



Problems of Legal Protection of Contract and Outsourcing Workers After Law Number 6 of 2023 concerning Job Creation

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Abstract

The development of an increasingly flexible labor relations system through the implementation of Fixed-Time Work Agreements (PKWT) and outsourcing after the reform of Job Creation regulations has raised a debate about the effectiveness of legal protection for workers in Indonesia. On the one hand, the policy aims to increase investment competitiveness and business efficiency, but on the other hand, it raises problems related to job security, the fulfillment of normative rights, and the balance of industrial relations. This study aims to analyze the problems of legal protection for contract and outsourcing workers in the Indonesian labor system after the reform of Job Creation regulations. This research is a normative legal research using a legislative approach and a conceptual approach. The legal materials used are primary, secondary, and tertiary legal materials that are analyzed qualitatively descriptively with a deductive conclusion method. The results of the study show that regulatory reform through Law Number 6 of 2023 provides wider flexibility on the use of PKWT and outsourcing, but has not been fully followed by the strengthening of legal protection mechanisms for workers. The elimination of restrictions on the types of work that can be outsourced, weak labor supervision, and unclear responsibilities in outsourcing employment relationships still have the potential to reduce legal certainty and the protection of workers' rights. The Constitutional Court Decision Number 27/PUU-IX/2011 remains the constitutional basis that the implementation of outsourcing must guarantee workers' rights. Therefore, the effectiveness of legal protection requires a balance between the flexibility of employment relationships, legal certainty, and the strengthening of law enforcement in the Indonesian labor system.

I. INTRODUCTION

The development of the global labor system shows a paradigm shift in employment relations from a permanent employment model to a more flexible employment relationship (*Labour market flexibility*). This shift is a consequence of economic globalization, industrial digitalization, and increasing investment competition that encourages companies to adopt more adaptive labor relations patterns through Fixed-Time Work Agreements (PKWT) and outsourcing systems (*outsourcing*) (Arifuddin Muda Harahap, Rahmad Efendi, 2023). From the perspective of the business world, the working relationship model is seen as able to increase operational efficiency, reduce production costs, and provide flexibility in managing labor according to market needs. However, behind these economic gains arises a fundamental problem in the form of increasing practices *Precarious employment*,

namely the condition of employment relations characterized by uncertainty of employment status, weak social protection, low income certainty, and limited guarantee of job continuity for workers.

This phenomenon also occurs in Indonesia and gains legitimacy through changes in labor law policies aimed at increasing the competitiveness of national investment. Regulatory reform through Law Number 11 of 2020 concerning Job Creation, which was later stipulated as Law Number 6 of 2023 along with Government Regulation Number 35 of 2021, has brought quite fundamental changes to the regulation of PKWT, outsourcing, workers' compensation, and the mechanism for termination of employment. The government argues that the regulatory reform is necessary to create a conducive business climate and expand employment opportunities. However, the change has also raised academic debates and

criticism from various circles because it is considered to shift the orientation of labor law from the paradigm of worker protection to the paradigm of labor market flexibility (Arifuddin Muda Harahap, 2020).

This problem becomes even more complex when it is associated with the function of labor law as an instrument of protection for parties who are economically and structurally in a weaker position. Theoretically, employment relationships are never in a truly balanced position because workers are in a subordinate relationship to the employer. This inequality of bargaining positions causes workers often to have no real freedom in determining the content of the employment agreement or rejecting the work conditions that are unilaterally determined. As a result, the principle of freedom of contract, which is the legal basis of treaties, is not always able to bring substantive justice to industrial relations. In practice, contract and outsourcing workers often receive disproportionate working conditions because the only option available is to accept the terms given by the company or lose the opportunity to get a job (Prabowo et al., 2023).

