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The Legal Status of Outsourced Workers under Indonesian Positive Law

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Original Article

Abstract

This study is prompted by the increasing flexibility of outsourcing arrangements in Indonesian labor law following the enactment of Law Number 6 of 2023 on the Stipulation of the Job Creation Government Regulation in Lieu of Law (Perppu), which has not been accompanied by adequate legal protection for workers. It aims to examine the legal status of outsourcing, its regulatory implications, judicial practices in worker protection, and relevant international comparisons, as well as to formulate an ideal model of protection. The study employs a normative legal research method using statutory, conceptual, and comparative approaches. The findings indicate that worker protection remains insufficient, despite the emergence of progressive approaches within the judiciary. Comparative analysis underscores the importance of the principles of equality and shared responsibility. The study concludes that policy reformulation grounded in joint liability and comprehensive protection is necessary to achieve a fair and sustainable labor system.

Keywords: *Outsourcing, Labor Law, Legal Protection, Legal Certainty*

Abstrak

Penelitian ini dilatarbelakangi oleh meningkatnya fleksibilitas sistem alih daya dalam hukum ketenagakerjaan Indonesia pasca berlakunya Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Perppu Cipta Kerja, yang belum diimbangi dengan perlindungan hukum yang memadai bagi pekerja. Penelitian ini bertujuan untuk menganalisis kedudukan hukum alih daya, implikasi yuridis pengaturannya, praktik perlindungan dalam peradilan, perbandingan internasional, serta merumuskan model perlindungan yang ideal. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa perlindungan pekerja masih lemah, meskipun peradilan telah mengembangkan pendekatan progresif. Perbandingan hukum menegaskan pentingnya prinsip kesetaraan dan tanggung jawab bersama. Disimpulkan bahwa reformulasi kebijakan berbasis joint liability dan perlindungan komprehensif diperlukan untuk mewujudkan sistem ketenagakerjaan yang adil dan berkesinambungan.

Kata kunci: *Alih Daya, Hukum Ketenagakerjaan, Perlindungan Hukum, Kepastian Hukum*

1. INTRODUCTION

The employment relationship constitutes a fundamental pillar of labor law, as it establishes the legal bond between workers and employers and gives rise to reciprocal rights and obligations. Within the classical legal framework, such a relationship is formed through an employment agreement binding two legal subjects—the worker and the employer—each possessing clearly defined legal standing and responsibilities governed by statutory provisions. These foundational principles extend beyond contractual aspects and reflect the broader objectives of labor law, namely achieving a balance between business interests and the protection of workers, who generally occupy a comparatively weaker socio-economic position.

Global economic developments, the transformation of industrial structures, and intensifying business competition have fostered the emergence of increasingly flexible forms of employment relationships. One prominent form is the outsourcing system, which enables companies to delegate certain functions to specialized labor service providers. Through this mechanism, user enterprises can concentrate on core business activities, while ancillary functions are performed by external providers with relevant expertise.

Outsourcing is often regarded as an efficiency-driven strategy that reduces operational costs, enhances production flexibility, and enables firms to respond more rapidly to dynamic market conditions. It is also considered conducive to a more competitive investment climate, as it allows firms to adjust workforce structures in accordance with business needs. In the context of globalization and labor market liberalization, such flexibility is frequently viewed as a key determinant of national competitiveness.

Nevertheless, from a labor law perspective, outsourcing raises significant normative and practical concerns, particularly regarding the certainty of employment relationships and the protection of workers' rights. A recurring issue is the ambiguity surrounding the employment relationship among workers, labor providers, and user companies. In practice, outsourced workers are formally employed by provider companies but operate under the supervision and control of user enterprises, thereby creating uncertainty as to which entity bears responsibility for the fulfillment of workers' rights.

Recent regulatory developments have generated considerable debate among scholars, practitioners, labor unions, and business actors. While these reforms are perceived as strategic measures to enhance labor market flexibility, stimulate investment, and promote job creation, they have also raised concerns about the potential erosion of worker protections and the widening of inequality in employment relations.

Against this backdrop, examining the legal status of outsourced workers becomes both urgent and significant. Regulatory changes not only reshape the structure of employment relationships but also affect legal certainty concerning worker status, employer obligations, and mechanisms for safeguarding workers' rights. In the absence of clear regulatory frameworks and effective oversight, outsourcing practices risk generating legal uncertainty and enabling potential abuses.

Moreover, it is essential to analyze how judicial practice interprets the legal status of outsourced workers, particularly in the resolution of industrial relations disputes. Judicial decisions often serve as authoritative references in clarifying general or ambiguous legal norms. Accordingly, an examination of case law provides valuable insight into the practical application of labor law and the extent to which existing legal mechanisms ensure adequate protection for outsourced workers.

