



UDC 331; DOI 10.18551/rjoas.2023-02.04

## LEGAL PROTECTION OF THE BASIC RIGHTS OF OUTSOURCING WORKERS IN THE JOB CREATION ACT REGULATION BASED ON THE ILO CONVENTIONS

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### ABSTRACT

Legal protection of the rights of outsourced workers is not just a legal issue, but a right that must be obtained by workers according to the mandate in the legislation, these rights are in the form of work and decent wages, social security, severance pay, and work safety. Although some of the rights have been listed in the labor regulations, these regulations have not yet fully contained and regulated the fulfillment of workers' rights, especially in practice that has not fully protected the rights of outsourced workers in a just and constitutional manner. This research uses a normative juridical method with a statutory, conceptual, historical approach, with primary legal materials namely the 1945 Constitution, Law Number 13 of 2003 concerning Manpower jo. Law No. 11 of 2020 on Job Creation, Government Regulation No. 35 of 2021 and ILO conventions. The results of the study indicate that the violation of the rights of outsourced workers is in fact still ongoing by providing substandard wages and unilateral layoffs by employers. Internationally, the ILO conventions have regulated the application of the protection of basic workers' rights, namely the abolition of forced labor and the provision of decent wages, this convention has also been ratified in Indonesian laws and regulations, thus various labor regulations should be a preventive measure as an optimization legal protection for workers so that the welfare of workers nationally and internationally can be achieved.

### KEY WORDS

Legal protection, outsourcing workers, ILO conventions.

Human rights are rights inherent in human beings, these rights are closely related to the dignity of a person, if they are confiscated or lost, it will be fatal for a person. Furthermore, there are also individual rights which are not human rights caused by various factors, one of which is in the form of workers' rights which have been regulated in laws and regulations as a form of legal protection for the fulfillment of workers' rights.<sup>1</sup> The rights of these workers cover various aspects including the right to get a fair and decent wage, the right to work safety guarantees, guarantees for the continuity of family life.<sup>2</sup> The fulfillment of these rights will certainly have an impact on individual and social welfare of the community in the work environment, and vice versa if these rights are violated or not given to workers, it will cause serious problems that will affect a larger scope.

Basically, legal protection for every citizen has been regulated in Article 27 of the 1945 Constitution which states that "every citizen right to work and a decent living for humanity".<sup>3</sup> Nevertheless, the rules in the Constitution have not been fully heeded by stakeholders, both service user companies and outsourcing companies. Nationally and internationally, regulations regarding workers / labourers have been regulated significantly as an effort to obtain just workers' rights. The basis for regulating the outsourcing work system in the rules of labor law in Indonesia is contained in Law Number 13 of 2003 concerning Manpower and

<sup>1</sup> Adrian Sutedi, "Hukum perburuhan," 2009.

<sup>2</sup> Zaimah Husin, "Outsourcing Sebagai Pelanggaran Terhadap Hak Para Pekerja Di Indonesia," *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (March 22, 2021): 1, <https://doi.org/10.19184/jkph.v1i1.23396>.

<sup>3</sup> "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945," n.d.



the Constitutional Court's decision number 27/PUU-IX/2011 in conjunction with the Minister of Manpower Regulation No. 19 of 2012 in conjunction with Permenaker number 11 of 2019 and Law number 11 of 2020 in conjunction with PP number 35 of 2021 as well as in the Indonesian Civil Code (KUH Perdata). With the arrangement related to the outsourcing system, it is hoped that it will provide convenience for entrepreneurs who need skilled and trained workers because outsourcing companies have provided guidance and training to workers before distributing them to service user companies.

The outsourcing work system is a surefire way to absorb skilled workers in a fast and easy way for large companies that require a lot of skilled workers, but often this convenience causes employers to arbitrarily give outsourced workers/laborers by paying below-standard wages. set. Indications of violations of the rights of outsourcing workers are clearly displayed in the work environment that outsourcing workers and permanent workers do the same work, but the wages received by outsourcing workers are smaller than the wages received by permanent workers, there is a violation of discrimination received. by outsourced workers, the violation of this right is contrary to the international declaration which stipulates "*everyone without any discrimination, has the right to equal pay for equal work*",<sup>4</sup> that everyone may not get any discrimination, and there is equal pay for work Similarly, Article 7 of the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* stipulates that there are remuneration rights that are owned and must be obtained by workers, these rights are in the form of equal remuneration or wages for work of the same value without any difference, (*equal remuneration for work of equal value*). However, the discovery of many differences in wages received by outsourcing workers in Indonesia indicates that the outsourcing work system is not in accordance with the provisions of international law.

