakerjaan di RI Masih Minim. Koran Sindo. Retrieved from.https://economy.okezone.com/read/2018/02/19/320/1861341/jumlahpengawas ketenaga kerjaan.di-ri-masih-minim.

[10] Catur, J.S., Djongga D., Heriyandi, H., Poerwanto, H., Hutasoit, J., Aman, K., & Wiyono, B. (2020). Perlindungan Hukum Terhadap Kesejahteraan Pekerja Melalui Undang-Undang No. 11 Tahun 2020 Tentang Cipta Kerja. *Jurnal Lex Specialis, I(2).*

[11] Triyono, S., Wahyudi, I., & Harahap, D. H. (2020). Hubungan Job InsecuritydanJob Satisfaction pada Karyawan Outsourcing di PT. X. Jurnal Psikologi, 16(1), 25-35

[12] Samau, C. Wahongan, Pinangkaan. (2022). Jaminan Sosial Tenaga KerjaOutsourcing Berdasarkan Undang-Undang Nomor 13 Tahun 2003 tentangKetenagakerjaan. Lex Crimen, 11(2).

[13] Sudiarawan, K. A. (2017). Analisis Hukum terhadap Pelaksanaan OutsourcingDari Sisi Perusahaan Pengguna Jasa Pekerja. Jurnal Ilmu Sosial DanHumaniora, 5(2)

[14] Jamal, S. P. A., Sulaiman, S., & Fitriyani, D. (2020). Transparansi Upah Melalui E-Wage Outsorcing Workers Dalam Rangka Penguatan Undang-UndangKetenagakerjaan. Jurnal Legislatif, 22-36.

Ambarita and Malau said that the outsourcing problem in Indonesia is getting worse because the practice of outsourcing has generated a lot of controversy, and Indonesia's labor conditions are still a problem that is often called industrial relations disputes between workers and employers.[15] Work relations with the outsourcing system at the present time do not provide a guarantee of certainty for workers,[16] Therefore, the practice of using outsourced contract labor often causes debate, where the company needs to outsource, while the workers object because the future of the workers is considered to have no certainty.[17]

Workers are the main losers from the practice of outsourcing and many workers have asked for the outsourcing system to be abolished, but this is impossible because the outsourcing system has become part of the economy.[18] Moreover, the abolition of the outsourcing system will only increase the number of unemployed people in Indonesia. However, it must be recognized that the outsourcing system that applies in Indonesia contradicts Article 27 paragraph 2 of the Constitution of the Republic of Indonesia, which explains that the right to work and a decent livelihood. Actually, in this case, the government has a major role to play in stopping deviant outsourcing practices and improving the welfare of outsourced workers in Indonesia. Supervision of the implementation of outsourcing in the field is something that needs to be encouraged. This prevents the abuse of outsourcing practices that are not in accordance with applicable regulations. The Indonesian Ministry of Manpower still has limited supervisory personnel to do this. In addition, there are no strict legal sanctions for violators, which has an impact on the lack of effective enforcement of the outsourcing regulation itself.[19]

There are certain restrictions on using outsourced work, such as temporary work, seasonal work, work related to new products, new activities, or products that are still on trial and work that can be completed within a maximum period of 2 years,[20] While work agreements based on the period of time outsourced workers are included in a specific time work agreement (PKWT), which is a work agreement between a worker and a company to establish a working relationship within a certain time for a certain job that is held for a maximum of 2 years and only extended for 1 to 2 years with a maximum renewal of 2 years.[21] The fact that outsourced workers at one bank in Palembang have their contracts extended up to two to three times, this is also included in the probationary period, causing a sense of discomfort for employees with contract or outsourcing status.[22]

The end of an employment relationship between outsourced workers/laborers and companies can occur at any time due to termination of employment (PHK) or the expiration of a work contract. Termination of employment (PHK) is the end of the employment relationship due to a certain reason and has the effect of ending the rights and obligations between the worker and the company. However, layoffs themselves cause many injustices, especially for outsourced workers who have unclear working relationships. There are many irregularities in the application of PKWT work contracts, causing the work relationship to change to PKWTT as well as the application of layoffs that should be carried out by the company receiving the work and the outsourcing company.

Moreover, with the enactment of Law No. 6 of 2023 concerning Perpu No. 2 of 2022 concerning Job Creation into Law Jo. PP No. 35 of 2021 which contains many changes and controversies related to the limitation of the types of work that can be done by outsourcing work is not clear. Responsibility in the event of a dispute between outsourced workers/laborers and the employer company, the fulfillment of their rights is carried out by the party responsible for resolving the dispute is the worker service provider company, this is stated in Article 66 of the Ketenegenagakerjaan and Law No. 6 of 2023 concerning Job Creation, but in several examples of cases of disputes between outsourced workers and outsourcing companies also involve the employer company. Then if there are outsourced workers whose rights are not fulfilled, such as wage protection and so on, it becomes the responsibility of either the employer company/ outsourcing company or the company receiving the work.

In practice, there are examples of industrial relations disputes, namely in case number 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst, between Agus Setiawan as Plaintiff against Benny Sulistion Sinaga, Lie as Defendant I, Edy Susilo as Defendant II, PT Sinergi Global Servis as Defendant III, and PT Kreasiboga Primatama as Defendant IV. That Defendant I is the managing director of CV Aira Buana and Defendant II is the silent director of CV Aira Buana, where Defendant I and Defendant II are business actors who

[15] Ambarita, L. M., & Malau, P. (2021). Legal Protection of Outsourcing Labor Companies in Medan City. International Journal of Social, Policy andLaw, 2(1), 65-71.

[16] Julianti, L. (2015). Perlindungan Hukum Terhadap Tenaga Kerja OutsourcingDi Indonesia. Jurnal Advokasi, 5(1), 29388.

[17] Maryono, M. (2009). Tenaga Kontrak: Manfaat dan Permasalahannya. Jurnal Bisnis dan Ekonomi, 16(01), 24256.

[18] Petriella, Y. (2019, January 21). Masih Relevankah Sistem Outsourcing di Tanah Air? | Ekonomi. Retrieved January 28, 2021, from Bisnis.com website: https://ekonomi.bisnis.com/read/ 20190121/12/880788/masih-relevankah-sistem-outsourcing-di-tanah-air

[19] Izzati, N.R. (2018). Improving outsourcing system in Indonesia : Fixxing the Gap of Labor Regulation. Jurnal. Mimbar Hukum – Fakultas Hukum Universitas Gadjah Mada, 29(3),528. *http://doi.org/10.26555/novelty.v8i2.a5552.*

[20] Izzati, N. R. (2021). Eksistensi Yuridis dan Empiris Hubungan Kerja Non-Standar Dalam Hukum Ketenagakerjaan Indonesia. Masalah-MasalahHukum, 50(3), 290-303.

[21] Budiartha, I. (2016). Hukum Outsourcing: Konsep Alih Daya, BentukPerlindungan, dan Kepastian Hukum.

[22] Januari (2016). Analisis Penerapan Sistem Kerja Kontrak (Outsourcing) Karyawan PT. BTN Syariah Cabang Palembang Ditinjau dari KonsepMaqashid Syariah. Skripsi. Palembang.

are a business engaged in the distribution of bottled drinking water from the Nestle Pure Life Factory to be distributed to large agents and shops. That Defendant III and Defendant VI are companies engaged in outsourcing labor.

That the Plaintiffs, namely Agus Setiawan and Darso, were employed by Defendant I and Defendant II and then firmly ordered to sign a legal relationship as workers with Defendant III and Defendant IV with the status of a Fixed Time Employment Agreement (PKWT) who received a salary that was not in accordance with the applicable provisions or the salary received was below the UMR (regional minimum wage) and then requested severance pay, long service pay for working for Defendant I and Defendant II continuously without any breaks in the period from December 01, 2011 to February 28, 2021 for Agus Setiawan and Darso. d February 28, 2021 for Agus Setiawan and also in this case the Plaintiff states that the employment agreement between the Plaintiff and Defendant III and Defendant IV which in this case is an outsourcing employment agreement is not legally valid. Therefore, based on the above background, this thesis research proposal is entitled Analysis of Legal Protection of Outsourced Workers/Laborers in Cases of Termination of Employment Relations (PHK).

II. PROBLEM FORMULATION

Based on the above background, the problem formulation for this thesis is:

1. What are the legal provisions in Indonesia governing the protection of outsourced workers/laborers in the termination of employment?
2. What are the rights of outsourced workers/laborers that must be protected in accordance with Indonesian Labor Law?

III. RESEARCH OBJECTIVES

Based on the formulation of the problem above, the objectives of this study are as follows:

1. To analyze the legal provisions in Indonesia that regulate the protection of outsourced workers/laborers in the termination of employment.
2. To analyze the rights of workers/laborers that must be protected in accordance with the Indonesian Labor Law.

IV. RESEARCH METHOD

A. Research Type and Approach

1. Research Type

   In this research, the method used is normative research. This type of research is normative legal research with a case approach and legislation. Normative juridical research is carried out by referring to legal norms contained in laws and regulations and cases of industrial relations disputes (PHI) as well as norms prevailing in society or also concerning customs prevailing in society.[23]

2. Research Approach

   Considering that this research uses a normative research type using a normative juridical approach, the research approach used in this research is the Legislation approach (statue approach), case approach (case approach) and conceptual approach (conceptual approach). This legislative approach is used to examine the rules relating to the Legal Protection of Outsourced Workers/Laborers in Cases of Termination of Employment (PHK).