Furthermore, a comparative legal approach is essential to obtain a broader perspective on outsourcing regulation and worker protection. Several jurisdictions have developed more comprehensive regulatory frameworks governing indirect employment relationships, including the implementation of joint liability mechanisms between labor providers and user enterprises. Such comparative experiences may serve as valuable references for formulating more effective and equitable policies within the Indonesian labor law system.

Based on this context, outsourcing is clearly a phenomenon inherent in the dynamics of modern economic development. However, its implementation must remain aligned with the principles of legal protection for workers and fairness in employment relations. Accordingly, this study is significant in providing an in-depth examination of the legal status of outsourced workers within the Indonesian labor law system following recent regulatory changes, while also proposing a more comprehensive and sustainable model of legal protection for the future.

The study of employment relations and worker protection in Indonesia has attracted considerable scholarly attention. Transformations in the global economic structure, increasing labor market flexibility, and deregulation policies through labor law reform have stimulated extensive academic discourse on worker status, particularly within outsourcing arrangements. Previous studies have addressed various dimensions, including employment relationships, the protection of workers' normative rights, and the implications of regulatory changes for outsourced workers.

A study by Amalia et al. examines employment agreements under Law Number 13 of 2003 on Manpower, emphasizing that employment relationships are fundamentally established through contractual arrangements defining the rights and obligations of workers and employers, including in the context of fixed-term employment agreements (PKWT). The findings indicate that non-compliance with statutory requirements results in the automatic conversion of PKWT into indefinite-

term employment agreements (PKWTT). The study further highlights the importance of safeguarding workers' rights, including access to health insurance, occupational safety, and severance compensation upon termination. While providing a strong conceptual foundation, this study does not specifically address the complexities inherent in outsourcing arrangements.¹

A more focused analysis of outsourcing practices is provided by Hafizh et al., who examine the implementation of outsourcing following the enactment of Law Number 11 of 2020 on Job Creation. Their findings suggest that outsourcing serves as a policy instrument to enhance labor market flexibility and attract investment. However, the study also reveals that outsourced workers frequently experience disadvantages in terms of wages, job security, and the fulfillment of normative rights. These findings indicate that, although the Job Creation Law has increased flexibility, it has also raised concerns regarding the potential weakening of legal protections for workers.²

Similarly, Kurniasari analyzes the impact of labor regulatory changes on outsourced workers and finds that their position within employment relationships tends to be comparatively weaker. From the perspective of legal certainty, protection for outsourced workers may be categorized into preventive and repressive measures. Preventive protection includes clarity regarding employment status, job classification, and the legal standing of labor provider companies, while repressive protection relates to dispute resolution mechanisms in cases of rights violations. The study further confirms that regulatory reforms under the Job Creation Law have removed limitations on the types of work that may be outsourced, thereby significantly expanding the scope of outsourcing practices in the business sector.³

Furthermore, Indrayanti et al. examine the conditions of fixed-term (PKWT) and outsourced workers in the context of newly implemented employment policies. Employing an empirical approach based on national labor force survey data and in-depth interviews, the study finds that labor market flexibility constitutes a critical response to global economic transformation, digitalization, and economic uncertainty. Nevertheless, it also underscores the need for stronger regulatory oversight to ensure adequate protection for workers within outsourcing arrangements.⁴

From a normative labor law perspective, Putra and Yustiawan analyze the amendments to outsourcing provisions following the enactment of Law Number 11 of

¹ Apri Amalia et al., "Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan Dan Hukum Perjanjian," *USU Law Journal* 5, no. 1 (2017): 66–76.

² Dean Fadhuroman Hafizh et al., "Analisis Praktik Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja," *Jurnal Lembannas RI* 10, no. 3 (2022): 212–23, <https://doi.org/10.55960/jlri.v10i3.298>.

³ Tri Widya Kurniasari, "Kepastian Hukum Terhadap Perlindungan Pekerja Outsourcing Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Genthèè: Penelitian Multidisiplin* 5, no. 2 (2022): 123–36, <https://doi.org/10.52626/jg.v5i2.159>.

⁴ Turro S Indrayanti et al., "Analisa Implementasi UU Cipta Kerja Kluster Perjanjian Kerja Waktu Tertentu (PKWT) Dan Alih Daya," *Jurnal Ketenagakerjaan* 17, no. 3 (2022): 210–237, <https://doi.org/10.47198/naker.v17i3.184>.