Furthermore, in the ILO convention on the elimination of labor discrimination no. 111 (1958) (*Discrimination Employment and Occupation*) all forms of discrimination are not justified and equality must be upheld (*equality and non-discrimination*). The rights of workers that are protected in the rules of the basic ILO Conventions are in the form of protection of workers' rights against direct and indirect discrimination (*giving protection for all workers against direct and indirect discrimination*).<sup>5</sup> The sound in this convention is clearly in line with the basic rules of the Republic of Indonesia which protect all Indonesian people.

The contents of the basic ILO conventions have been ratified in legislation no. 21 of 1999. However, discrimination against outsourced workers is still ongoing, so this is a violation of human rights. One example is the case that occurred in the Petrokimia Gresik Outsourcing Workers who demanded equal rights, as well as work safety guarantees, and decent wages for the unfair treatment they received while working.<sup>6</sup> The realization of this basic ILO convention in Indonesian law lies in Article 6 of Law number 13 of 2003 which stipulates that every worker has the right to receive equal treatment without discrimination in the workplace.<sup>7</sup>

Based on the above reality, an indication of the ambiguity of norms in the outsourcing work relationship is found, namely in the work agreement which has elements of wages and orders which are in article one of the general provisions. Whereas the employment relationship is the relationship between the two parties, namely the entrepreneur and the worker/labourer based on a work agreement, the work agreement must include elements of work, wages, and orders.<sup>8</sup> It can be understood that a working relationship will only be formed if the three elements, orders, work, and wages are gathered. These three elements will then be ratified in the form of a work agreement between the employer and the worker. The text of the article indicates the urgency of the need for legal prescriptions to answer legal issues in the field of labor law. It concerns the legal protection of the basic rights of outsourced workers/laborers in the agreement for the provision of worker/labor services as

<sup>4</sup> "Universal Declaration of Human Rights Preamble," 1948.

<sup>5</sup> Guide to International Labour Standards and Rights at Work Concerning Young People, 2017, [www.ilo.org/publns](http://www.ilo.org/publns).

<sup>6</sup> Ady, "Buruh Outsourcing Petrokimia Gresik Gugat Diskriminasi Kerja," 2012, July 2012, <https://www.hukumonline.com/berita/a/buruh-ioutsourcingi-petrokimia-gresik-gugat-diskriminasi-kerja-1t4f509ad39c2b1>.

<sup>7</sup> "Undang- Undang Nomor 13 Tahun 2003 Tentang Ketenagakejaan" (2003).

<sup>8</sup> Bab I Ketentuan and Umum Pasal, "Peraturan Pemerintah Nomor 35 Tahun 2021 Tentang Perjanjian Kerja Waktu Tertentu, Outsourcing, Waktu Kerja Dan Waktu Istirahat, Dan Pemutusan Hubungan Kerja." (2021).



regulated in Law Number 11 of 2020 concerning Job Creation. This legal issue is an authentic, original strategic issue because there is no academic work that discusses and answers legal issues regarding legal protection of the basic rights of outsourced workers which are constitutionally regulated in the implementation of the outsourcing system. Such urgency is motivated by philosophical aspects, where the ontology of this research is the existence of outsourcing not in accordance with the spirit of our constitution in obtaining the right to decent work and as a basic right of workers, namely welfare, if the welfare of these workers is not fulfilled, and then there are rights that are harmed. Epistemologically a need for corrections and inputs to improve the content of the law in order to provide a proper position to workers by applying the right outsourcing system in implementing and making rules, so that axiologically can achieve the fulfillment of a decent life in accordance with the laws and regulations and the constitution of the republic of Indonesia so that people's welfare through their work can be achieved.

Legal protection for workers/labor has the aim of ensuring the acceptance of the basic rights of workers so that discrimination against outsourced workers can be stopped and workers get fair treatment and the welfare of workers/laborers and their families can be achieved by considering the progress of the business world. Based on this background, a legal issue was raised regarding the extent to which laws and regulations provide legal protection for the basic rights of workers which have also been regulated internationally in the basic ILO conventions. So, the authors are interested in conducting research with the title "Legal Protection of the Basic Rights of Outsourcing Workers in the Job Creation Act Regulation Based on the ILO Conventions". With the formulation of several problem formulations related to the title above, it will be known to what extent the regulations in Indonesia have provided protection for outsourced workers or workers.

1. What is the form of legal protection for the basic rights of outsourced workers in the Employment Copyright Act and its derivative regulations?
2. How does the legal protection of workers in the Job Creation Act conform to the protection of workers based on the basic ILO conventions?