V. DISCUSSION

A. Protection of Workers/Laborers in Outsourcing Companies in the Case of Termination of Employment (PHK) Between Agus Setiawan against Benny Sulistion Sinaga, Lie, Edy Susilo PT. Sinergi Global Servis and PT. Kreasiboga Primatama

One of the duties of the state in this case is that the Government has an obligation to respect, protect and fulfill the rights of workers so that workers have the right to obtain fair and decent work. In Law 13 of 2003 concerning Manpower, it is stated that the protection of labor is intended to guarantee the basic rights of workers / laborers and ensure equal opportunities and treatment without discrimination on any basis to realize the welfare of workers / laborers and their families while taking into account the development of business progress. The development of progress in the business world has made companies try to make efficiency in the cost of production by employing the minimum number of workers to be able to make the maximum contribution according to the company's goals. For this reason, the company seeks to focus on handling work that becomes the core business (core business) only, while supporting work is delegated to other parties. The handing over of part of the work to another company is commonly known as outsourcing. Article 64 of Law No. 13/2003 explains that a company may assign part of the work to another company (outsourcing) through a contract for the assignment of work or the provision of worker/labor services made in writing. Agreements for the contracting out of work or the provision of worker/labor services with workers/laborers who are employed can be set out in

[23] Soerjono Soekanto dan Sri Mahmudji, Peranan dan Penggunaan Kepustakaan di Dalam Penelitian Hukum. (Jakarta: Pusat Dokumen Universitas Indonesia, 1979), hlm. 18.

an indefinite period work agreement (PKWTT) or a specific period work agreement (PKWT) as referred to in Article 59 of Law No. 13 of 2003 Concerning Manpower. Article 64 of Law No. 13 of 2003 stipulates that a company may assign part of the work to another company (outsourcing) through a work contracting agreement or the provision of worker/labor services made in writing.

Outsourcing is the use of labor to produce or carry out a job by a company, through a labor provider/employer.[24] Another opinion states that Outsourcing is the transfer or delegation of some business processes to a service provider body to carry out administrative and management processes based on definitions and criteria that have been agreed upon by the parties.[25] From this understanding, it can be concluded that Outsourcing utilizes labor provided by third parties to carry out part of the business process based on an agreement or agreement.

In the research of case number 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst, there are at least three forms of legal protection in the process of termination of employment requested by the plaintiff in his lawsuit at the Industrial Relations Court at the Central Jakarta District Court.

First, Legal Protection in the Form of Employment Agreement

Forms of Worker Protection in Outsourcing Companies in termination of employment (PHK) with case Number 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst. in Jakarta between Agus Setiawan as Plaintiff against Benny Sulistion Sinaga, Lie, Edy Susilo, PT. Sinergi Global Servis, and PT. Kreasiboga Primatama there is a fact that there is a signing of a Work Contract as a worker against the status of a Specific Time Work Agreement (PKWT) as a legal relationship with the following details:

1. Details of service period December 01, 2011 to September 30, 2016.
2. Details of the working period from October 01, 2016 to October 31, 2016, the status of the legal relationship was changed by Benny Sulistion Sinaga, Lie, Edy Susilo to become a legal relationship between Agus Setiawan and PT Sinergi Global Servis through a Fixed Term Employment Agreement.
3. Details of the work period dated May 01, 2020 to February 28, 2021 were changed by Benny Sulistion Sinaga, Lie, Edy Susilo to be with PT Kreasiboga Primatama through a Specified Time Work Agreement.

That then on February 28, 2021 his employment was terminated on the grounds of the completion of the contract period, due to the status of a Fixed Term Employment Agreement (PKWT), Agus Setiawan was not entitled to severance pay, long service pay and compensation pay because employees with PKWT status only apply the provisions on compensation pay. The Plaintiff who worked for Defendant I and Defendant II continuously without any break during the period of December 01, 2011 to February 28, 2021 requested his right to severance pay. d February 28, 2021 requested his right to the remaining salary payments because during this time the Plaintiff did not receive a salary in accordance with the applicable provisions or the salary received was below the UMR (regional minimum wage) then requested Severance Pay, The Plaintiff also claims that the employment agreement between the Plaintiff and Defendant III and Defendant IV, which in this case is an outsourcing employment agreement, is not legally valid because Defendant I and Defendant II are business actors who are companies engaged in the distribution of bottled drinking water where the Plaintiff works as a truck driver to distribute bottled drinking water to large agents and shops which with the help of the Defendant I and Defendant II are business actors who are companies engaged in the distribution of bottled drinking water. In other words, the Plaintiff's work is the core work of the business and not a job whose scope is only supporting work, in this case the type of work is permanent and also the Plaintiffs work continuously without a break past the predetermined time limit which is the limit of the PKWT (Fixed Time Work Agreement) until the work is completed or a maximum of 5 years.

The work carried out by Agus Setiawan as far as it is related through the Outsourcing Work channel is a job that is permanent and continuous and is also not a job that is completed once or is temporary in nature or with the status of an Indefinite Time Work Agreement (PKWTT).

Where this is in accordance with the rules of Article 59 paragraph 1 (one) of Law No. 6 of 2023 concerning Job Creation regarding work agreements for a certain time can only be made for certain jobs which according to the type and nature or work activities will be completed within a certain time, namely:

a. work that is completed once or that is temporary in nature;
b. work that is expected to be completed within a short period of time;
c. work that is seasonal; or
d. work related to new products, new activities, or additional products that are still being tested or explored;
e. work that is irregular in type and nature or activity;

In its consideration, the Panel of Judges examining and deciding this case was of the opinion that what was disputed in the case a quo was a dispute over rights where the Plaintiff from the beginning worked at CV Aira Buana by receiving wages below the Provincial Minimum Wage so that he asked to be paid the shortage of wages, and a dispute over termination of employment, namely the Plaintiff who was employed by Defendant I and Defendant II (CV Aira Buana) since December 9, 2013 and was then expressly

[24] Payaman Simanjuntak seperti dikutip Adrian Sutedi, Hukum Perburuhan, Sinar Grafika, Jakarta, 2009, hlm.48-49.
[25] Lalu Husni, Pengantar Hukum Ketenagakerjaan Indonesia Edisi Revisi, Raja Grafindo Persada, Jakarta, 2003, hlm. 177

ordered by Defendant I and Defendant II to sign a Fixed Time Work Agreement with Defendant III and Defendant IV, then on February 28, 2021 his employment was terminated on the grounds of the completion of the contract period, because the type of work of the Plaintiff is a permanent type of work so that based on the provisions of Article 59 of Law Number 13 of 2003 it must change to an Indefinite Time Work Agreement (PKWTT).

Second, Legal Protection in the Form of Employment

In this case, it is found that Agus Setiawan as a truck driver working through outsourcing is a business actor who is a business engaged in the distribution of bottled drinking water from the Nestle Pure Life Factory to be distributed to large agents and shops, which in other words is work that is not included in the scope of types of work that can be outsourced.

In this case, there is no reporting of the type of supporting work to be handed over by the Employer Company. So this is very contrary to the prevailing laws and regulations, namely according to Article 65 paragraph 2 of Law Number 13 of 2003 concerning Manpower, before a company applies the Outsourcing work system, there must be two stages of agreements that must be made between the company providing work and the labor provider company which contains, among others, the following conditions:

1. Conducted separately from the main activity;
2. Performed by direct or indirect order of the employer;
3. Is a supporting activity for the company as a whole;
4. Does not directly hamper the production process.

In addition to being regulated in Article 65 paragraph 2 of Law Number 13 Year 2003 concerning Manpower, it is also regulated in Article 66 paragraph 2 of Law Number 13 Year 2003 concerning Manpower regarding the conditions for the provision of Workers, namely, among others:

1. There is a working relationship between the worker/laborer and the company providing worker/labor services,
2. A work agreement applicable in a work relationship for a specific period of time that meets the requirements as referred to in Article 59 and/or an indefinite term work agreement is made in writing and signed by both parties;
3. Protection and welfare, working conditions and disputes arising shall be the responsibility of the company providing worker/labor services; and
4. Agreements between companies using worker/labor services and other companies acting as worker/labor service providers shall be made in writing and shall contain the articles referred to in this Law.

It is unclear regarding the rules for limiting the work of worker/labor service provider companies that cannot be used by employers to carry out basic activities or activities directly related to the production process due to the abolition of Article 64 and Article 65 of the Manpower Law after the enactment of the 2020 Job Creation Law which then regarding the limitation of restrictions is revived but it is also unclear about the norms which in this case are explained in Article 64 of Law No. 6 of 2023 concerning Job Creation that further provisions regarding the determination of partial implementation of work as referred to in paragraph (2) shall be regulated in a Government Regulation which until now there has been no regulation regarding its provisions. In other words, currently all types of work can be done with outsourcing agreements. Changes to the rules seem to be considered to expand the scope of outsourcing work and eliminate the guarantee of permanent job certainty or can be said to indirectly eliminate the guarantee that workers can work as permanent employees. So if we go back to the original concept of the idea of transferring some work to another company or oursourcing, then this outsourcing concept is no longer appropriate.

In this case, the Panel of Judges who examined and decided this case used systematic or logical interpretation, namely interpreting statutory provisions by relating them to other legal regulations or laws or to the entire legal system. This means that when making an interpretation, it does not only refer to the article to be interpreted, but must also look at other articles in the same law or other laws, even the legal system as a whole as a unit[26] Although there is no legal clarity regarding the rules limiting the work of worker/labor service provider companies that cannot be used by employers to carry out basic activities or activities directly related to the production process, the Panel of Judges sees that the Work Agreement for the transfer of Outsourcing Work can be carried out by PKWT and PKWTT.