On the other hand, the Indonesian constitution places work as part of the fundamental rights of citizens. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every citizen to work and livelihood that is suitable for humanity, while Article 28D paragraph (2) provides a guarantee for the right to work and to obtain fair and decent remuneration and treatment in employment relations. These two constitutional provisions show that the protection of workers is not just a policy choice, but a constitutional obligation of the state. Therefore, any change in labor regulations should be measured not only by its success in increasing investment and economic growth, but also by its ability to ensure legal certainty, justice, and protection of workers' rights.

Although various legal instruments have regulated the rights of contract and outsourcing workers, the reality of their implementation still shows that there are various unresolved legal issues. The practice of using PKWT is still found for permanent jobs, the mechanism for providing compensation money has not been fully fulfilled, the implementation of outsourcing still creates uncertainty regarding the parties responsible for the fulfillment of workers' rights, while labor supervision has not been able to ensure compliance of all companies with the provisions

of laws and regulations. Not a few workers still experience termination of employment without certainty of compensation, delay in payment of normative rights, limited access to employment social security, or treatment differently than permanent workers even though they carry out the same job. This condition shows that the existence of legal norms has not automatically resulted in effective legal protection (Nisa et al., 2023).

These problems actually show that there is a contradiction between the purpose of the formation of regulations and the reality of industrial relations. On the one hand, the state seeks to create flexibility in employment relations to increase investment and economic growth. On the other hand, this flexibility has the potential to expand workers' vulnerabilities if it is not balanced with adequate legal protection mechanisms. This contradiction is the main problem in the current Indonesian labor system, namely how to create a balance between the interests of economic development and the protection of workers' rights as a group in a vulnerable position in employment relations.

Various previous studies have generally discussed the legal protection of contract and outsourcing workers from the normative perspective or effectiveness of the implementation of the Job Creation Law. However, there is still relatively little research that examines this problem by placing the change in the paradigm of labor law as the main point of analysis, namely a change in orientation from a protective labor law to an employment law that is more oriented towards labor market flexibility. In fact, this paradigm change has direct implications for legal certainty, the balance of industrial relations, and the effectiveness of protecting workers' rights.

Based on this description, this study departs from the problem that changes in labor regulations have not been able to fully answer the need for legal protection for contract and outsourcing workers. This study aims to analyze the problems of legal protection for contract and outsourcing workers in the Indonesian labor system after the reform of the Job Creation regulation, identify the factors that cause legal protection to not run optimally, and evaluate the extent to which the applicable regulations have met the principles of legal certainty, justice, and protection of workers' constitutional rights as the main goal of the formation of labor laws.

II. RESEARCH METHODS

This research is a normative legal research that focuses on the analysis of legal protection for contract and outsourcing workers in the Indonesian labor system after the reform of Job Creation regulations. The approach used includes the legislative approach (*Statute approach*) and conceptual approaches (*conceptual approach*) (Jonaedi Efendi & Rijadi, 2022). The research data is sourced from secondary legal materials consisting of primary, secondary, and tertiary legal materials. Data analysis was carried out in a qualitative descriptive manner by examining the provisions of relevant laws and regulations, doctrines, and literature. Drawing conclusions uses the deductive method, which is drawing conclusions from general legal provisions towards analysis of specific problems.

III. RESULTS AND DISCUSSION

A. Paradigm Changes in Outsourcing Arrangements in the Indonesian Employment System

Legal protection of workers is essentially one of the main goals of the establishment of labor laws. Employment relations are not in a balanced position because workers economically and juridically have a lower bargaining position than employers. Therefore, the state is obliged to present legal instruments that are able to provide legal certainty while ensuring the fulfillment of workers' normative rights. This principle is in line with the mandate of Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia which guarantees the right of every citizen to obtain a job, a decent livelihood, and fair treatment in employment relations. In its implementation, such protection is realized through regulations on wages, social security, occupational safety and health, freedom of association, and industrial relations dispute settlement mechanisms (Budiarta, 2016).