## METHODS OF RESEARCH

The research method used is *normative juridical*, namely research conducted by analyzing and reviewing the legal substance in the form of legislation that is juxtaposed with the problems found.<sup>9</sup> This research approach uses four approaches, namely the *Statute Approach*, *Conceptual Approach*, the *historical* approach, and *comparative approach*.<sup>10</sup> The sources of legal materials used in this study are primary legal materials and secondary legal materials. Sources of primary legal materials are legal materials that are authoritative in nature, that is, they have authority consisting of statutory regulations, minutes of drafting laws and regulations, or court decisions. Secondary legal materials are sourced from all forms of publications on law that are not official documents, such as text books, legal dictionaries, legal journals,<sup>11</sup> sources of secondary legal materials also come from publications through internet media related to research materials. either in the form of accurate current news about the legal issues raised. The collection of legal materials is carried out through several procedures, including: *first*, to systematize legal products in the form of legislation regarding labor law, especially regarding the legal issues under study. The systematization of these laws and regulations is carried out to explore and at the same time carry out an inventory of regulations regarding the provision of worker services and forms of legal protection. *Second*, do classification of laws and regulations relating to the provision of worker services. This classification is carried out based on a hierarchical approach to laws and regulations that aim to facilitate the process of reviewing and analyzing the suitability of the provision of worker services. *Third*, analyzing, namely analyzing the laws and regulations relating to the contracting of the provision of worker services, including the legal basis and

<sup>9</sup> P D M Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017), <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

<sup>10</sup> Marzuki.

<sup>11</sup> Marzuki.



other provisions relating to legal issues, including several related cases as factual justification. All stages in this activity are carried out to process legal issues until the answers to the problem formulations in this study are found.

## RESULTS AND DISCUSSION

*Legal protection of the basic rights of outsourced workers in the Job Creation Act and its derivative regulations.* The creation of the Job Creation Law is one of the government's efforts to strengthen the protection of workers, in order to improve the welfare of workers/laborers and in a broader context, as a supporter who will expand the investment ecosystem in Indonesia. economic observers and political officials to invite investors to invest in Indonesia. With an easier and clearer investment process, the government thinks it can create more and wider job opportunities so that it can absorb a lot of workers in Indonesia, while also making the production process more effective. This simple discourse seems to provide fresh air and the right solution to the unemployment problem in Indonesia. On the other hand, this solution creates many new problems in many aspects, especially in employment. The emergence of the Job Creation Law weakens the provisions of the Manpower Act regarding legal protection for outsourced workers.

In general, In the field of Manpower, the Job Creation Law, which is devoted to discussions on manpower, has drawn several polemics as a result of its formation and amendment to the Manpower Act. First, the change in the provisions of the maximum time limit in the Specific Time Work Agreement (PKWT). Second, regarding the calculation of the minimum wage which no longer ignores the phrase "necessities for a decent living" as a benchmark in calculating the minimum wage, which causes wages to be reduced without considering the amount of a decent wage based on needs, which has an impact on the shift in the concept of wage protection broadly. Third, the elimination of restrictions on the types of work that can be categorized as outsourced work. Fourth, termination of employment without negotiation between the employer and the outsourced worker is caused by the completion of a job, and is only carried out with notification from the company, (Unilateral Termination of Employment by the entrepreneur). Fifth, the Job Creation Act pays very little attention to the function of control and supervision of work relations which should be carried out seriously by the state. PKWT time limit and the right to long rest can be agreed in the work agreement. Sociologically-empirical, this arrangement will only benefit one party who has *power*, of course, the company will benefit, then workers will be greatly harmed because the inequality between workers and employers makes workers not have sufficient bargaining positions in conducting two-way negotiations in a fair manner. Sixth, there is no form of concern and lack of protection of special rights for persons with disabilities who work as workers.

This Job Creation Act provides injustice for people with disabilities, who work, if they experience a work accident that causes difficulty in completing their work, they are easily laid off. This arrangement is contrary to disability protection in Law Number 8 of 2016 concerning Persons with Disabilities. Efforts by the Job Creation Law to relax protection for workers are not the right solution and quite the opposite. Philosophically, labor law was established to protect the interests of workers, which regulates matters related to employment relations and the protection of workers' rights. Not only protecting the interests of workers, this regulation of course also protects business interests which should be carried out by the government without reducing the essence of protecting the rights of workers/workers, and using other legal instruments as a source of strength for businessmen or entrepreneurs, so that a balance occurs, for example, several things that can be done. This is done by providing tax incentives, ensuring that there is no corruption and extortion, and ensuring a simple and uncomplicated bureaucracy. Legal protection of labor should not be sacrificed just because of the interests of the authorities who have the capital to invest. In addition, the changes made by the Employment Creation Act primarily to Law Number 13 of 2003 concerning Manpower cannot answer the labor problems that have occurred so far.

The regulation in the Job Creation Act has the potential to trigger new problems in labor law. It is undeniable that the age of employment law which until now was in force



before being changed by the Job Creation Act is indeed quite old, 17 years has become the basis of labor law, with the pace of development in the world of manpower of course requiring reform arrangements that are more relevant to today's workforce. However, the problems that still often arise and have not yet found a solution have not actually been solved by the enactment of the Employment Creation Law in the employment chapter. Whereas the partial revision of the amendment to the Manpower Law by the Employment Creation Act creates new problems that have a negative impact on the protection of workers.