In its consideration, the Panel of Judges examining and deciding this case held that although there were 3 employment agreements signed by the Plaintiff, namely with CV Aira Buana, Defendant III (PT. Sinergi Global Servis), Defendant IV (PT. Kreasiboga Primatama), However, due to the fact that the Plaintiff from the beginning worked at CV Aira Buana as a driver continuously without any breaks as a driver which is a permanent type of work at CV Aira Buana, in other words that the Plaintiff's work is the core work (core) of the business and not a job whose scope is only supporting a job which in this case the type of work is permanent and also the Plaintiffs work on a permanent basis. In addition, the Plaintiffs worked continuously without a break past the predetermined time limit, which is the limit of the PKWT (Specified Time Work Agreement) until the work is completed or a maximum of 5 years, the Panel of Judges examining and deciding this case granted the claim of the Plaintiffs that the Specified Time Work Agreement between the Plaintiffs and Defendant I and Defendant II, The Plaintiff and Defendant III, and the Plaintiff

[26] Sudikno Mertokusumo, 2014, Penemuan Hukum : Suatu Pengantar, Cahaya Atma Pusataka, Yogyakarta., hlm. 51.

and Defendant IV are legally transferred to Defendant I and changed to an Indefinite Term Employment Agreement (PKWTT) and are also entitled to severance pay and long service pay.

Third, Protection in the Event of Termination of Employment (PHK) and Payment of Wages Below UMP

In this case the Panel of Judges ordered Defendant I to pay the rights of termination of employment in the form of severance pay and long service pay as well as the shortage of wages paid below the Provincial Minimum Wage which in total amounted to Rp.144,991,981 (One hundred forty-four million nine hundred nine hundred nine piluh one thousand nine hundred eighty-one rupiah), details as follows:

1. Employment termination rights Rp. 57,410,418
2. Wage shortfall below UMP Rp. 87,581,563

In this case, the consideration of the Panel of Judges examining and deciding this case is that from the evidence of letters and witness testimony as described above, it can be concluded that the Plaintiff worked at CV Aira Buana continuously as a driver from December 09, 2013 to February 28, 2021 by signing a Specified Time Work Agreement in turn, namely from December 9, 2013 to September 30, 2016 with CV Aira Buana, October 1, 2016 to October 31 with PT Sinergi Global Servis, from November 1, 2016 to April 30, 2020 with CV Aira Buana, then May 1, 2020 to February 28, 2021 with PT. Kreasiboga Primatama, without the Plaintiff submitting a job application and all of the Specified Time Work Agreements were all signed at the behest of CV Aira Buana without making a job application to PT Sinergi Global Servis and there was no break and CV Aira Buana signed them with the lure or hope that they would be appointed as permanent employees (Indefinite Time Work Agreement), the Plaintiff in carrying out his work at the behest of CV Aira Buana, and received wages also at CV Aira Buana.

That from the above conclusions the Panel of Judges is of the opinion that although there are 3 employment agreements signed by the Plaintiff, namely with CV Aira Buana, Defendant III (PT. Sinergi Global Servis), Defendant IV (PT. Kreasiboga Primatama), but due to the fact that the Plaintiff from the beginning worked at CV Aira Buana as a driver continuously without any breaks as a driver which is a permanent type of work at CV Aira Buana which is a bottled drinking water distributor that sends bottled drinking water to agents and shops, then is also ordered by CV Aira Buana, and receives wages at CV Aira Buana, Therefore, as stipulated in Article 1 Point 15 of Law Number 13 of 2003 concerning Manpower, which states that work relations are relations between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders, so that based on the law the Plaintiff's work relationship is with CV Aira Buana, thus the Specified Time Work Agreement entered into by the Plaintiff with Defendant III and Defendant IV is ruled out. That therefore the termination of the Plaintiff's employment dated February 28, 2021 on the grounds of the completion of the Fixed Term Employment Agreement is not based on the law, therefore it is null and void. That because the termination of employment was not due to the completion of the contract nor was it due to the fault of the Plaintiff, and the Company is still operating, the Panel of Judges is of the opinion based on ex a quo et bono that the termination of employment was for reasons of efficiency to prevent losses.

That because the Plaintiff started working from December 01, 2011 until February 28, 2021, which is more than 9 years but less than 10 years, the Plaintiff is entitled:

a. Severance pay 1 X 9 X Rp. 4,416,186.00 = Rp.39,745,674.00
b. Long service award money 1 X 4 X Rp. 4,416,186.00 Rp.17,664,744.00
c. Reimbursement of rights = Rp. 0.00 +

Total = IDR 57,410,418.00 (Fifty-seven million four hundred ten thousand four hundred eighteen thousand rupiah);

That based on Article 43 paragraph (2) of Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment which states that Employers may terminate the employment of Workers/Laborers due to the reason that the Company is making efficiency to prevent losses, Workers/Laborers are entitled to:

a. Severance pay amounting to 1 (one) time the provisions of Article 40 paragraph (2);
b. Long service pay amounting to 1 (one) time the provisions of Article 40 paragraph (3),
c. Right replacement money in accordance with the provisions of article 40 paragraph (4)

In this case, the Panel of Judges considered that the lack of wages below the UMP of Rp. 87,581,563 was charged to Defendant I because the Plaintiff started working from December 09, 2013 until February 28, 2021 and was given a salary by Defendant I. Generally, the salary of outsourced employees will be paid directly by the outsourcing company. Generally, the salary of outsourced employees will be paid directly by the outsourcing company. The Plaintiff as a truck driver working through outsourcing received a salary below the minimum wage and should have been responsible for carrying out the obligation to pay wages during the period October 01, 2016 to October 31, 2016 and May 01, 2020 to February 28, 2021, namely the outsourcing company PT Sinergi Global Servis, and PT Kreasiboga Primatama because when looking at the provisions regarding outsourcing discussed in Government Regulation No. 35 of 2021 are:

1. The working relationship between an outsourcing company and the worker/laborer employed is based on a fixed-term employment agreement (PKWT) or an indefinite-term employment agreement (PKWTT) made in writing.

2. Protection of workers/laborers, wages, welfare, working conditions, and disputes are the responsibility of the outsourcing company. This is regulated in the work agreement, company regulations, or collective bargaining agreement.

Article 66 paragraph 2 of Law No. 6 Year 2023 states that: Protection of workers/laborers, wages and welfare, working conditions, and disputes arising shall be implemented at least in accordance with the provisions of laws and regulations and shall be the responsibility of the outsourcing company. Because the Aira - Kreasiboga Labor Supply Agreement has been registered with the South Jakarta Sub-Department of Manpower, Transmigration and Energy according to the document of Proof of Registration of Labor Supply Agreement Number 5337/2021 dated October 26, 2021; thus it can be concluded that the outsourcing cooperation between CV AIRA BUANA and ACCUSED III and ACCUSED IV is valid in the eyes of the law. This is confirmed in the Proof of Employment Registration document. However, in their consideration, the Panel of Judges in their decision stated that the shortfall in wages below the UMP of IDR 87,581,563 was charged to Defendant I because the Plaintiff started working from December 09, 2013 until February 28, 2021 and was paid by Defendant I. In this case, according to the reasoning of the Panel of Judges, the Plaintiff was paid a salary by Defendant II. In this case, according to the consideration of the Panel of Judges who decided and tried this case, it was stated that the completion of the Certain Time Work Agreement was not based on law, therefore it was null and void, so that automatically the business agreement or agreement that had been carried out by the service provider company with the employer company was considered to have never occurred.

In a civil context, judges are bound by the facts presented by the parties on which their claims and counterclaims are based. If the parties do not dispute the determination of the facts submitted, then the judge may not demand evidence, unless the acceptance of the parties' arguments would lead to legal consequences that cannot be freely determined by the parties. If there is a void or ambiguity in the law, the judge has the duty to provide a solution by interpreting the law. The basis of legal discovery is systeemdenken. This means that all laws are contained in the law and only if there is a void or ambiguity in the law then the judge may interpret. Judges think inductively which means from specific concrete events to general legal rules. Finis rei attendendus est: every problem must be solved.[27]

In this case, systematic or logical interpretation is used, namely interpreting statutory provisions by relating them to other legal regulations or laws or to the entire legal system. This means that when interpreting the law, it does not only refer to the article to be interpreted, but must also look at other articles in the same law or other laws, even the legal system as a whole. Systematic interpretation is based on the postulate concerdare leges legibus est optimus interpretandi modus which means that adjusting one law to another is the best way of interpretation. Similarly, the postulate that reads optimus interpretandi modus est sic leges interpretare ut leges legibus accordant.[28] This means that the best way to interpret is by adjusting one law to another. Because the relationship between employers and workers/laborers is based on a work agreement, which has elements of work, wages, and orders, so that based on the law the Plaintiff's work relationship is with CV Aira Buana, thus the Specified Time Work Agreement entered into by the Plaintiff with Defendant III and Defendant IV is ruled out. That thus the termination of the Plaintiff's employment dated February 28, 2021 on the grounds of the completion of the Fixed Term Employment Agreement is not based on the law, therefore it is null and void so that the Plaintiff gets the Termination Rights of Rp. 57,410,418 and the shortage of wages below the UMP of Rp. 87,581,563 and the one who is fully responsible for paying it is CV Aira Buana.

The above case is one of the problems in Labor practices that are technically carried out in Indonesia, from the sequence of problems that occur, violations of labor protection occur more in the application and implementation of labor regulations in Indonesia carried out by the Company against the employment relationship mandated by the regulations and laws governing Manpower so that problems occur by utilizing the Outsourcing system to exploit their workers.