2020 on Job Creation. Their findings indicate that the revised framework broadens the scope of work eligible for outsourcing, including activities previously categorized as core business functions. This development carries significant legal implications for the status of outsourced workers, as employment relationships are no longer confined to supporting roles. The study highlights the necessity for further examination of whether these regulatory changes effectively adequate legal protection for workers.⁵

A comparative analysis by Wasistha et al. evaluates outsourcing regulations in Indonesia and the United States. The study reveals that Indonesia continues to face structural challenges, including weak enforcement, ambiguous legal interpretation, and low levels of corporate compliance. In contrast, the United States provides a more robust framework for worker protection through statutory instruments such as the National Labor Relations Act, the Fair Labor Standards Act, and the Civil Rights Act, which collectively safeguard workers' rights to organize, prohibit discrimination, and regulate minimum wages and working hours.⁶

Earlier research by Rinto and Mustari investigates the implementation of legal protection for outsourced workers at PT PLN (Persero) in the Makassar region. The findings demonstrate that legal protection remains suboptimal, primarily due to the absence of a direct employment relationship between user companies and outsourced workers. Consequently, in cases of disputes or disciplinary violations, user companies lack the authority to intervene directly, thereby exposing deficiencies in existing protection mechanisms.⁷

Additionally, Lestari and Putra examine the impact of investment liberalization policies on labor regulations, particularly within the employment cluster of job creation reforms. Their study indicates that regulatory changes not only affect workers but also shape corporate strategies in managing labor, including the increasing reliance on flexible employment arrangements such as outsourcing.⁸

Dewi examines the protection of outsourced workers from the perspective of Islamic law, particularly the principles of *muamalah*. The study demonstrates that outsourcing practices that disadvantage workers—such as ambiguous contractual

⁵ I Kadek Devara Sandy Pradnyana Putra and Dewa Gede Pradnya Yustiawan, "Perlindungan Hak-Hak Pekerja Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja," *Kertha Wicara: Journal Ilmu Hukum* 15, no. 9 (2025): 525–35, <https://ejournal4.unud.ac.id/index.php/wicara/article/view/72>.

⁶ Aisya Wiradrana Wasistha, Agus Prihartono, and Dede Agus, "Perbandingan Tanggung Jawab Hukum Pekerja Outsourcing Di Indonesia Dan Amerika Serikat Dalam Hukum Ketenagakerjaan," *Journal of Contemporary Law Studies* 3, no. 1 (2025): 69–82, <https://doi.org/10.47134/lawstudies.v3i1.4978>.

⁷ Eduardus Rinto and Mustari Mustari, "Perlindungan Hukum Pekerja Alih Daya (Outsourcing) Menurut UU No.13 Tahun 2003: Studi Pada PT. PLN (Persero) Wilayah Sulsel, Sultra, Sulbar Di Kota Makassar," *Tomalebbi: Jurnal Pemikiran, Penelitian Hukum, Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (2014): 44–55, <https://doi.org/10.56680/jt.v1i1.6134>.

⁸ Anita Dwi Lestari and Pamungkas Satya Putra, "Analisis Hubungan Kerja Outsourcing Dalam Perspektif Pengusaha Dan Pekerja Pasca Berlakunya Undang-Undang Cipta Kerja," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 3, no. 1 (2022): 98–112, <https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/101>.

terms, excessive working hours, and unilateral termination—are inconsistent with the principles of justice embedded in Islamic legal doctrine.⁹

Although a number of studies have addressed outsourcing practices and worker protection in the context of Law Number 11 of 2020 on Job Creation, the majority have focused on prior regulatory frameworks and have not comprehensively analyzed the legal implications following the enactment of Law Number 6 of 2023. This study contributes novelty by examining the legal status of outsourced workers, judicial practices, international legal comparisons, and the formulation of an ideal model of legal protection for outsourced workers in Indonesia.

This research aims to provide a comprehensive analysis of the legal status of outsourced workers within the Indonesian labor law system following regulatory changes introduced by Law Number 6 of 2023 on Job Creation. Specifically, it seeks to: (1) examine the concept and legal position of outsourcing within the structure of employment relations under Indonesian labor law; (2) analyze the legal implications of removing restrictions on the types of work eligible for outsourcing with respect to the certainty of employment relationships; (3) assess the extent of legal protection for outsourced workers in judicial practice; (4) conduct a comparative analysis of outsourcing regulations across selected jurisdictions to identify alternative approaches to worker protection; and (5) formulate an academic framework for a more equitable and sustainable model of legal protection for outsourced workers in Indonesia.

2. RESEARCH METHODOLOGY

This study employs a normative legal research method aimed at analyzing the legal norms governing outsourcing in employment relationships and their implications for worker protection within the Indonesian labor law system. This method is selected because the research focuses on the examination of statutory regulations, legal doctrines, and judicial practices concerning the legal status of outsourced workers following recent regulatory changes. In this context, law is conceptualized both as a body of normative rules governing social behavior (law in the books) and as an instrument for achieving legal certainty, justice, and utility in employment relations.