As a legal state that adheres to the theory of a welfare state law, Indonesia is a country that guarantees the welfare of its people, there are five pillars in realizing people's welfare, namely: democracy, protection of human rights, social justice, and anti-discrimination.<sup>12</sup> With regard to the implementation of workers' rights to compensation rights after layoffs, this causes the company to be obliged to provide severance pay, and gratuities during work or compensation money to outsourced workers that have previously been determined and agreed upon in a work agreement based on company regulations that are guided by the regulations.

The concept of fulfilling workers' rights is in line with the theory of legal protection according to Satjipto Rahardjo, that legal protection is a form of providing safeguards against the fulfillment of human rights (HAM) which must be anticipated for the level of harm to other parties and protection of the community in order to obtain all the rights granted to them. has been guaranteed by law to be able to enjoy the realization of these human rights.<sup>13</sup> Efforts and efforts to obtain the legal protection desired by everyone can be maximized by establishing order and regularity on a legal basis that has a strong value as the basis for law enforcement, furthermore legal certainty so that protection will be more easily achieved, more legal uses and functions are sought. and the most important thing is that legal justice can be realized, although in general in practice the three basic values are against each other, but efforts to realize the three basic values must be kept together so that legal protection is not just a concept but the embodiment of legal protection for the community. This legal protection is in line with the function of law, namely as a regulator that protects the people from actions and dangers that have the potential to harm individuals and other people, society, and authorities, as well as the law functions as an enforcer of justice and becomes a means to realize prosperity for all Indonesian people.

In line with the theory of legal protection above, the form of legal protection for outsourcing workers can be carried out in a preventive and repressive manner.<sup>14</sup> As for preventive legal protection, it can be interpreted as normative protection of rights to outsourcing workers provided by the state (government) through legal arrangements in legislation. Meanwhile, repressive legal protection is defined as the protection of the rights of outsourced workers to maintain or defend the rights that have been stipulated and regulated normatively, which in the event of a dispute in the employment relationship with the entrepreneur (outsourcing company) the arrangement can be used as a legal basis. to obtain a fair legal settlement. The concept of legal protection starts from the basic idea, that there is a difference in position between employers and outsourcing workers, in the employment relationship the position of the worker occupies a weaker position compared to the entrepreneur or company that has a stronger position, this cannot be avoided and denied because as a the employer of the company has the power as the party that provides wages and employs workers, while the worker as the party who needs work and is bound to complete a job and requires wages from the company. Therefore, the state, in this case the government, needs to provide legal protection through legal arrangements in legislation so that justice as the main legal goal for outsourcing workers can be realized in the practice of

<sup>12</sup> Oman Sukmana, "Konsep Dan Desain Negara Kesejahteraan (Welfare State)," *Jurnal Sospol 2*, no. 1 (2016).

<sup>13</sup> S Rahardjo, K Dimiyati, and Universitas Muhammadiyah Surakarta, *Ilmu Hukum: Pencarian, Pembebasan Dan Pencerahan* (Muhammadiyah University Press, 2004), <https://books.google.co.id/books?id=zsmXAAAACAAJ>.

<sup>14</sup> S.H.M.H. Dr. Rizal Akbar Maya Poetra, *Quo Vadis Masyarakat Hukum Adat Pasca UU Cipta Kerja* (Nas Media Pustaka, 2021), <https://books.google.co.id/books?id=BQFWEEAAQBAJ>.



outsourcing work relationships in the community so that life is fair and upholds welfare based on Pancasila and the Constitution. 1945 can be achieved.<sup>15</sup>

Human rights are regulated in Law Number 39 of 1999 concerning Human Rights which regulates basic human freedoms, these rights are in the form of the right to life, the right to develop oneself, the right to a sense of security, the right to have a family and continue offspring, the right to obtain justice, rights to welfare, rights to participate in government, women's rights, and children's rights.<sup>16</sup>

In addition, regarding the basic rights of workers which are non-human in nature, it is regulated in the law, namely Article 6 of the Manpower Law which stipulates that the right of every worker is to receive equal treatment without discrimination from employers in the workplace. On basis of these two arrangements for Human Rights and Manpower, it is a strong legal basis for the fulfilment of the rights of a person, both human and non-human, and there should be no violation and discrimination against human rights as a human being in general and non-human rights as a worker/employee. It should be noted that in some circumstances it is very difficult to categorize supporting companies; this is due to the different perceptions and needs of each company, as well as the need to obtain the maximum profit to reduce production costs and operational costs of training workers.