One of the forms of employment relations that has experienced the most significant development in the Indonesian labor system is the outsourcing mechanism (*outsourcing*). From an economic perspective, outsourcing is seen as a business strategy that allows companies to improve operational efficiency by handing over part of the execution of work to other companies that have certain competencies. This model provides flexibility for companies to manage their

workforce needs without having to bear all the administrative and financial consequences of direct employment relationships. However, from the perspective of labor law, outsourcing raises issues regarding the certainty of employment relations, the division of responsibilities between the employer and the service provider, and the protection of the rights of workers in the employment relationship (Husin, 2021).

Prior to the enactment of regulatory reform through the Job Creation Law, outsourcing arrangements in Indonesia were specifically regulated in Articles 64 to 66 of Law Number 13 of 2003 concerning Manpower. This provision basically still limits the use of outsourcing only to certain supporting work (*non-core business*). The restrictions are intended so that work that is directly related to the main activities of the company is still carried out by workers who have a direct employment relationship with the employer company. Thus, outsourcing at that time was not intended as a mechanism to replace all the needs of the company's workforce, but only as an instrument to support business activities.

These restrictions are reflected in Article 65 paragraph (2) of Law Number 13 of 2003 which stipulates that work that can be transferred to other companies must be carried out separately from the main activities of the company, carried out based on the employer's order, are activities that support the company as a whole, and do not hinder the production process directly. The four requirements are cumulative so that failure to meet one of the elements results in the work not being transferred to an outsourcing company. Such an arrangement shows that the lawmakers at the time still placed the protection of workers as a primary consideration by limiting the scope of the use of outsourcing (Pratiwi & Andani, 2022).

In addition to restrictions on the type of work, Law Number 13 of 2003 also stipulates that outsourced workers still have the right to obtain protection for normative rights like other workers, including regarding wages, social security, occupational safety and health, and other work conditions in accordance with the provisions of laws and regulations. Normatively, the regulation is intended to prevent outsourcing practices from being used as a means of reducing employers' responsibilities for the fulfillment of workers' rights.

However, in practice, various problems are still found. Restrictions on supporting work are often

interpreted differently by companies so that many jobs that are actually directly related to the company's core activities are transferred to outsourcing companies. In addition, legal relationships involving three parties, namely employer companies, worker service providers, and workers, often create uncertainty about who is responsible in the event of violations of workers' rights. This condition results in the legal protection that has been regulated in laws and regulations that have not been fully realized effectively.

Thus, the outsourcing regulation in Law Number 13 of 2003 is actually built on the protective *labor law* paradigm through limiting the scope of outsourcing and affirming the normative rights of workers. However, various implementation issues show that the existence of legal norms alone is not enough to guarantee the realization of legal protection if it is not followed by effective supervision and compliance of business actors with the provisions of laws and regulations.

B. Implications of the Constitutional Court Decision Number 27/PUU-IX/2011 on the Legal Protection of Outsourcing Workers

The Constitutional Court Decision No. 27/PUU-IX/2011 is one of the important milestones in the development of Indonesian labor law, especially related to the protection of outsourcing workers. The decision was born in response to outsourcing practices that cause uncertainty in employment relations and have the potential to reduce the fulfillment of workers' normative rights. The Constitutional Court basically did not state that the outsourcing system was contrary to the 1945 Constitution of the Republic of Indonesia, but emphasized that its application must still guarantee the protection of workers' constitutional rights.

In its legal considerations, the Constitutional Court considered that the use of outsourcing is part of business policy (*Business Policy*) which in principle is allowed as long as it does not eliminate the rights of workers as guaranteed by Article 27 paragraph (2) and Article 28D paragraph (2) of the Constitution of the Republic of Indonesia of 1945. Therefore, the flexibility of employment relationships cannot be used as an excuse to reduce the right to decent work, certainty of employment relations, fair treatment, or the right to decent remuneration (Ramadhona, 2023).