The research adopts statutory, conceptual, and case-based approaches. The statutory approach involves a systematic review of labor legislation, particularly provisions regulating outsourcing under the Manpower Law and its subsequent amendments introduced through the Job Creation policy. The conceptual approach is utilized to examine relevant legal principles, doctrines, and theoretical frameworks concerning employment relations and labor protection. Meanwhile, the case approach

⁹ Juwita Sari Dewi, “Perlindungan Hukum Terhadap Tenaga Kerja Sistem Outsourcing Di Indonesia Perspektif Prinsip Muamalah” (Universitas Islam Negeri Maulana Malik Ibrahim., 2021), <http://etheses.uin-malang.ac.id/30263/>.

entails the analysis of judicial decisions in industrial relations disputes involving outsourced workers. The study relies on primary, secondary, and tertiary legal materials obtained through an extensive literature review. These materials are analyzed qualitatively using a descriptive-analytical method to assess and evaluate the effectiveness of outsourcing regulations in ensuring adequate legal protection for workers.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Concept and Legal Status of the Outsourcing System within the Structure of Employment Relations under Indonesian Labor Law

The outsourcing system represents a form of indirect or triangular employment relationship involving three legal subjects: the worker, the labor provider, and the user enterprise. Within this structure, a formal employment relationship exists between the worker and the labor provider, as established through an employment agreement that constitutes the legal basis of the relationship. However, in practice, the essential elements of employment—particularly direction and supervision—are exercised by the user company. This condition results in a dual legal status for outsourced workers: formally employed by the provider, yet substantively working under the control of the user enterprise.

From a labor law doctrinal perspective, an employment relationship is characterized by three core elements: work, wages, and subordination (authority or control). The element of subordination is central in determining the identity of the actual employer. In outsourcing arrangements, a divergence arises between formal and substantive employment relationships. While the provider is recognized as the formal employer, the user company exercises effective control over the labor process. This divergence generates ambiguity in assigning legal responsibility for the fulfillment of workers' rights.

Historically, Law Number 13 of 2003 on Manpower sought to address this ambiguity by restricting outsourcing to auxiliary functions not directly related to a company's core business activities. Such limitations reflect a protective approach within labor law, positioning direct employment as the primary model and outsourcing as a narrowly defined exception.

However, a significant paradigm shift occurred following the enactment of Law Number 6 of 2023 on Job Creation, which eliminated restrictions on the types of work eligible for outsourcing. This regulatory change has facilitated the expansion of outsourcing practices, including into core business activities. From a legal standpoint, outsourcing has thus shifted from a complementary mechanism to a broadly applicable employment model within the structure of labor relations.

The findings of this study are consistent with prior research indicating that labor regulatory reforms have increased flexibility in outsourcing arrangements.¹⁰ Nevertheless, this study identifies a relatively underexplored dimension: the growing uncertainty surrounding workers' legal status due to the expansion of outsourcing without a corresponding strengthening of liability norms for user enterprises. While earlier studies tend to emphasize normative protections or regulatory comparisons, this research highlights the structural configuration of employment relationships and its implications for workers' legal standing.

At present, the outsourcing system in Indonesian labor law remains characterized by legal uncertainty. On the one hand, deregulation policies are intended to enhance labor market flexibility and promote economic growth. On the other hand, the absence of clear rules governing the allocation of responsibilities between provider and user companies generates uncertainty that may adversely affect workers.¹¹ The dual legal status of outsourced workers reflects the legal system's limited capacity to fully accommodate the complexities of contemporary employment relationships.

Moreover, the legal position of outsourced workers has become increasingly precarious following these regulatory changes. Although workers remain formally employed by labor provider companies, they are no longer guaranteed that their work is limited to auxiliary functions.¹² With outsourcing now permitted across all categories of work, including core business activities, workers face heightened instability in terms of both job security and the protection of their normative rights.

These findings reveal a normative gap between policy objectives that emphasize labor market flexibility and the fundamental principles of labor law, which prioritize the protection of workers. In this context, the concept of an employment relationship grounded in the element of subordination should serve as the primary basis for determining legal responsibility. Accordingly, user enterprises that exercise effective control over the performance of work should also bear corresponding legal responsibility for outsourced workers.

The concept and legal status of outsourcing within Indonesian labor law have undergone a significant transformation, shifting from a limited and protective framework toward a more flexible model that provides reduced legal certainty. Consequently, a reconstruction of legal policy is required to achieve a balance between labor market flexibility and the principle of worker protection. This may be realized, in particular, through strengthening regulatory provisions on the legal liability of user

¹⁰ Hafizh et al., "Analisis Praktik Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja"; Indrayanti et al., "Analisa Implementasi UU Cipta Kerja Kluster Perjanjian Kerja Waktu Tertentu (PKWT) Dan Alih Daya"; Kurniasari, "Kepastian Hukum Terhadap Perlindungan Pekerja Outsourcing Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja"; Lestari and Putra, "Analisis Hubungan Kerja Outsourcing Dalam Perspektif Pengusaha Dan Pekerja Pasca Berlakunya Undang-Undang Cipta Kerja."

¹¹ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, ed. Tarmizi (Jakarta: Sinar Grafik, 2017).

¹² Muhamad Sadi Is and Sobandi Sobandi, *Hukum Ketenagakerjaan Di Indonesia* (Jakarta: Prenada Media, 2020).

enterprises and clarifying the legal status of employment relationships within outsourcing arrangements.