The development of the era of globalization has also caused the forms of partnerships between companies to have different compositions from each other, so that what was previously not a supporting job becomes a support, or vice versa which was originally categorized as a supporting job can turn into the main job, this will certainly make things worse, confusion in the classification of jobs to cause complex problems. So, through the Ministerial decision mentioned in Article 65 paragraph (5) of Law no. 13 of 2003 concerning Manpower is expected to consider input from parties related to the process of producing goods and services.<sup>17</sup>

The outsourcing work system does not only harm the workers who are clearly discriminated against, but in some cases the company also suffers losses, namely in the form of a lack of control over outsourced workers, threats to security and confidentiality, poor customer service. Some of the losses received by outsourcing workers are as follows:

- Workers are harmed as a result of changing legal relationships which result in low wages, no severance pays, unilateral layoffs, as well as protection of workers' rights in the form of participation of workers and their families in social security, protection programs for pension fund benefits and so on;
- The limitation of the validity period of the PKWT which results in low legal protection for outsourcing workers, so that the workers do not have certainty and are in an insecure position, because when the work has been completed, then as a worker in a company it also ends.

The outsourcing work system is carried out intentionally by the company to reduce the cost of work / labor (labor costs) with less than maximum legal protection so that it will be very detrimental to the workers / laborers. Based on world history records, over the last few decades, outsourcing and restructuring work systems have become the main reaction in global competition, with low productivity levels and increasing labor costs in companies, so the outsourcing workforce recruitment system is more favored by companies in order to maintain efficiency and reduce costs. personnel to maintain profits and increase profits, because the outsourcing system is proven to be able to save on the cost of training workers as well as in carrying out production activities, this is a means to utilize human resources and special skills they have.<sup>18</sup>

Various advantages in the practice of outsourcing work that overrides social welfare and only benefits the company, which drives the outsourcing workers to conduct demonstrations against the legalization of this outsourcing work system, because the

<sup>15</sup> Budiartha I Nyoman Putu, *HUKUM OUTSOURCING Konsep Outsourcing, Bentuk Perlindungan, Dan Kepastian Hukum* (Sentara Press, 2016).

<sup>16</sup> "Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia" (1999).

<sup>17</sup> Budiartha I Nyoman Putu, *HUKUM OUTSOURCING Konsep Outsourcing, Bentuk Perlindungan, Dan Kepastian Hukum*.

<sup>18</sup> Dean Elmuti, Julia Grunewald, and Dereje Abebe, "Consequences of Outsourcing Strategies On Employee Quality of Work Life, Attitudes, and Performance," *Journal of Business Strategies*, 1970.



workers view that the outsourcing work system only benefits employers and acts arbitrarily on the fate of workers. The difficulties experienced by workers are the right to obtain difficult job responsibilities, workers find it difficult to claim their own welfare because they do not have and are prohibited from forming labor unions, and workers/labor do not have clear rights and terms of working time so that unilateral layoffs often occur in companies, suddenly without any prior notification. As for the company, the outsourcing work system is very profitable, some of the reasons companies prefer to apply the outsourcing system to some types of work is that it can further increase the company's focus on main and primary work, take advantage of world-class capabilities, utilize company resources that can be used for other crucial needs, causing the availability of capital funds, obtaining skilled resources that were not previously owned, solving problems that are difficult to manage and control, because in some problems finding answers to good skill management which turned out to be possessed by outsourcing workers by recruiting more specifically to a group of field experts.<sup>19</sup>

Meanwhile, preventive legal protection for outsourced workers has been regulated in the Manpower Law which was partially amended in the Job Creation Act; this implies a domino effect, namely cause and effect that makes it easier for the practice of outsourcing employment relationships that is less fair for workers. The following is a table of changes to the Manpower Law regarding Outsourcing in the Job Creation Act:

Table 1 – Employment Law Changes on Outsourcing in the Job Creation Law

NO	Employment Law	Act Job
1	The rules of the Manpower Act in the use of outsourcing are limited and only for workers outside the main business, namely: cleaning service, security, catering transportation services workers, and supporting jobs in the mining sector.	Type of Employment: The Job Creation Act will open the possibility for outsourcing agencies to hire workers for various tasks, including freelancers and part-time workers. This will make the use of outsourcing free.  Protection of work continuity guarantee: If the outsourcing company employs workers/laborers based on PKWT, then the work agreement must require the transfer of protection of rights for workers/laborers in the event of a change in the outsourcing company and if the object of the work remains.  Compensation money is given when the PKWT ends. <sup>20</sup>

Based on the explanation above, if the classification of jobs that can be outsourced is no longer given, the company will easily violate labor rights which are part of human rights that have been regulated in statutory norms, as stipulated in the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia.