The job transfer scheme carried out by the Outsourcing Company in the above case is not in line with the objective of justice in labor law which can be realized through the protection of workers against unlimited power on the part of employers or employers, through existing legal means.[29] For this reason, there are principles and protections for workers that should be realized in order to achieve the goal of justice. Although in this case, outsourced workers/laborers did obtain legal certainty for all of their rights, it is quite difficult to obtain Justice for the protection of their rights in the Industrial Relations Court first. Although in this case the outsourced worker/laborer did obtain legal certainty for all of his/her rights, it was quite difficult to obtain Justice for all protection of his/her rights, which according to Gustav Radbruch, who was the originator of the three objectives of law which later became the main reference for legal experts afterwards in discussing the objectives of law, namely certainty, justice, and expediency. Radbruch

[27] Zainal Arifin Mochtar Eddy O.S Hiariej, 2021, Dasar-dasar Ilmu Hukum (Memahami Kaidah, Teori, Asas dan Filsafat Hukum), Jakarta, Perpustakaan Nasional: Katalog Dalam Terbitan (KDT), hlm.418.

[28] Sudikno Mertokusumo, 2014, Penemuan Hukum : Suatu Pengantar, Cahaya Atma Pusataka, Yogyakarta., hlm. 58.

[29] Niru Anita Sinaga dan Tiberius Saluchu. Perlindungan Hukum Hak-Hak Pekerja dalam Hubungan Ketenagakerjaan di Indonesia. Jurnal Teknologi Industri, Vol. 6, 2017, hal. 57

eventually corrected his own views,[30] He states that the ideal of law is nothing other than justice. Furthermore, he also stated, "Est autem jus a justitia, sicut a matre sua ergo prius fuit justitia quam jus." Which means: But the law comes from justice as from its mother's womb; therefore, justice existed before the law.

B. Rights of Outsourced Workers to be Protected in Outsourcing Companies in Accordance with Indonesian Labor Laws

On November 25, 2021, the Constitutional Court in its decision stated that Law No. 11 of 2020 concerning Job Creation is conditionally unconstitutional due to formal and procedural defects, which in this case means that the Job Creation Law will actually become permanently unconstitutional against the Constitution above it and is null and void if it does not meet the requirements. The condition is that the Job Creation Law must be immediately corrected within 2 (two) years from the Constitutional Court Decision. If it is not corrected within the specified period, the Job Creation Law will become permanently unconstitutional and the existing rules will return to the old regulations.

Then on December 30, 2022 the Government enacted a Government Regulation in Lieu of Law or Perpu on Job Creation or known as PERPU Number 2 of 2022 which is a form of improvement by the Government of the Job Creation Law which was previously conditionally unconstitutional and the improvement was before the grace period ended as required.

Currently, PERPU No. 2 of 2022 has become Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Laws on Job Creation, in which the legal provisions have undergone many changes, one of which is a change regarding the substance of the transfer of part of the implementation of work to another company or commonly known as outsourcing.

The rights of outsourced workers include several important aspects that need to be guaranteed to ensure their protection and welfare in the work environment. It is important to note that the protection of the rights of workers/laborers must be protected as well as the provisions stipulated in individual work agreements or contracts must also be implemented. In terms of the protection of workers' rights, Rawls' social contract theory is used to recognize humans as moral persons, who are rational, free and equal in nature[31] However, according to Rawls, some citizens, despite having equal rights, are unable to fully utilize their rights due to factors such as ignorance and poverty. In order to overcome this, Rawls established the Difference Principle in his theory. In the Difference Principle, Rawls still prioritizes equitable distribution, but if in the future it is proven that the distribution results in social inequality in the sense that the lucky get luckier and the unlucky get luckier, the Difference Principle will only be used.[32]

Basically, Rawls argues that determining whether or not a social contract is fair is not based on whether or not there are benefits and how much benefits are obtained. However, it is determined by the procedure, as long as the procedure to achieve a result is followed correctly and there are no obligations that are violated, regardless of how the result is and whether or not there are benefits, justice can actually be realized. It is said that the procedure has been followed correctly if there is no discrimination of rights. Everyone is given the same rights (equality) in the process while the problem of the unequal final result is not an assessment.[33]

The rights of workers, including outsourced workers, have undergone some changes after the enactment of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. The following are the rights of Outsourced workers that must be protected in accordance with the Manpower Law in Indonesia, namely there are eight Important Points relating to the Normative Rights of Outsourced Workers:

First, the protection of employment relations related to the Qualification Type of Work Agreement, previously the Qualification Type of Work was technically defined in Article 64 of Law Number 13 Year 2013 concerning Manpower which defines:

"a company may assign part of the execution of work to another company through a work contracting agreement or the provision of worker/labor services made in writing".

The provisions of Article 64 in Law Number 11 of 2020 concerning Job Creation were abolished. But then it reappeared in Law Number 6 of 2023 and was changed to "companies can hand over part of the implementation of work to other companies through outsourcing agreements made in writing".

So with these changes, the work that was originally carried out as a contracting agreement turned into an outsourcing agreement so that it did not cause multiple interpretations of the technical definition based on the type of work, even though it did not mention in detail the types of work.

The enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law makes the Outsourcing rules more flexible. In this case, after the enactment of the Job Creation Law,

According to Article 64 of the Job Creation Law, the government currently determines the partial determination of work implementation and further provisions regarding the determination of partial work implementation are regulated in a Government

[30] Titon Slamet Kurnia, "Hukum dan Keadilan: Isu Bagian Hulu dan Hilir," Refleksi Hukum: Jurnal Ilmu Hukum, Edisi April 2015, Hlm. 16-19.

[31] Andre Ata Ujan, 2001, Keadilan dan Demokrasi Telaah Filsafat Politik John Rawls, Kanisus, Yogyakarta, hlm. 38.

[32] Ibid.

[33] John Rawls, 1999, The Law of People, Cambridge: Harvard University Press, hlm. 37.

Regulation. In addition, the Job Creation Law also abolishes article 65 of Law Number 13 of 2003 concerning Manpower, which in the article explains that the type of outsourcing work that can be done must be separate from the main activity and does not hamper the production process.

Based on the previous discussion, the abolition of Article 65 of the 2003 Labor Law allows outsourced workers to do main work or work related to production. The removal of restrictions on the type of work for outsourced workers has a negative impact on workers, because companies can easily replace outsourced workers with new workers.

In addition, regarding the working period of PKWT workers, there are several changes in Article 59 of the Manpower Law with the Job Creation Law, in paragraph (1) of the Manpower Law in letter b the provision "no longer than three years" is deleted. Article 59 of the Manpower Law limits the duration of PKWT to a maximum of 3 years. If this provision is removed, employers can bind workers to PKWT for an indefinite duration. This will certainly be detrimental to workers because they will lose job security, and it will be more difficult for workers to obtain their rights as workers. In non-permanent contracts, workers have more limited rights compared to permanent workers. For example, non-permanent workers are not entitled to severance pay, long-service pay, and old-age pensions. If the duration of non-permanent contracts is not limited, it will be more difficult for workers to obtain these rights. In the past, the Manpower Law recognized limitations on which activities could be carried out by other companies and which could not. This limitation is contained in Article 66 paragraph 1 of the Labor Law, which states that workers from outsourcing companies are not allowed to carry out basic activities that are directly related to the production process. So they can only do work that is not directly related to the production process.

The revocation of Permenaker Number 19 of 2012 and Permenaker Number 11 of 2019 brings Significant Weaknesses and changes in the definition of Work related to Limitation which is regulated as a form of certainty in Labor Law. According to Gustav Radbruch, legal certainty is the main guidance for the law, so that the law becomes positive, in the sense that it applies with certainty. The law must be obeyed, thus the law is truly positive. The law is required to have certainty with the intention that the law should not change.[34] A law that has been enacted is binding on everyone and remains so until it is withdrawn. Substantial changes regarding the limitation or scope of outsourcing work limitations create a dilemma and do not reflect legal certainty.

So in this case, the limitation regarding outsourcing is eliminated, in other words, currently all types of work can be done with an outsourcing agreement. This rule change is then considered to expand the scope of outsourcing work and eliminate the guarantee of permanent job security.[35] So if we go back to the original concept of the idea of transferring part of the implementation of work to another company or oursourcing, then this outsourcing concept is no longer appropriate.

In Article 64 paragraph 3 of the 2023 Job Creation Law, the concept of outsourcing is revived and further provisions regarding the determination of part of the implementation of outsourcing work are again limited, the limits of which will be determined in a Government Regulation. So the Government should immediately make a regulation specifically regulating the limitation of the scope of outsourcing work because if it is not limited, it can be interpreted broadly. The lack of clarity regarding the norms of the outsourcing concept without limitation of the work sector has the potential to harm workers, because workers who should be permanent workers in the Employer company because the field of work is the core business of the Employer company then do not have an employment relationship with the company where they contribute.

In addition, under the concept of outsourcing without limitation of work sector, permanent workers of a company have the right to join a labor union in that company, while outsourced workers under the concept of outsourcing without limitation of work sector do not have the right and opportunity to join a labor union.[36]

This condition makes the 2023 Job Creation Law in outsourcing provide an opportunity for employers to be free to reduce workers which has an impact on workers' rights.[37] However, outsourcing is still used as a solution so that companies can freely recruit and fire/terminate workers according to the business situation faced without suffering losses.[38]

Analysis of the outsourcing concept in terms of employment relations has not changed much compared to the concept contained in the Manpower Law. Although Article 65, which contains the term "direct or indirect orders", has been abolished, outsourced workers still perform work in the Employer's company. The work performed is for the benefit of the Employer and is usually directly related to the Employer's company.