3.2. Legal Implications of the Removal of Restrictions on Outsourceable Work

The removal of restrictions on the types of work eligible for outsourcing has fundamentally altered the structure of employment relationships within the Indonesian labor system. Under Law Number 13 of 2003 on Manpower, such restrictions functioned as a normative instrument to preserve legal certainty by limiting outsourcing to auxiliary activities. This framework clearly delineated the boundary between direct and indirect employment relationships, ensuring that workers engaged in core business functions maintained a direct employment relationship with the principal employer. Following the removal of these limitations, however, the legal framework no longer provides a clear demarcation regarding the permissible scope of outsourcing.

The first legal implication identified in this study is the expansion of outsourcing practices to encompass all categories of work, including core business activities. This development has the potential to undermine the longstanding principle of direct employment relationships as the foundation of labor law. From the perspective of legal certainty, the absence of such restrictions generates ambiguity regarding the status of employment relationships, as there is no longer any assurance that core functions will remain within direct employment arrangements. Consequently, non-permanent employment practices have become more prevalent, contributing to reduced job security and stability for workers.

The second implication concerns the allocation of legal liability. This study finds that Law Number 6 of 2023 does not explicitly regulate mechanisms of joint liability between labor providers and user enterprises. In practice, legal responsibility for violations of workers' rights is often disproportionately imposed on provider companies, despite the fact that user enterprises exercise effective control over the work and directly benefit from the labor performed. This regulatory gap creates significant legal uncertainty and has the potential to weaken worker protection.

The third implication relates to the enforcement of labor law. The removal of restrictions on outsourced work has resulted in increasingly complex and opaque employment arrangements. Labor inspectors encounter substantial challenges in identifying and tracing legal relationships among workers, provider companies, and user enterprises. In many instances, contractual arrangements between providers and users lack transparency, thereby complicating monitoring processes and the enforcement of both administrative and criminal sanctions. As a result, the overall effectiveness of labor law enforcement has diminished.

The findings of this study are consistent with prior research indicating increased labor market flexibility following regulatory reforms.¹³ However, in contrast to earlier studies that primarily emphasize economic benefits and investment growth, this research highlights more complex legal consequences, particularly with respect to the certainty of employment relationships and the adequacy of worker protection. In this regard, the study advances the analytical framework by positioning legal certainty as a central variable in evaluating the impact of outsourcing deregulation.

The removal of restrictions on outsourcing reflects a broader paradigm shift in employment policy from a protective model toward a flexibility-oriented labor market approach.¹⁴ While such policies provide businesses with greater adaptability in responding to economic dynamics, they also risk creating imbalances in industrial relations. Legal certainty, which should function as a safeguard for workers, is instead weakened by the absence of clear regulatory boundaries governing outsourcing and the allocation of responsibilities among the parties involved.

Furthermore, legal certainty in employment relationships is determined not only by the existence of legal norms, but also by the clarity of their substance and the consistency of their implementation.¹⁵ In this context, the removal of restrictions on the types of work eligible for outsourcing, without a corresponding strengthening of liability norms and oversight mechanisms, has generated legal uncertainty that may adversely affect workers. The flexibility afforded to employers is not accompanied by adequate legal safeguards for workers, thereby creating structural imbalances within employment relationships.

This study demonstrates that the removal of such restrictions carries significant legal implications for the certainty of employment relationships. The findings indicate that the policy has expanded outsourcing practices, blurred the boundaries of direct employment, weakened the legal accountability of user enterprises, and complicated the enforcement of labor law. Accordingly, a more comprehensive reformulation of policy is required, particularly through the establishment of clearer joint liability provisions and the strengthening of oversight mechanisms, to ensure that labor market flexibility does not undermine legal certainty and the protection of workers' rights.

3.3. Legal Protection for Outsourced Workers in Industrial Relations Court Practice in Indonesia

¹³ Hafizh et al., "Analisis Praktik Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja"; Indrayanti et al., "Analisa Implementasi UU Cipta Kerja Kluster Perjanjian Kerja Waktu Tertentu (PKWT) Dan Alih Daya"; Lestari and Putra, "Analisis Hubungan Kerja Outsourcing Dalam Perspektif Pengusaha Dan Pekerja Pasca Berlakunya Undang-Undang Cipta Kerja"; Wasistha, Prihartono, and Agus, "Perbandingan Tanggung Jawab Hukum Pekerja Outsourcing Di Indonesia Dan Amerika Serikat Dalam Hukum Ketenagakerjaan."

¹⁴ Lalu Husni, *Pengantar Hukum Ketenagakerjaan: Edisi Revisi* (Depok: Raja Grafindo Persada, 2020).

¹⁵ Abdullah Sulaiman and Andi Walli, *Hukum Ketenagakerjaan/Perburuhan* (Jakarta Timur: YPPSDM Jakarta, 2019).