The Employment Creation Act has resulted in many serious problems in the employment sector. So based on the Constitutional Court's decision Number 91/PUU-XVIII/2020 it is stated that the Job Creation Act is formally flawed and is stipulated as Conditionally Unconstitutional. Conditionally unconstitutional which means that the establishment of the Job Creation Law is contrary to the 1945 Constitution and has no legal force to bind conditionally if it is not interpreted, i.e., no amendments have been made within 2 (two) years since this decision was pronounced. Meanwhile, the Job Creation Law is still valid until the formation is corrected in accordance with the grace period as determined in the decision.<sup>21</sup>

The Constitutional Court's decision states that if the Job Creation Law is not amended for a maximum period of 2 years from the pronouncement of the Constitutional Court's decision, then the Job Creation Law is declared permanently unconstitutional so that it cannot be used as a legal basis or implementation of a provision or legal activity. Even though the Job Creation Law is conditionally declared unconstitutional, in substance the Job Creation Law remains in effect for the period of its revision as stated in the decision above. With the various polemics contained in the Job Creation Law, this regulation regarding

<sup>19</sup> Iman Setya Budi and Arie Syantoso, "Analisis Konsep Hak Dan Kewajiban Outsourcing Dalam Perspektif Ekonomi Syariah," 2019.

<sup>20</sup> "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 11 TAHUN 2020 Tentang Cipta Kerja" (2020).

<sup>21</sup> Mahkamah Konstitusi, "Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun," <https://www.mkri.id/index.php?page=web.Berita&id=17816> § (2021).



employment can still be re-examined and reformulation and improvement carried out, with the aim of improving the outsourcing work system that is more equitable.

As part of this nation, we should uphold a better life for the Indonesian people by exercising and fulfilling their rights and obligations in a fair and balanced manner by paying attention to the plight of the workers and small people whose rights are often underestimated and do not get proper legal protection. The form of legal protection for workers/laborers in Indonesia is a serious matter and must be fought for so that workers' rights can be achieved. Attention must be given to workers, as well as care and improvement in welfare which is realized by equal and general social security, based on the principles of joint effort, kinship and cooperation as stated in the spirit and spirit of Pancasila and the 1945 Constitution. The economy that must be implemented quickly must also use a careful and appropriate strategy so that it does not injure the legal protection of workers and the basic rights of workers to equal rights and the elimination of discrimination can run well in line with the pace of economic development in Indonesia and the legal protection of workers and worker welfare can be achieved.

*The suitability of the forms of legal protection of workers in the Job Creation Act with the protection of workers based on the ILO Conventions.* Outsourced work practices have been widely used by countries in various parts of the world, large and sustainable, especially if it is detrimental to the workers. The implementation of the outsourcing work system must be accompanied by improving the quality of the workforce, access of workers to a flexible or easily accessible job market that is not complicated, legal protection in the form of law enforcement against possible violations of workers' rights, as well as social protection guarantees for workers who have not received employment opportunities in the job market. Some of the most important things are also the bargaining position, which is an equal position between the group of employers and the union which will have a direct impact if there is a negotiation between the two, this bargaining position must be done so that one party does not feel he has over power or greater power due to various factors. so that it can oppress the weaker. The strict requirements on the outsourcing work system are very understandable, because in Indonesia the unemployment and poverty rates are still quite high, therefore it is feared that the opening or liberation of the outsourcing labor market will exacerbate the situation and not be an effective solution to economic and labor problems in Indonesia. In this case, the role of the state, namely the government agency, is very necessary to ensure legal protection for outsourcing workers so that the opening of the labor market does not experience oversupply which will have a negative impact on workers.<sup>22</sup> This labor market is clearly dominated by less educated workers, and workers in the informal economy who have no other choice but to enter the world of outsourced work. However, a rigid regulation will hamper the pace of economic acceleration, therefore rules that are too rigid need to be avoided but with due regard to other factors that must be maintained, especially inflows of investment, which in turn will reduce the creation of job opportunities. The implementation of the practice of absorbing outsourced workers is closely related to the arrangements governing the outsourcing work relationship between the outsourcing company and the workers. Among the arrangements that have not provided social welfare is the minimum wage setting which creates a conflict in the regulations relating to the rights and protection of workers. Protection of workers' wages is based on Article 27 paragraph (2) of the 1945 Constitution, which states that every citizen has the right to work and a decent living for humanity and Article 28 D paragraph (2) of the 1945 Constitution, which states that everyone has the right to work and receive compensation, and fair and proper treatment in employment relationships.<sup>23</sup>

In Indonesia, labor regulations are regulated in the Manpower Law, which has been updated and partially amended in the Employment Creation Law and is complemented by government regulations and ministerial regulations as implementing regulations. Meanwhile, international labor regulations are also serious matters that have received serious attention,

<sup>22</sup> Nawawi, "POLEMIK HUBUNGAN KERJA SISTEM OUTSOURCING," *Jurnal Masyarakat Indonesia* 39, no. 1 (June 2013).