[34] O. Notohamidjojo, Soal-Soal pokok Filsafat Hukum, Griya Media, Salatiga, 2011, Hlm. 33.

[35] Sela Nopela Milinum, "Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Klaster Ketenagakerjaan," Jurnal Hukum Lex Generalis 3, no. 5 (May 1, 2022): 412–32

[36] Zaimah Husin, "Outsourcing Sebagai Pelanggaran Atas Hak Pekerja Di Indonesia," Jurnal Kajian Pembaruan Hukum 1, no. 1 (2021): 1–24

[37] Albert Kardi Sianipar, "Perlindungan Hukum Terhadap Pekerja Outsourcing Berdasarkan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," Jurnal Rectum 4, no. 1 (2022): 516–27

[38] Ida Farida et al., "Outsourcing Policy in Indonesia," American Research Journal of Humanities & Social Science (ARJHSS) 3, no. 10 (2020): 26–31

In practice, direct orders from the employer company are very likely to occur. Meanwhile, in the outsourcing concept, the employment relationship only binds the worker to the outsourcing company. The absence of a working relationship between the worker and the Employer company then makes the outsourcing concept in the Job Creation Law 2023 still does not provide clarity in terms of working relationships and opportunities to conduct Legal Smuggling through Exploitation of Work types on Workers.

Referring to the Legal Issues of Providing Work through the Outsourcing system by parsing the legal basis and implementation, the form that can certainly and guarantee maximum Legal Protection still depends on the Supervisory Function of Outsourcing Companies in Registration and Placement of Workers Based on the Type of Work and Checking the Conformity of Work Agreements made between Outsourcing Companies and Outsourced Workers carried out by the Government.

Second, worker protection in the form of work agreements that can be used in this Outsourcing agreement is a Fixed Time Work Agreement (PKWT) and an Indefinite Time Work Agreement (PKWTT).

The protection of the rights of non-permanent workers is expanded by the government by issuing implementing regulations through Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning specific time agreements, outsourcing, changes that look significant from the previous provisions regarding the regulation of non-permanent contracts are as follows:

- Time Limitation of PKWT In the previous provision, PKWT is only allowed to be made for a maximum of 2 (two) years, provided that it can be extended 1 (one) time for 1 (one) year, and can be renewed 1 (one) time for 2 (two) years.
- In this case, PP 35/2021 regulates that PKWT can be made for a maximum of 5 (five) years, provided that this time includes the extension period. In addition, the government also abolished the provision of a 30 (thirty) day gap period in the extension of PKWT which was previously stipulated in Law 13/2003. It is hoped that these changes to the PKWT time limit will provide convenience for the parties in the implementation of PKWT in the future.
- Recording PKWT to the Authorized Party, Employers must record PKWT to the ministry in the field of manpower online no later than 3 (three) working days from the signing of PKWT. If online recording of PKWT is not available, Employers can record PKWT in writing to the government organizer in the field of manpower in the city no later than 7 (seven) days from the signing of the PKWT.
- Compensation Rights for Workers One of the most significant changes is the obligation for employers to pay compensation rights to workers after the end of their working period. This compensation money is given after the expiration of the PKWT working period before the extension, and the employer still has the obligation to pay the next compensation money after the PKWT time extension ends. It should be noted that this right to compensation does not apply to foreign workers employed on non-permanent contracts.

Law Number 6 of 2023 on the Ratification of Perppu Number 2 of 2022 on Job Creation regulates outsourced work that uses PKWT must comply with the provisions of Article 59 of Law Number 6 of 2023. The article essentially states that non-permanent contracts may not be used for work that is permanent in nature. Then, when using PKWT as a type of outsourcing agreement, it is also required to transfer the protection of workers' rights in the event of a replacement of the outsourcing company, but with a note as long as the object of work still exists.

This requirement is in accordance with the mandate of the Constitutional Court in decision number 27/PUU-IX/2011 which decided the judicial review of Articles 59, 64, 65, and 66 of the Manpower Law. The judicial review at that time was carried out because it was considered that there was no certainty for workers to be re-employed, even if they were employed, they were usually counted as new workers. At that time, the Constitutional Court was of the opinion that in order to avoid exploitation of workers without regard to the guarantee and protection of the constitutional rights of outsourced workers, there were two models for running outsourcing.

The first is on a PKWTT basis and the second can be implemented on a PKWT basis but applies the transfer of protection of workers' rights or “Transfer of Undertaking Protection of Employment” (TUPE).

Berdasarkan konsep TUPE ini ketika perusahaan Pemberi Kerja tidak memberikan pekerjaan kepada perusahaan Alih Daya As long as the work is still available, the existing workers must continue to be employed by the newly appointed Outsourcing company without any changes to the terms of the previous employment contract unless it benefits the workers.

In this TUPE, the worker is not counted as a new worker, but the length of service is still counted since the first time he/she worked at the Job Provider company.[39]

Decision No. 27/PUUIX/2011 suggests two models that can be implemented to protect the rights of workers/laborers. First, by requiring that work agreements between workers/laborers and companies that carry out outsourcing work not take the form of a fixed-term employment agreement (PKWT), but rather take the form of an “indefinite-term employment agreement”. Secondly, by applying the principle of transfer of protective measures for workers/laborers or Transfer of Undertaking Protection of Employment who work for companies that carry out outsourcing work. Under the first model, the employment relationship between the

[39] Khairani, Kepastian Hukum Hak Pekerja Outsourcing : Ditinjau Dari Konsep Hubungan Kerja Antara Pekerja Dengan Pemberi Kerja (Jakarta: Raja Grafindo Persada, 2016).

worker/laborer and the outsourcing company is constitutional as long as it is based on an "indefinite term employment agreement" in writing.

Furthermore, the second model is applied in the event that the employment relationship between a worker/laborer and a company that performs outsourcing work is based on a non-permanent work agreement, then the worker must still receive protection of his/her rights as a worker/laborer by applying the principle of transfer of Undertaking Protection of Employment for workers/laborers who work for companies that perform outsourcing work. In practice, the principle of Transfer of Undertaking Protection of Employment has been applied in labor law, namely in the event that a company is taken over by another company.

The form of outsourcing agreement in a PKWT employment relationship with the principle of Transfer of Undertaking Protection of Employment is not new, in the legal setting in Indonesia. The form of Transfer of Undertaking Protection of Employment is an exception to the principle of personality. There are two (2) exceptions to the principle of personality, namely, derdenbeding 1317 Civil Code and derdenwerking 1318 Civil Code. The TUPE principle is a form of exception to the principle of personality in the form of derdenwerking, which is a promise to third parties.

Furthermore, in the principle of Transfer of Undertaking Protection of Employment, there is a guarantee of continuity of employment, working conditions and a calculation of the length of service. Secondly, outsourced workers with the principle of Transfer of Undertaking Protection of Employment have the right to refuse work at the new employer's place in the event that the working conditions are not in accordance with the worker's expectations. Workers are not bound by the principle of Transfer of Undertaking Protection of Employment. Workers are only bound by the outsourcing agreement. Normatively, workers are not parties to the principle of Transfer of Undertaking Protection of Employment, but the principle of Transfer of Undertaking Protection of Employment applies to workers, so workers are automatically entitled to the protection of the principle of Transfer of Undertaking Protection of Employment.

By applying the principle of transfer of protection, when the employer company no longer provides piecework work or the provision of worker/labor services to an old outsourcing company and provides the work to a new outsourcing company.

Therefore, as long as the work ordered to be done still exists and continues, the new outsourcing company must continue the existing work contract, without changing the provisions in the contract, without the consent of the parties concerned, except for changes to increase the benefits for the worker/laborer due to increased experience and length of service.

To protect the rights of workers whose company is taken over by another company, the rights of the workers/laborers of the company being taken over are still protected. The transfer of worker protection is implemented to protect outsourced workers from arbitrariness on the part of the employer.

This regulation not only provides certainty for the continuity of work of outsourced workers, but also provides protection for other aspects of welfare, because in this regulation outsourced workers are not treated as new workers.

The working period that outsourced workers have gone through is still considered and taken into account, so that workers can enjoy their rights as workers in a proper and proportional manner. If an outsourced worker is dismissed on the grounds that the company providing the worker's services has changed, then the worker is given the legal standing to file a lawsuit based on this to the industrial relations court as a rights dispute. Through the principle of transfer of protection, the loss or neglect of the constitutional rights of outsourced workers can be avoided.

Based on the explanation above, to better understand the reasons for the Constitutional Court to hand down a decision related to the economy, it is better to not only listen to the ruling but also to study the legal considerations of Constitutional Court Decision No. 27/PUU-IX/2011.

It can be understood that the meaning of Constitutional Court No. 27/PUU-IX/2011 explains more about the constitutional spirit of the Indonesian economy[40] On this basis, the judgment can be summarized into three parts.

First, in its decision, the Constitutional Court stated that Articles 65 paragraph (7) and 66 paragraph (2) letter b of the Labor Law are conditionally unconstitutional.

Second, in its legal reasoning, the Constitutional Court argues that there are two models that can be implemented to protect the rights of workers/laborers, namely:

(1) by requiring that the work agreement between the worker/laborer and the outsourcing company not be in the form of PKWT, but in the form of an "indefinite term work agreement" and
(2) by applying the principle of transfer of Undertaking Protection of Employment (TUPE) for workers/laborers who work for outsourcing companies.