One of the important aspects that the Constitutional Court emphasized is the need to provide a guarantee of the sustainability of protection for outsourced workers through the application of the principle of Transfer of Undertaking Protection of Employment (TUPE). This principle is intended so that the replacement of the worker service provider company does not eliminate the employment relationship and the rights of workers that have been obtained previously. Thus, workers do not always start the employment relationship from scratch every time there is a change of outsourcing company, so that the working period, work experience, and other normative rights still receive recognition and legal protection (Syamsinar et al., 2023).

From the perspective of legal protection, the ruling strengthens the position of outsourcing workers as legal subjects who still have the right to receive protection for wages, social security, occupational safety and health, and other normative rights without being affected by changes in the contractual relationship between the employer and the service provider. The Constitutional Court's ruling also affirms that flexible employment relations should not eliminate the state's responsibility to ensure the fulfillment of workers' constitutional rights (Arifin et al., 2024).

However, the implementation of the Constitutional Court Decision No. 27/PUU-IX/2011 has not been fully effective. In industrial relations practice, outsourcing workers are still found who lose their jobs when service providers change, do not obtain recognition of their working period, or experience termination without adequate protection. This condition shows that the strengthening of legal protection through the Constitutional Court's decision has not been fully followed by effective supervision and law enforcement mechanisms. In fact, after the enactment of Law Number 11 of 2020 which was later stipulated as Law Number 6 of 2023 and its implementing regulations, a new debate has arisen regarding the extent to which the protection principles affirmed by the Constitutional Court are still maintained in a more flexible outsourcing regulatory system (Saija, 2019).

Therefore, the Constitutional Court Decision Number 27/PUU-IX/2011 not only has a meaning as a constitutional decision, but also becomes a parameter in assessing whether the development of labor regulations after the Job Creation reform

remains in line with the principle of protection of workers' rights as guaranteed by the constitution. Thus, any policy regarding outsourcing should not only be oriented towards economic efficiency, but must also ensure legal certainty, justice, and sustainability of protection for workers.

C. Problems of Legal Protection of Contract Workers and Outsourcing After the Reform of Job Creation Regulations

The reform of labor regulations through Law Number 11 of 2020 which was later stipulated as Law Number 6 of 2023 concerning Job Creation brought quite fundamental changes to the labor relations system in Indonesia, especially regarding Fixed-Time Work Agreements (PKWT) and outsourcing. These changes show a shift in the orientation of labor law policy from a restrictive protection model to a more flexible labor relations system. The government views this flexibility as an instrument to increase investment competitiveness, expand employment opportunities, and provide convenience for business actors in managing human resources. However, the changes also raise various issues regarding the effectiveness of legal protection for contract and outsourcing workers (Febrianti et al., 2022).

One of the most significant changes is the removal of the provisions of Article 64 and Article 65 of Law Number 13 of 2003 which previously limited the types of work that can be outsourced. In the previous arrangement, outsourcing was only allowed for ancillary work (*Non-core business*) by meeting certain requirements cumulatively. After the enactment of the Job Creation regime, these restrictions are no longer maintained, so the scope of outsourcing use becomes much wider. This change provides flexibility for companies to transfer various types of work to worker service providers, as long as they comply with the provisions of applicable laws and regulations (Tjandraningsih & Herawati, 2010).

From the perspective of the business world, the removal of restrictions provides benefits in the form of increased flexibility in workforce management, operational cost efficiency, and the company's ability to adapt to labor needs to market dynamics. However, from the perspective of worker protection, the policy has consequences in the form of the wider use of non-permanent employment relationships which has the potential to reduce job security. When almost all types of

work can be outsourced, the line between permanent workers and outsourced workers becomes increasingly blurred, so that the opportunities for workers to obtain sustainable employment relationships are increasingly limited.