Industrial Relations Court practice in Indonesia plays a crucial role in affording legal protection to outsourced workers, particularly in light of the limited statutory framework that does not explicitly regulate the legal responsibility of user enterprises within outsourcing arrangements. In this context, judges frequently adopt a factual approach (substance over form) in determining the existence of an employment relationship. This approach extends beyond the formal contractual link between the worker and the labor provider and instead considers the actual conditions of work, including which party exercises control, issues instructions, supervises performance, and derives economic benefit from the labor.

A number of Industrial Relations Court decisions reflect the development of a progressive judicial approach that prioritizes the element of subordination as the primary indicator in identifying the responsible employer. In certain cases, user enterprises have been recognized as the *de facto* employer where it is factually established that they exercise direct control over the worker. Consequently, courts have imposed responsibility on user companies for the fulfillment of workers' rights, including wages, termination benefits, and other statutory entitlements. These findings demonstrate that judicial practice functions as a corrective mechanism to address ambiguities within the regulatory framework governing outsourcing.

These findings are consistent with labor law doctrine, which identifies subordination as a defining element of employment relationships.¹⁶ However, in contrast to earlier studies that predominantly emphasize normative dimensions of worker protection¹⁷, this study reveals a more complex and varied judicial landscape. Not all court decisions adopt a progressive stance. In some instances, judges adhere strictly to formal contractual arrangements and assign full responsibility to labor provider companies, notwithstanding the dominant role of user enterprises in practice. Such divergence reflects inconsistency in judicial approaches and contributes to legal uncertainty.

Moreover, the Constitutional Court of the Republic of Indonesia plays a strategic role in shaping the direction of legal protection for outsourced workers. In Decision Number 168/PUU-XXI/2023, the Court emphasized that policies promoting labor market flexibility must not undermine workers' constitutional rights to job security and a decent standard of living. While acknowledging the legislature's discretion in regulating outsourcing, the Court underscored the necessity of ensuring adequate worker

¹⁶ Husni, *Pengantar Hukum Ketenagakerjaan: Edisi Revisi*; Is and Sobandi, *Hukum Ketenagakerjaan Di Indonesia*; Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*.

¹⁷ Kurniasari, "Kepastian Hukum Terhadap Perlindungan Pekerja Outsourcing Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja"; Putra and Yustiawan, "Perlindungan Hak-Hak Pekerja Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja"; Rinto and Mustari, "Perlindungan Hukum Pekerja Alih Daya (Outsourcing) Menurut UU No.13 Tahun 2003: Studi Pada PT. PLN (Persero) Wilayah Sulsel, Sultra, Sulbar Di Kota Makassar."

protection and preventing exploitative practices, thereby reinforcing its function as a guardian of constitutional justice within the labor law system.

Nevertheless, reliance on judicial practice as a mechanism of protection remains subject to significant limitations. Judicial decisions are inherently case-specific and binding only upon the parties involved, thereby lacking general and preventive legal effect.¹⁸ In addition, access to justice remains a substantial barrier.¹⁹ Many outsourced workers face constraints in pursuing legal remedies due to limited legal awareness, financial barriers, and their relatively weak bargaining position within employment relationships.

Furthermore, the inconsistency of judicial decisions constitutes a key finding of this study. Divergent judicial interpretations regarding outsourced employment relationships reflect the absence of uniform guidelines for determining the legal responsibilities of the parties. As a result, the level of legal protection afforded to workers becomes uncertain and highly dependent on the individual reasoning of adjudicating judges. Under such conditions, judicial practice, which is expected to ensure legal certainty, may instead contribute to its erosion.

The findings of this study indicate that industrial relations adjudication in Indonesia performs a dual function in the protection of outsourced workers. On the one hand, courts are capable of delivering substantive justice through fact-based approaches and progressive interpretations of legal norms. On the other hand, structural limitations and inconsistent rulings suggest that the protection provided remains reactive and has not yet developed into a coherent and systemic framework.

Accordingly, legal protection for outsourced workers should not be wholly dependent on judicial mechanisms. The judiciary ought to function as a forum of last resort rather than the primary instrument for ensuring legal certainty. Therefore, it is imperative to strengthen positive legal norms by explicitly regulating the responsibilities of user enterprises, clarifying the structure of employment relationships, and establishing comprehensive standards of worker protection within the outsourcing system.

3.4. Comparative Analysis of Outsourcing Regulations in Selected Countries

There are fundamental differences in regulatory approaches to outsourcing across jurisdictions, particularly in Japan, Germany, and the United States. Despite these differences, all three countries share a common emphasis on worker protection as a central element of their outsourcing regulatory frameworks.

In Japan, outsourcing is governed in detail by the Worker Dispatching Act, which prioritizes limitations on the use of dispatched labor. Empirical studies indicate that

¹⁸ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010).

¹⁹ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, 1st ed. (Jakarta: Rajagrafindo Persada, 2010).