Thirdly, in its legal reasoning, the Constitutional Court is of the opinion that if outsourced workers are dismissed on the grounds of a change of company providing worker services, then the workers are given legal standing to file a lawsuit based on this to the industrial relations court as a rights dispute.

[40] Syahuri, Taufiqurrohman. 2011. Cetakan ke-1. Tafsir Konstitusi Berbagai Aspek Hukum. Jakarta: Kencana Prenada Media Group. Hal. 249

The application of the legal concept of economic development in an effort to prevent the exploitation of outsourced workers based on Constitutional Court Decision No. 27/PUU-IX/2011 is in accordance with what is expected based on the formulation of justice in economic life. As is known based on the formulation of the Brawijaya University Center for Popular Economic Studies (2009) justice is at least realized in three forms, namely:[41]

First, justice in economic relations between people by always giving to one another what is rightfully theirs. This is what gives birth to the justice of exchange,

secondly, justice in economic relations between people and their communities, by always giving and implementing everything that promotes mutual prosperity and welfare. This is what gives birth to social justice

Third, justice in economic relations between society and its citizens, by always sharing all the pleasures and burdens equally according to their respective nature and capacity.

This is what gives birth to "distributive justice." Furthermore, in this case Latif[42] Another one was added, namely justice in the production relations between capital owners and laborers. Value-added should not be exploited by capital owners alone, but should also be shared with laborers.

This can be achieved through allocating a portion of shares to workers and/or the appropriateness of employee pay and social security standards. This is what gives birth to "productive justice," which is known as justice in industrial relations.

Third, the Right to Wages. After the enactment of the Job Creation Law, wage regulations have become more flexible. Article 88C of the Job Creation Law states that the Governor is obliged to set the provincial minimum wage and the Governor can set the district/city minimum wage. In Government Regulation No.8 of 1981 concerning the protection of wages, it is stated that wages are a receipt as a reward from employers to workers for work or services that have been or are performed, stated or valued, in the form of money determined by agreement or applicable laws and regulations and paid for a work agreement between employers and workers, including benefits, both for the workers themselves and their families.[43]

Referring to the phrase "may" in the provision "The governor may determine the district / city minimum wage", it can be interpreted that the determination of MSEs is not mandatory, if the determination of MSEs is not an obligation, it is possible for the Governor not to determine the MSE. If the governor is only obliged to set the Provincial Minimum Wage (UMP), then the Regency or City Minimum Wage (UMK) in various districts or cities that have been higher than the value of the Provincial Minimum Wage (UMP) will decrease.

The Job Creation Law provides more relief to micro business actors than the previous Manpower Law, Article 90B of the Job Creation Law allows employers of micro and small businesses to pay wages below the UMP, wages in micro and small businesses are determined based on an agreement between the Employer and Workers / Laborers in the Company. According to the author, by providing relief to micro businesses in providing wages below the UMP, it provides benefits for small business actors to develop so that it has an impact on increasing employment, with wage relief, micro businesses can open new jobs. This will help reduce unemployment and improve the welfare of the community. Wages are further outlined in the Manpower Law, namely:

a. Determine the wage policy in Article 88 paragraphs (2) and (3), which includes: minimum wage, overtime wages, wages for absence from work due to absence, wages for absence from work due to other activities outside of work, wages for exercising the right to rest time, form and method of payment of wages, fines and deductions, things that can be calculated with wages, structure and scale of wages, calculation of income tax. Article 6 of Government Regulation No. 36 on Wages only mentions seven wage policies. The seven policies are minimum wage; structure and scale of wages; overtime work wages; wages for not coming to work and/or not doing work for certain reasons; forms and methods of wage payment; things that can be calculated with wages; and wages as the basis for calculating or paying other rights and obligations.
b. Minimum wages by province or district/city and by sector by province or district/city. (Article 25 of Government Regulation No. 36 on Wages)
c. Employers are prohibited from paying wages lower than the minimum wage (Article 23 paragraph (3) of Government Regulation No. 36 on Wages).
d. Wages are not paid if the worker does not perform work. (Article 93 paragraph (1) of the Labor Law. This provision is a principle that basically applies to all laborers/workers, except when the worker/laborer concerned is unable to perform work not because of his/her fault.
e. Some exceptions to Article 93 paragraph (1) are listed in Article 93 paragraph (2), namely: The provisions referred to in paragraph (1) do not apply, and employers are required to pay wages if:
    1) The worker/laborer is sick so that he/she cannot do the job. This can be proven by a doctor's certificate.

[41] Latif, Yudi. 2011. Negara Paripurna: Historitas, Rasionalitas, dan Aktualitas Pancasila. Jakarta: PT. Gramedia Pustaka. Hal. 585-586

[42] *Ibid*, Hal. 586

[43] Husni, 2001, Pengantar Hukum Ketenagakerjaan Indonesia, Jakarta: PT. Raja Grafika Persada, hlm. 108.

2) Female workers/laborers who are sick on the first and second days of their menstrual period so that they are unable to perform work.
3) Workers/laborers are absent from work because of marriage, marriage, circumcision, baptism of a child, wife giving birth or miscarriage, husband or wife or child or son-in-law or father-in-law or parent or family member in the same household dies.
4) The worker/laborer is unable to perform his/her job because he/she is carrying out obligations to the state.
5) The worker/laborer is unable to perform his/her job because of his/her religious observance.
6) The worker/laborer is willing to perform the promised work but the employer does not employ him/her, either due to his/her own fault or an obstacle that should have been avoided by the employer.
7) Workers/laborers exercise the right to rest.
8) Workers/laborers carry out trade union/labor union duties with the consent of the employer; and
9) Workers/laborers carry out educational tasks from the company.

f. Workers who experience illness so that they are unable to carry out their duties still have the right to wages, as stipulated in Article 93 paragraph (3), as follows:
1) for the first 4 (four) months, paid 100% (one hundred percent) of wages.
2) for the second 4 (four) months, 75% (seventy-five percent) of wages.
3) for the third four (4) months, 50% (fifty percent) of wages; and
4) for the next month, 25% (twenty-five percent) of the wage shall be paid before the termination of employment by the employer.
5) The wage component consists of basic wage and fixed allowances with the amount of basic wage being at least 75% (seventy-five percent) of the amount of basic wage and fixed allowances. Set out in Article 94.

Fourth, the Right to Working Hours and Rest Time. Every worker who performs work in excess of normal working hours must be calculated as overtime wages, except for workers belonging to certain groups who are not entitled to overtime wages. The calculation of overtime wages after the enactment of the Job Creation Law has undergone several changes. The calculation of overtime wages is also based on the overtime time carried out by workers. Article 78 of the Manpower Law explains that overtime work time can only be done at a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week, with the enactment of the Job Creation Law the provisions of Article 78 have changed to overtime work time can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.

The change in overtime wages has various implications, with the increase in overtime working time means an increase in overtime wages, this increase in overtime wages can be used by outsourced workers to fulfill their daily needs or to improve their welfare. Working time and rest time are guarantees of protection for workers/laborers in the workplace in order to avoid inhumane treatment of workers/laborers during excessive working hours that can interfere with health and safety. In this study, the understanding of health and safety includes physical and mental/psychological aspects because both will affect the productivity/working capacity of workers/laborers.

a. Working Time

The time allowed for a worker/laborer is determined by the Manpower Law. Article 77 of the Manpower Law states that every employer is obliged to implement the provisions of working time if there is a deviation in the working hours, the employer must apply for permission from the authorized institution and must make payment/compensation in accordance with the regulations on overtime work and overtime work wages.

Working time stipulated by Article 77 paragraph (2) of Law 13 Year 2003:

1) 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week, or.
2) 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in one (1) week

Deviations from this provision by Article 78 of Law 13 of 2003 are regulated under the following conditions:

1) There is consent of the worker/labor concerned
2) Overtime work can only be done for a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week.
3) Employers who employ workers/laborers beyond the working hours as referred to in paragraph 1 (1), are obliged to pay overtime work wages in accordance with regulations.

b. Break Time

Workers / laborers in their working hours are entitled to get rest time to restore energy and fitness with the following provisions:[44]

1) The break between working hours shall be at least half an hour after four hours of continuous work and such break shall not include working hours.

[44] Agusmidah, 2010, Dinamika & Kajian Teori Hukum Ketenagakerjaan Indonesia, (Ghalia Indonesia: Bogor). hlm. 72

2) Weekly rest is one day for six working days in a week or two days for five working days in a week.

In addition to these daily and weekly rest periods, workers/laborers are also entitled to rest/leave to not carry out their work while still receiving their due rights. Leave time to which workers/laborers are entitled include:[45]

1) Annual leave, at least 12 (twelve) working days after the worker/labor concerned has worked for 12 (twelve) months continuously, and
2) The long rest shall be at least 2 (two) months and shall be carried out in the seventh and eighth years for 1 (one) month each for workers/laborers who have worked for 6 (six) years continuously in the same company. In this case, workers/laborers who undergo such long rest are no longer entitled to their annual rest in the current 2 (two) years and thereafter apply for every multiple of 6 (six) years of service.

The implementation of the provisions on annual leave and long rest by the Law is left to the company's policy and agreement with the labor union as evidenced by the statement in Article 79 paragraph (3) of the Manpower Law: "The implementation of annual rest periods is regulated in work agreements, company regulations, or collective labor agreements".