<sup>23</sup> "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945."



including by the International Labor Organization or commonly abbreviated as ILO, an international labor organization that upholds the achievement of workers' rights for member countries who are also members of the United Nations. This ILO regulates several provisions related to workers' rights internationally, so that every member country of the United Nations must follow, and comply with the basic provisions governing the basic rights of every citizen and worker internationally which are then practiced in their respective countries. The ILO convention covers several matters concerning the protection of workers, including the prohibition for all United Nations countries to carry out forced labor and the abolition of forced labor as soon as possible. ILO Convention Points Concerning the Abolition of Forced Labour. The laws and regulations that approve and ratify the ILO convention state the following points of the Convention, that:

- Countries that are members of the ILO which ratify the basic conventions must prohibit and should not do let alone support and facilitate the sharing of forced labor, which in its development can be used for political tools, inappropriate forced development, disciplining workers, all forms of discrimination and strikes with pretext for a work sentence;
- ILO member states must strictly eliminate forced labor completely;
- ILO member states must report on the implementation of the measures contained in this convention.<sup>24</sup>

With the enactment of the law regarding the ratification of the ILO convention, the provision of work using the outsourcing system should be criticized and corrected again, both in the outsourcing system and in the form of work agreements that bind outsourced workers. By correcting the system, it will be known whether the outsourcing system contains elements of discrimination or forced labor that should be abolished.

So far, the outsourcing employment relationship system has been legally implemented in Indonesia, especially with the main goal being to facilitate employment and accelerate the pace of investors to invest in Indonesia. However, the thing that must be considered is the fulfillment of the rights of outsourced workers, as well as supervision of the work system, in the form of giving work from the employer to the workers, is it true that there is no element of coercion in it. Things that often happen and need to be anticipated in the outsourcing work system are in the form of providing piecework without estimating the ability of workers and overtime work that exceeds the overtime limit that has been regulated in legislation, then fair and proper overtime wages are not given. to outsourced workers in Indonesia.

Regarding agreements in employment agreements, Voss said that in most European countries, the legal basis or basis for hunting can be found in "employment agreements". Employment Agreements in statutory arrangements in European countries as well as in jurisprudence are understood with the following three elements: employment, wages, and authority. This gives the meaning that a work agreement will occur if there is an agreement between workers / workers who bind themselves to work under the authority / authority of their employers with the aim of getting paid wages.<sup>25</sup> This element of the work agreement has direct legal consequences with the existence of a working relationship between workers and employers. Likewise with wages, namely new workers will get wages after doing work based on work orders by employers.

Fair and decent wages for humanity in employment relations are regulated in Article 88 paragraph (1) of the Manpower Law. Wage is the right of the worker/labourer in the form of money as a reward for the work that has been completed in accordance with the work agreement between the entrepreneur or the employer to the worker, the agreement in the work agreement must be in accordance with the laws and regulations including allowances for workers/laborers and their families. (Article 1 number 30 of the Manpower Act). Regarding the number of wages must be in accordance with the provisions of decent living needs (KHL). KHL can be defined as the standard needs of a single worker/labor to be able to live

<sup>24</sup> "Undang-Undang Tentang Pengesahan ILO Convention No. 105 Concerning The Abolition of Forced Labour (Konvensi ILO Mengenai Penghapusan Kerja Paksa)" (1999).

<sup>25</sup> Guus Heerma Van Voss, "Deregulation and Labour Law in the Netherlands," 2000, <https://www.researchgate.net/publication/28640850>.



physically fit for the needs of 1 (one) month (Article 1 point 1 Permenakertrans No. 13 of 2012). The existence of violations in the practice of giving wages is clearly vertically against the legal theory of a decent wage. The regulation regarding wages has been regulated in such a way in the internationally supported legislation based on the basic ILO conventions.

In Article 3 of ILO Convention No.131 it is stated:

*“The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include: (a) of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”.*

Arrangements regarding a decent wage in accordance with the work done by workers are listed significantly in the basic ILO conventions, the decent wage aims to meet the needs of a person's life so that they can meet their daily needs and receive social security benefits and can increase worker productivity. This is a form of fulfilling anti-discrimination rights and fulfilling decent wages that can make workers prosperous. It is hoped that this arrangement can also be formed in the Indonesian legal order so that the rights of equitable outsourcing workers can be achieved.

The movement regarding forced labor is certainly closely coupled with the advantages for companies to provide minimum wages for workers and the forced labor they are required to perform. If a universal legal theory is contradicted by other newly formed legal rules, it indicates that there is a philosophical violation. With concrete evidence in the realm of practice that the provision of decent and fair wages for workers has not been implemented, which has resulted in the emergence of national labor demands with the slogan "reject cheap wages", this is caused by errors in regulating minimum wages at the level of legal dogmatics, legal theory and philosophy of law.<sup>26</sup> A philosophical understanding of labor wages can be understood as an award that must be paid as a result of work that has been completed, so without completing a job, wages will not be given.

Chainur Arrasjid said that law is a will made by humans in the form of norms in which there are instructions for behavior, about what can be done and what cannot be done. That is why the law must have a sanction and in it must contain the values of justice, usefulness, and the value of certainty in the society where a law was created.<sup>27</sup> So that in terms of realizing and creating the values of justice, usefulness, and the value of certainty, it is necessary to take *legal remedies* to maintain them.