Japan imposes strict restrictions on the types of work eligible for outsourcing and establishes clear limits on the duration of worker placement with user enterprises. In addition, Japan applies the principle of equal treatment, requiring outsourced workers to receive comparable wages and working conditions to those of permanent employees.²⁰ This framework aims to prevent discriminatory practices and the misuse of outsourcing as a mechanism for reducing labor costs unfairly.

In Germany, outsourcing is regulated under the *Arbeitnehmerüberlassungsgesetz*, which similarly emphasizes robust worker protection. The German legal system explicitly recognizes triangular employment relationships while imposing substantial responsibility on user enterprises. Key principles include equal pay and equal treatment after a specified period, ensuring that outsourced workers are not treated less favorably than permanent staff. Furthermore, statutory limits on the duration of worker assignments to a single user enterprise are designed to prevent the institutionalization of permanent outsourcing arrangements.²¹

By contrast, the United States adopts a more flexible and decentralized approach. There is no single comprehensive statute governing outsourcing; instead, regulation has developed through case law. A central concept is the doctrine of joint employment, under which multiple entities may be recognized as joint employers if they exercise significant control over the terms and conditions of employment.²² Under this doctrine, user enterprises may be held liable for violations of workers' rights, even in the absence of a direct contractual relationship.

This comparative analysis identifies three core principles that underpin outsourcing regulation across jurisdictions: limitations on the use of outsourcing, the application of equal treatment, and the recognition of shared or joint responsibility between provider and user enterprises. These principles function as key instruments for balancing labor market flexibility with the protection of workers' rights.

In comparison with prior studies, these findings reinforce the view that jurisdictions with stronger labor protection frameworks tend to integrate flexibility with stringent regulatory safeguards. This study further contributes by demonstrating that the effectiveness of outsourcing regulation depends not only on the existence of formal legal norms but also on the consistent implementation of worker protection principles in practice. In this regard, Indonesia continues to face significant challenges in incorporating these principles into its national legal system.

²⁰ Hisashi Takeuchi-Okuno, "The 2015 Amendment to the Temporary Agency Work Act: A Fundamental Revision of the Regulatory Scheme," *Waseda Bulletin of Comparative Law* 36 (2017): 125–30, https://waseda.repo.nii.ac.jp/record/40612/files/WasedaBulletinOfComparativeLaw_36_33.pdf.

²¹ Alexander Spermann, "The New Role of Temporary Agency Work in Germany" (Bonn, 2011), <https://doi.org/10.2139/ssrn.1970775>.

²² Wasistha, Prihartono, and Agus, "Perbandingan Tanggung Jawab Hukum Pekerja Outsourcing Di Indonesia Dan Amerika Serikat Dalam Hukum Ketenagakerjaan."

Indonesia's outsourcing policy following the enactment of Law Number 6 of 2023 on Job Creation tends to prioritize labor market flexibility; however, this orientation has not been accompanied by a commensurate strengthening of worker protection mechanisms.²³ The removal of restrictions on the types of work eligible for outsourcing, coupled with the absence of explicit provisions on joint liability, places outsourced workers in a vulnerable position. This approach contrasts with regulatory frameworks in Japan and Germany, which retain certain limitations, as well as with the United States, where joint liability has been developed through legal doctrine.

Furthermore, this study confirms that flexibility in outsourcing cannot be divorced from the principle of fairness in employment relations. Comparative experiences demonstrate that worker protection can be effectively maintained alongside the widespread use of outsourcing, provided that clear and enforceable regulatory mechanisms are in place. In this regard, the principles of equal treatment and joint liability emerge as critical elements that may inform the reformulation of employment policy in Indonesia.

Comparative legal analysis thus offers a valuable framework for evaluating outsourcing policy in Indonesia. Current regulations tend to emphasize flexibility without ensuring adequate legal safeguards for workers. Accordingly, policy reformulation is required, particularly through the adoption of best practices derived from international experience, including the imposition of reasonable limitations on outsourcing, the implementation of the principle of equal treatment, and the strengthening of shared responsibility between labor providers and user enterprises.

3.5. Proposed Academic Framework for the Protection of Outsourced Workers in Indonesia

Current outsourcing regulations in Indonesia continue to present fundamental challenges related to legal certainty and worker protection. The flexibility afforded to businesses has not been accompanied by a comprehensive protective framework, resulting in structural imbalances in employment relationships. Although judicial practice has sought to address normative gaps through fact-based approaches, its inherently case-specific nature has prevented the development of a consistent and systemic model of legal protection. At the same time, comparative analysis demonstrates the existence of universal principles that may be adopted to strengthen the protection of outsourced workers in Indonesia.