On the other hand, Article 66 of Law Number 6 of 2023 still emphasizes that the employment relationship between worker service providers and workers can be based on PKWT and PKWTT. The provision also requires service providers to provide protection for wages, welfare, working conditions, and resolve any industrial relations disputes that arise. Normatively, these provisions show that the lawmakers still maintain the principle of protection of the rights of outsourcing workers. However, legal protection is not enough only to be realized through the existence of norms, but also requires effective supervision and law enforcement mechanisms so that these rights can be truly enjoyed by workers (Nengsih et al., 2024).

The next problem is related to the PKWT arrangement which provides greater flexibility to the parties in determining the duration of the employment relationship as further regulated in Government Regulation Number 35 of 2021. This flexibility does provide space for companies to adjust the needs of the workforce to the characteristics of temporary work. However, in industrial relations practice, it is still found that the repeated use of PKWT for work that is actually permanent. Such practices cause workers to continue to be in uncertain employment relationships, making it difficult to obtain career security, competency development, and economic protection in the long term (Sukendro et al., 2024).

Another problem that still often arises is the weak bargaining position of outsourcing workers in employment relations. Juridically, the employment relationship only occurs between the worker and the service provider company, while the daily work is carried out for the benefit of the employer company. Legal relationships involving more than one subject often create ambiguity about who is responsible when there is a violation of workers' rights. It is not uncommon for each company to throw responsibility at each other for the payment of normative rights, the settlement of industrial relations disputes, and the fulfillment of employment social security. Such conditions show that the construction of outsourcing employment relationships still leaves problems regarding legal

certainty and the effectiveness of protection for workers (Avianto et al., 2022).

From the perspective of legal protection theory, the change in Job Creation regulations shows that there is an effort to balance the interests of the business world and the interests of workers. However, this balance has not been fully achieved when measured based on the principles of social justice and the protection of workers' constitutional rights. Flexibility in employment relations is indeed necessary to support national economic growth, but this flexibility must not reduce the right to decent work, certainty of employment relations, fair income, and social security as guaranteed in Article 27 paragraph (2) and Article 28D paragraph (2) of the Constitution of the Republic of Indonesia in 1945 (Hanifah, 2020).

Based on this analysis, the main problem of legal protection of contract workers and outsourcing after the reform of the Job Creation regulation no longer lies in the vacuum of legal norms, but in the shift in the orientation of labor law policy that emphasizes more on the flexibility of employment relations than job certainty. This shift has the potential to expand the use of outsourcing and PKWT without being balanced with strengthening supervision mechanisms, law enforcement, and protection of workers' normative rights. Therefore, the effectiveness of legal protection is not enough to be realized through changes in laws and regulations, but also requires more optimal labor supervision, compliance of business actors with their legal obligations, and law enforcement that is able to ensure the protection of workers' rights in real terms.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Legal protection for contract and outsourcing workers in Indonesia has undergone a paradigm shift in line with labor regulation reform through Law Number 6 of 2023 concerning Job Creation. The arrangement provides greater flexibility for the business world, especially through the expansion of outsourcing and the arrangement of Fixed-Time Work Agreements (PKWT). Although normatively laws and regulations still guarantee workers' rights to wages, welfare, social security, and industrial relations dispute resolution, their implementation still faces various problems. The elimination of restrictions on the type of work that can be outsourced, weak labor supervision, and

the unclear division of responsibilities between employer companies and service providers have the potential to reduce legal certainty and protection of workers' rights. The Constitutional Court Decision Number 27/PUU-IX/2011 has basically affirmed that outsourcing is a constitutional policy as long as it does not reduce workers' rights. Therefore, the main problem of legal protection today does not lie in the absence of norms, but in the effectiveness of implementation, supervision, and law enforcement so that the balance between labor flexibility and the protection of workers' rights can be realized optimally.

B. Suggestions

The government needs to strengthen labor supervision and ensure the implementation of provisions regarding PKWT and outsourcing in accordance with the principles of worker rights protection. On the other hand, companies must ensure the consistent fulfillment of workers' normative rights, while the formation of labor policies in the future needs to maintain a balance between the needs of the flexibility of the business world and legal certainty for workers.

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