So, to protect the rights of employees who are placed in the company, certain requirements are determined to minimize the negative impact on the outsourcing work system. Several conditions must be met by companies providing worker services with the aim of eliminating the exploitation of workers, namely the following conditions:<sup>28</sup>

- The form of business of a worker service provider company has officially become a legal entity so that it has a valid permit to carry out labor recruitment activities;
- The main activities or those related to production should not be borne by the outsourced workers;
- Employer service providers establish clear working relationships with outsourced workers according to minimum labor standards to ensure the legal protection of workers;
- A written agreement is made as evidence of an employment relationship agreement between the company and the employee by stating the rights and obligations of the parties in accordance with applicable regulations.

These requirements are often neglected in the practice of outsourcing employment relationships in Indonesia, especially in the initial agreement in making work agreements that do not fully include the rights of workers based on the Human Rights Law and the Manpower

<sup>26</sup> A Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Sinar Grafika, 2009), <https://books.google.co.id/books?id=gBZMQwAACAAJ>.

<sup>27</sup> Chainur Arrasjid, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2004).

<sup>28</sup> Sri Rahayu Purwanidjati, "PENERAPAN SISTEM OUTSOURCING DI PERUSAHAAN SWASTA DALAM PERSPEKTIF PERLINDUNGAN HUKUM HAK-HAK PEKERJA KONTRAK," 2012, <https://ejournal.unisri.ac.id/index.php/Wacana/article/view/261/224>.



Law. Furthermore, it is known that the outsourcing concept in Law 11 of 2002 concerning Job Creation does not provide legal protection to workers/laborers, this can be seen from the legal facts of the Job Creation Law that employers easily absorb labor when needed and easily dismiss workers. work when the company's needs have been met. So that as outsourced workers/workers, it causes a lot of loss of workers' rights, work benefits, job security and social security which is only obtained by employees with permanent worker status, this will certainly reduce the quality of life which affects the welfare of workers. The entrepreneur's way to reduce the company's operational costs is to provide convenience to the absorption of outsourcing workers but does not pay attention to the main employer's obligations in the welfare of workers / laborers so that the rights of outsourcing workers are not obtained fairly.

One of the roles of the Government in its position as a stakeholder in terms of employment is to become a regulator or regulator. Therefore, the government should be in a middle position between employers and workers and can be a supervisor in the outsourcing work system so that the rights of workers are just and are not harmed by anyone. Likewise, in the legal order in Indonesia related to employment, the existing reforms in the Job Creation Law must contain basic rules that have also been ratified based on the basic ILO Conventions concerning the anti-discrimination work system, the abolition of forced labor and the provision of decent wages as assigned or assigned. work that has been done. With the establishment of concrete regulations, it will make it easier for workers to get legal protection and the fulfillment of workers' rights is not easily violated.

## **CONCLUSION**

Forms of legal protection for outsourced workers must ensure the continuity of a fair employment relationship system that is implemented in accordance with applicable laws and regulations. The form of protection and certainty is in the form of fulfilling the basic rights of outsourced workers including protection of working time and overtime rights, protection against the application of decent worker wages standards, protection of working time for female workers/laborers, protection of workers on occupational safety and health, protection of social security, and other protections that are closely related to the fulfillment of all basic rights of workers. However, in fact the form of certainty and protection for outsourced workers has not been properly and perfectly regulated in the labor regulations in Indonesia, resulting in difficulties in the implementation of the fulfillment of the rights that must be accepted by workers. Whereas the fulfillment of the rights of outsourced workers/laborers with permanent workers should be the same.

The suitability of the form of legal protection between the laws and regulations in Indonesia concerning manpower covered by the Manpower Act, the Employment Creation Law and its derivative regulations with the basic ILO Conventions has been pursued with the establishment of the Law on the ratification of the basic ILO conventions, namely Law Number 1 of 2000 concerning Ratification of the ILO Convention Number 182. Concerning The Prohibition and Immediate Action for Elimination Of The Worst Forms Of Child Labor (ILO Convention Number 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor) and Law Number 19 of 1999 concerning Ratification of the ILO Convention No. 105 Concerning The Abolition Of Forced Labor (ILO Convention Concerning the Abolition of Forced Labor). The regulation includes several protections for workers' rights, including the abolition of forced labor for workers, and the provision of decent wages. However, so far, these two rules have only been contained in the old regulations and are separate from the rules currently used as the basis of labor law, and the concept of protection contained in the basic ILO conventions has not been fully contained in the regulations governing employment, especially in the work system, outsourcing, as well as in employment agreements, therefore this becomes a strategic gap for stakeholders to act arbitrarily against outsourced workers so that their rights are easily violated.



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