Based on these findings, this study advances several key propositions for a more effective model of legal protection. First, it is essential to reaffirm the concept of

²³ Putra and Yustiawan, "Perlindungan Hak-Hak Pekerja Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja"; Wasistha, Prihartono, and Agus, "Perbandingan Tanggung Jawab Hukum Pekerja Outsourcing Di Indonesia Dan Amerika Serikat Dalam Hukum Ketenagakerjaan."

outsourcing within the framework of a triangular employment relationship. In this regard, the employment relationship should not be confined to the formal contractual link between the worker and the provider company, but must also encompass the factual relationship with the user enterprise. Accordingly, the principle of joint liability should be explicitly codified in legislation to ensure that user companies cannot evade responsibility for workers under their effective control. The findings indicate that the implementation of this principle would enhance accountability and prevent the unjust allocation of legal responsibility.

Second, strengthening the principle of equal treatment between outsourced and permanent workers constitutes a critical component of a fair protection model. This study identifies disparities in wages, social security, and working conditions as central issues in outsourcing practices in Indonesia. Therefore, regulatory provisions should explicitly guarantee equal treatment across these dimensions. This approach is consistent with international labor standards, which recognize non-discrimination as a fundamental principle of worker protection.

Third, the imposition of limits on the duration of outsourced workers' assignments to user enterprises is necessary to prevent the normalization of permanent outsourcing arrangements. The findings indicate that, in the absence of such limitations, companies tend to maintain outsourced status indefinitely, even where labor demand is continuous. This practice undermines job security and limits workers' opportunities to obtain permanent employment status. The introduction of time restrictions would encourage employers to align employment arrangements with actual operational needs.

Fourth, strengthening the labor inspection system is a crucial determinant of effective regulatory implementation. This study demonstrates that weak oversight constitutes a major factor contributing to the inadequate protection of outsourced workers. Accordingly, a more transparent and accountable supervisory framework is required, including the provision of sufficient authority for labor inspectors to conduct inspections and enforce sanctions effectively.

Compared with prior studies, these findings extend the analytical perspective by not only identifying normative deficiencies but also proposing an integrative and operational policy model. Earlier research has largely concentrated on regulatory critiques or analyses of judicial decisions²⁴, whereas this study advances a normative framework that may serve as a foundation for academic discourse and policy reformulation.

²⁴ Hafizh et al., "Analisis Praktik Outsourcing Dalam Perspektif Undang-Undang Cipta Kerja"; Indrayanti et al., "Analisa Implementasi UU Cipta Kerja Kluster Perjanjian Kerja Waktu Tertentu (PKWT) Dan Alih Daya"; Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*.

The protection of outsourced workers can be effectively achieved only through an approach that balances the interests of workers and business actors.²⁵ While flexibility remains essential in responding to contemporary economic dynamics, it must be accompanied by principles of justice and the protection of workers' fundamental rights. In this regard, the state plays a strategic role as both regulator and supervisor to ensure that employment relationships are fair, equitable, and free from exploitative practices.

This study underscores that the reformulation of outsourcing policy in Indonesia should be grounded in three principal pillars: legal certainty, justice, and sustainability. Legal certainty requires clear and coherent regulatory provisions governing employment relationships and the allocation of responsibilities among the parties. Justice is realized through the application of the principle of equal treatment and the effective protection of workers' rights. Sustainability, in turn, is reflected in the balanced integration of labor market flexibility with adequate worker protection.

Absent comprehensive policy reformulation, the outsourcing system in Indonesia risks perpetuating legal uncertainty and structural injustice for workers. Accordingly, the academic propositions developed in this study are intended to provide a conceptual basis for the formulation of more responsive, adaptive, and worker-oriented employment policies in the future.

4. CONCLUSION

This study aims to examine the outsourcing system within Indonesian labor law, including its conceptual framework and legal status, the legal implications arising from the removal of restrictions on job types, judicial practices in worker protection, comparative international perspectives, and the formulation of a more equitable and sustainable protection model. Based on an analysis of Law Number 6 of 2023 concerning the enactment of the Job Creation Regulation in Lieu of Law (Perppu), the findings indicate that the expansion of outsourcing flexibility has not been accompanied by sufficient certainty in employment relationships or adequate mechanisms for worker protection.

Judicial practice has demonstrated a progressive orientation through the application of a factual approach; however, it remains largely casuistic and lacks consistency. Comparative analysis with other jurisdictions highlights the significance of key principles—namely, limitations on outsourcing, equal treatment, and shared responsibility—as foundational elements of effective worker protection. Accordingly, this study advocates for policy reformulation grounded in the principles of joint liability, equal treatment, limitations on the duration of employment, and strengthened regulatory oversight.

²⁵ Takeuchi-Okuno, "The 2015 Amendment to the Temporary Agency Work Act: A Fundamental Revision of the Regulatory Scheme."

This study contributes as a conceptual reference for policymakers. Nevertheless, its primary limitation lies in its reliance on a normative legal approach without incorporating empirical field data. Future research is therefore recommended to adopt empirical methodologies in order to assess the practical effectiveness of the proposed protection model and to support the development of more robust regulatory frameworks.

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