Long breaks are not generally applicable but apply to certain companies. This is as stated in Article 79 paragraph (4) of the Manpower Law, that: "The right to long rest only applies to workers/laborers who work in certain companies".

c. Special Leave Breaks for Women Workers/Laborers

As previously described, female workers/laborers still get their wage rights, even though they cannot carry out their obligations due to their biological functions. This special leave for women includes:

1) First and second day of menstruation. Female workers/laborers who feel pain during their menstrual period and notify the employer are not obliged to work (Article 81 of the Manpower Law).
2) Female workers/laborers are entitled to rest for 1.5 (one and a half) months before childbirth and 1.5 (one and a half) months after childbirth according to the calculation of a doctor or midwife. (Article 82 of the Labor Law)
3) Female workers/laborers who experience a miscarriage of pregnancy are entitled to a rest period of 1.5 (one and a half) months or in accordance with the certificate of a gynecologist or field. (Article 82 of the Labor Law)
4) Female workers/laborers whose children are still breastfeeding shall be given reasonable opportunity to breastfeed their children if it must be done during working time. (Article 83 of the Labor Law)

This can also be a motivation for outsourced workers to work harder, however, das sollen das sein, reality does not always match expectations, this can also increase the risk of violations of the rights of outsourced workers such as not getting overtime pay or delays in paying overtime pay, many outsourced workers are not aware of their rights, including the right to decent overtime pay. This may lead to them not demanding their rights to the fullest, and law enforcement against outsourced workers' overtime pay violations is still weak. This has the potential to cause employers to not comply with applicable regulations.

Fifth, the Right to Employment Social Security.

Social security can be broadly and narrowly defined. In its broad sense, social security includes various efforts that can be made by the community and/or the government. These efforts by Sentanoe Kertonegoro are grouped into four main business parts as follows:[46]

a. Efforts in the form of prevention and development, namely efforts in the fields of health, religion, education legal aid, and others that can be grouped in social services (Social Service).
b. Efforts in the form of recovery and healing, such as assistance for assistance for natural disasters, the elderly, orphans, disabled people, and various provisions that can be called social assistance (Social Asisstance).
c. Efforts in the form of guidance in the form of improved nutrition, housing, transmigration, cooperatives, and others that can be categorized as social facilities (Social Infra Structure).
d. Efforts in the field of labor protection which are specifically aimed at the labor community which is the core of the development force and always faces social economic risks, are classified in Social Insurance.

The enactment of the Job Creation Law has also made changes to several provisions in the Manpower Law, including provisions regarding employment social security. The Job Creation Law amends the provisions of article 18 of Law No. 40/2004 on the National Social Security System. The Job Creation Law adds one type of social security, namely Job Loss Insurance (JKP). Job loss insurance (JKP) is a social security provided to workers/laborers who experience termination of employment (PHK). Law No. 40/2004 on National Social Security, in paragraph 1.1 states that social security is: "a form of social protection to guarantee all people to be able to meet the needs of a decent life" In article 1 of Law Number 3 of 1992 concerning Labor Social Security, the definition of labor social security is formulated as follows; "labor social security is a protection for workers in the form of compensation in the form

[45] *Ibid.*

[46] Zaeni Asyhadie, Hukum Kerja, 2007, Hukum ketenagakerjaan bidang hubungan kerja (Jakarta : PT. Raja Gafindo Persada), hlm. 102

of money as a substitute for part of the income that is lost or reduced in services as a result of events experienced by workers in the form of work accidents, illness, maternity, old age, and death."

According to the author, social security after the enactment of the Law on Manpower, the addition of the JKP program provides more protection for workers, especially outsourced workers after being laid off. According to Government Regulation Number 37 of 2001 concerning the Implementation of the Job Loss Insurance Program, it provides benefits including:

- Cash: Cash benefits are provided to JKP participants who experience layoffs for the first 6 months. The amount of cash benefits is set at 45% (forty-five percent) of wages for the first 3 (three) months and 25% (twenty-five percent) of wages for the next 3 (three) months.
- Access to labor market information: The benefit of access to labor market information is provided to JKP participants in the form of job training, apprenticeship, and job vacancy information.
- Job training: Job training benefits are provided to JKP participants who have completed the cash benefit period. Job training aims to improve the skills and competencies of JKP participants so that they can more easily get a job.

JKP is organized by BPJS Ketenagakerjaan and the Central Government. BPJS Ketenagakerjaan is responsible for managing JKP funds and providing JKP benefits to participants. The Central Government is responsible for providing subsidies to BPJS Ketenagakerjaan for the implementation of JKP.

Sixth, Right to Compensation The enactment of Law Number 6 of 2023 on Stipulating Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law changes several provisions in the calculation of compensation. The amount of compensation is regulated in Article 16 paragraph 2 of Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, and the Provision of Worker Services The amount of compensation is given in accordance with the following provisions:

- PKWT for 12 (twelve) months continuously, given at 1 (one) month's wage;
- PKWT for 1 (one) month or more but less than 12 (twelve) months, shall be calculated proportionally with the following calculation: $masa\ kerja$ 12 x 1 (one) month's wage;
- PKWT for more than 12 (twelve) months, calculated proportionally with the calculation: $masa\ kerja$ 12 x 1 (one) month's wage.

According to the author, there is a change in the calculation of compensation money, in the old labor law employers only paid the amount of one month's last wage earned by workers, while the Job Creation Law pays attention to the length of service in providing compensation. According to the author, the amount of compensation for PKWT employees after the Job Creation Law is greater than the Manpower Law. This is certainly beneficial for Outsourcing workers, because they will get more money if their working period ends.

Compensation after the enactment of the Job Creation Law has also changed. Article 36 of Government Regulation No. 35 of 2021 on Specified Time Work Agreements, Outsourcing, and the Provision of Worker Services explains several conditions that allow companies to lay off their workers on the grounds of efficiency, either followed by the closure of the company or not followed by the closure of the company due to the company experiencing losses, the company closed for 2 years due to losses, the company closed due to force majeure, the company is in a state of suspension of debt payment obligations and the company is bankrupt.

Based on this, it can be explained that based on the Job Creation Law, employers can now easily dismiss their workers for the reasons above. Prior to the enactment of the Job Creation Law, companies that carried out efficiency could only lay off their workers if accompanied by closure, this is different from the Job Creation Law which allows layoffs without being followed by the closure of the Company. In addition, with the abolition of the provisions of Article 156 of the Manpower Law, it is easier for employers to dismiss their workers, especially for workers who do not have knowledge of legal remedies.

Regarding the rights due to layoffs, namely compensation money, there are several different amounts for each reason for layoffs. Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment currently workers can get compensation money a maximum of 0.5 times salary if they are dismissed because the company is making efficiency due to losses, the company is making efficiency to prevent losses, the company is closed because it has suffered losses for 2 years continuously, the company is closed due to force majeure, the company is in a state of postponement of debt payment obligations caused by the company experiencing losses, and the company is in a state of bankruptcy. Compensation in the Job Creation Law is less than the old Labor Law. The direct impact of the amount of severance pay in the Job Creation Law for outsourcing workers is the reduction in the value of compensation money received by outsourcing workers if they are dismissed. This will certainly be a burden for outsourced workers, especially for outsourced workers who have a short working period. The above discussion can explain that the Job Creation Law has not fulfilled the economic development and social welfare policies of Outsourced Workers' Rights.

To ensure legal certainty and protection, the government issued a new clause to prevent exploitation of workers through the outsourcing system by covering up the weaknesses of the previous regulation, through the issuance of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Laws on Job Creation. One of them is through the addition of an article that

can provide legal certainty as stipulated in number 17 to add provisions between Article 61 and Article 62, 1 (one) article is inserted, namely Article 61A so that it reads as follows:

(1) In the event that a specified period work agreement ends as referred to in Article 61 paragraph (1) letter b and letter c, the Employer is obliged to provide compensation to the Worker/Laborer.

(2) The compensation money as referred to in paragraph (1) shall be given to the Worker/Laborer in accordance with the period of employment of the Worker/Laborer in the Company concerned.

(3) Further provisions concerning compensation money shall be stipulated in a Government Regulation.

The addition of the Article on Compensation to Workers is in line with the Purpose of Protection defined by **Abdullah Sulaiman**, there are 5 forms or types of labor protection, namely:[47]

a. Economic protection, namely as protection of working conditions or labor conditions stipulated in regulations regarding employment relationships or employment agreements.
b. Work safety protection, namely providing protection to workers so that they are safe from hazards that can be caused by work tools or materials that are worked on.
c. Occupational health protection. This protection exists because industrial and non-industrial technology workers sometimes experience arbitrary and inhumane treatment by employers.
d. Protection of employment relationship, which is the protection of work carried out by workers for employers in employment relationship by receiving wages.
e. Protection of legal certainty, namely in the form of legal protection stipulated in laws and regulations. It contains commands and prohibitions, as well as sanctions for violations with a coercive nature, as hard as possible, and as firm as possible.

Seventh, the Right to Welfare

Realizing the importance of workers to the company, the company is obliged to guarantee the welfare of outsourced workers, Law No. 13 Year 2003 has regulated the following:

a. Every worker/laborer and his/her family has the right to obtain labor social security. (Article 99 paragraph (1)).
b. To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities which include family planning services, day care centers, workers/laborers housing, worship facilities, sports facilities, canteen facilities, health facilities and recreational facilities, of course, the provision of such facilities shall be carried out by taking into account the needs of workers/laborers and the size of the company's capacity. (Article 100 paragraph (1) and paragraph (2).
c. To improve the welfare of workers/laborers, worker/labor cooperatives and productive enterprises in the company shall be established, namely activities of an economic nature that generate income beyond wages (Article 101 paragraph (1).

To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities which include family planning services, daycare, workers/laborers housing, worship facilities, sports facilities, canteen facilities, health facilities and recreational facilities, of course the provision of these facilities is carried out by taking into account the needs of workers/laborers and the size of the company's capabilities. To improve the welfare of workers/laborers, worker/labor cooperatives and productive enterprises in the company are formed, namely activities of an economic nature that generate income outside of wages (Article 101 paragraph (1).

Eighth, the right to obtain decent work for everyone, including persons with disabilities, is an application of the fulfillment of economic and social rights as part of the implementation of human rights.

Disabled workers are legal subjects in the Labor Law which is also specifically regulated in Law No. 4 of 1997 concerning Disabled Persons. Persons with disabilities are given equality and opportunities with other normal humans. Article 1 point 3 of Law No. 4 of 1997 explains that equal opportunity is a situation that provides opportunities for persons with disabilities to have equal opportunities in all aspects of life and livelihood. Article 14 of Law No. 4 of 1997 affirms that companies, both state and private companies, are required to provide equal opportunities and treatment to persons with disabilities in their companies, according to the type and degree of disability, education, and ability, the number of which is adjusted to the number of employees and or company qualifications. Anyone must provide equal treatment, between the work of the disabled and the normal workforce. This same treatment is defined as non-discriminatory treatment including wages for the same job and position, Companies that do not implement the provisions in Article 14 of Law No. 4 of 1997 are threatened with criminal detention for a maximum of 6 (six) months and or a maximum fine of Rp. 200,000,000 (two hundred million rupiah).

Ninth, the right to guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families. Discrimination in all its forms is prohibited because it is contrary to the principles of the general public. The term discrimination is defined as differences in treatment of fellow citizens (such as by looking at native/non-native, differences in skin color and so on). ILO Convention No. 111 of 1958 concerning Discrimination (employment and occupational

[47] Arifuddin Muda Harahap. Pengantar Hukum Ketenagakerjaan. Malang: Literasi Nusantara, 2020, hal. 97-98.

opportunities) which has been ratified through Law No. 21 of 1999 on May 7, 1999. Article 1(a) stipulates that the term discrimination includes:[48]

a. Any distinction, exclusion or preference on the basis of race, color, religion and political beliefs national or social origin which has the effect of nullifying or reducing equality of opportunity or treatment in employment and occupation.
b. Any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as determined by the member concerned after consultation with representatives of employers' and workers' organizations where applicable and with other appropriate bodies.

Tenth, The right to protection and guarantee of employment for workers with disabilities.

Article 67 of Law 13 of 2003 explicitly states that employers who employ workers with disabilities are obliged to provide protection in accordance with the type and degree of disability. The protection referred to in this paragraph is for example the provision of accessibility, provision of work tools and personal protective equipment tailored to the type and degree of disability. This provision was born as an effort by the government to uphold certainty for every worker to obtain work and a decent livelihood, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia (Article 27 paragraph (2) and Article 28 D paragraph (2)).

The right to obtain decent work for everyone, including persons with disabilities, is an application of the fulfillment of economic and social rights as part of the implementation of human rights (HAM). Disabled workers are legal subjects in the Labor Law which is also specifically regulated in Law No. 4 of 1997 concerning Disabled Persons. Persons with disabilities are given equality and opportunities with other normal humans. Article 1 point 3 of Law No. 4 of 1997 explains that equal opportunity is a situation that provides opportunities for persons with disabilities to have equal opportunities in all aspects of life and livelihood. Article 14 of Law No. 4 of 1997 affirms that companies, both state and private companies, are required to provide equal opportunities and treatment to persons with disabilities in their companies, according to the type and degree of disability, education, and ability, the number of which is adjusted to the number of employees and or company qualifications. Anyone must provide equal treatment, between the work of the disabled and the normal workforce. This same treatment is interpreted as non-discriminatory treatment including wages for the same job and position, Companies that do not implement the provisions in Article 14 of Law No. 4 of 1997 are threatened with imprisonment for a maximum of 6 (six) months and or a maximum fine of Rp. 200,000,000 (two hundred million rupiah).

Eleventh, Protection of Women Workers

Law 13 of 2003 states that the protection of workers is intended to guarantee the basic rights of workers/laborers and ensure equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families. Discrimination in all its forms is prohibited because it is contrary to the principles of the general public. The term discrimination is defined as differences in treatment of fellow citizens (such as by looking at native/non-native, differences in skin color and so on.

ILO Convention No. 111 of 1958 concerning Discrimination (employment and occupational opportunities) which has been ratified through Law No. 21 of 1999 on May 7, 1999. Article 1(a) stipulates that the term discrimination includes:

a. Any distinction, exclusion or preference on the basis of race, color, religion and political beliefs national or social origin which has the effect of nullifying or reducing equality of opportunity or treatment in employment and occupation.
b. Any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as determined by the member concerned after consultation with representatives of employers' and workers' organizations where applicable and with other appropriate bodies.

It can be concluded that the existence of labor regulations whose substance and material are specifically intended for women are intended to:[49]

a. Prevent discrimination (distinction, exclusion and prioritization) that results in reducing equality of opportunity or treatment in employment or position.
b. Protecting women workers to carry out and carry out their reproductive duties in accordance with nature, without having to lose opportunities for employment.

The overall protection of women workers is related to economic protection, social protection and technical protection. Within the scope of economic protection, among others, wages and other benefits must not be differentiated from male workers for the same type of work and position. Social and technical protection concerning workplace protection, among others, is contained in Article 76 of Law 13 of 2003 which determines:

a. Female workers/laborers who are less than 18 (eighteen) years old are prohibited from being employed between 23.00 and 07.00.

[48] Agusmidah, 2010, Dinamika & Kajian Teori Hukum Ketenagakerjaan Indonesia, (Ghalia Indonesia: Bogor), hlm. 67.

[49] *Ibid.* hlm 70.

b. Employers are prohibited from employing pregnant women workers/laborers who, according to a doctor's certificate, are dangerous to the health and safety of their wombs and themselves if they work between 23.00 and 07.00.
c. Employers who employ female workers/laborers between 23.00 hours and 07.00 hours shall:
   1) Provide nutritious food and drinks
   2) Maintain decency and safety in the workplace.
d. Employers are obliged to provide shuttle transportation for female workers/laborers who go to and from work between 23.00 and 05.00.

Twelfth, Occupational Safety and Health (K3) Protection

Work safety is one of the rights of workers/laborers regulated in Article 86 paragraph (1) letter a of Law Number 13 Year 2003. For this reason, employers are required to implement it systematically and integrated with the company's management system. What is meant by occupational safety and health management system is part of the company's overall management system which includes the organizational structure, planning, implementation, responsibilities, procedures, processes, and resources needed for the development of implementation, achievement, assessment, and maintenance of occupational safety and health policies in order to control risks related to work activities in order to create a safe, efficient, and productive workplace. Occupational safety and health efforts aim to protect the safety of workers/laborers in order to realize optimal work productivity, by preventing accidents and occupational diseases, controlling hazards in the workplace, health promotion, treatment and rehabilitation. So important is occupational safety for workers, that Law No. 13 of 2003 regulates it in Article 86 paragraph (1), namely: Every worker/laborer has the right to obtain protection for:

a. Occupational safety and health.
b. Morals and decency and
c. Treatment in accordance with human dignity and religious values.

Provisions on work safety are regulated in Law No. 1 of 1970 concerning Occupational Safety. Work safety refers to work safety in all workplaces, whether on land, in the ground, on the surface of the water, in the water or in the air, which are within the jurisdiction of the Republic of Indonesia. (Article 2 paragraph (1)).

CONCLUSIONS

The conclusion of the discussion on Legal Protection of Outsourced Workers/Laborers in Cases of Termination of Employment (PHK) is as follows:

1. Termination of employment (PHK) is the termination of employment relations caused by a certain matter and has an impact on the end of rights and obligations between workers and companies. Legal protection in this case is a form of work that is permanent and continuous and is not a job that is once completed or temporary in nature, it must change its status to an Indefinite Time Work Agreement (PKWTT) and is entitled to the Rights of Termination of Employment. Protection of workers/laborers, wages and welfare, working conditions, and 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, but because a Certain Time Work Agreement is not based on law, it is null and void so that all agreements between outsourcing workers and outsourcing companies are ruled out and all rights to termination of employment and payment of wage shortages below the UMP are the responsibility of the company where they work or the company using outsourcing services, not the outsourcing company, therefore the agreement between the worker service provider and the employer company is also considered never to have occurred. The lack of clarity regarding the limitation of work seems to be considered as expanding the scope of outsourcing work and eliminating the guarantee of permanent job security or indirectly eliminating the guarantee that workers can work as permanent employees (PKWTT). Thus, if we go back to the original concept of the idea of transferring some work to another company or outsourcing, it must be work that is not directly related to the production process, then this outsourcing concept is no longer appropriate.
2. Indonesia as a state of law has proven to have made efforts to protect the rights of its citizens, especially regarding outsourced workers who have been clearly regulated in existing laws and regulations in Indonesia. In practice it turns out that there are still cases or violations that show that legal protection for outsourced labor is still not optimal. Looking at the form of outsourcing work agreements in general, it can be seen that the work agreement does fulfill the elements of work and wages, but there is no element of order because the company providing worker services has absolutely no authority to give orders, the authority to give orders lies with the outsourcing service user company where the worker is employed. Because there is no firm legal status of outsourced workers, the rights of outsourced workers are not fulfilled. By not fulfilling the elements of a work agreement, it automatically results in the absence of definite legal protection for outsourced workers.

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