Artikel History
Submitted:2024-05-13
Revisied:2024-05-17
Accepted:2024-05-20

MALAREV : JOURNAL BUSINESS LAW
ISSN: - (p); -(e);
Vol.01 No.01 (Juni 2024): 0-00, doi; -
https://journal.uinmataram.ac.id/index.php/malarev/

LEGAL PROTECTION OF *OUTSOURCED* WORKERS AGAINST TERMINATION OF EMPLOYMENT AT GOVERNMENT AGENCIES

Nuruddin[1)]

[1,2]State Islamic University of Mataram
nuruddinmh@uinmataram.ac.id, andriawan.wa@gmail.com

Abstract

Outsourced labor is outsourced labor provided by a service provider company and channeled to other companies in need. This *outsourced* workforce is contracted by government agencies through a work agreement system with an *outsourced* labor provider company. The implementation of *outsourcing* work agreements in terms of performance and economics will have a better impact on government agencies, but can raise other issues related to labor protection in *outsourcing* companies. *Outsourcing* is also considered to make the working relationship between the worker and the employer company unclear. Many prospective workers who get a job from an outsourcing company are required to pay a sum of money, even by deducting their monthly wages during the contract. In addition, many workers from *outsourcing* companies do not receive the normative rights that they should receive.

In writing this article, the type of research used is normative research using the normative juridical approach method. A process for finding applicable rules/laws, legal principles, and legal doctrines in order to answer the legal issues at hand. The approach used is a *statutory approach* (*statua approach*).

Based on the results of the discussion, that work agreements with *outsourcing* systems, government agencies can improve performance and good public services to the community. Government agencies can focus on the main goal of serving the community, while *supporting* tasks can be transferred to other parties who are more professional.

Keywords: *Protection, Outsourcing, Labor*.

A. INTRODUCTION

Manpower development is a form of fulfillment of human rights, so it is placed in an important part of the constitution, the 1945 Constitution of the Republic of Indonesia, that every citizen has the right to work and a decent livelihood in accordance with humanity.[1] It is further affirmed in Article 28D paragraph (1) that everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law, and in paragraph (2), everyone has the right to work and receive fair and decent remuneration and treatment in order to fulfill their needs.

Development is an effort to create prosperity and welfare of the people and the results of this development must be enjoyed by all people as an increase in physical and mental welfare in a fair and equitable manner. Meanwhile, the success of development is

[1] Article 27 paragraph (2) of the Constitution of the Republic of Indonesia 1945

highly dependent on the participation of all the people, which means that development must be carried out evenly by all levels of society.[2]

The State shall also recognize the right to work which includes every person to the opportunity to earn a living by doing work which he freely chooses or accepts and shall take appropriate measures to protect this right; as provided in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR 1966).[3]

Efforts to realize good welfare are difficult to achieve without an equitable socio-economic structure which from the aspect of the relationship between workers and employers is reflected in harmonious, dynamic and proportionally fair industrial relations. Therefore, it is necessary for the government to intervene through thorough and comprehensive policies that include the development of human resources, increasing the productivity and competitiveness of Indonesian labor, expanding employment opportunities, and fostering industrial relations as regulated in labor legislation.[4]

Entering the reform era has opened the tap of democratic flow, various regulations related to labor law have found their momentum, this is represented in three packages of Labor Laws, among others: Law No. 21 of 2000 on labor, Law No. 13 of 2003 on Manpower and Law No. 2 of 2004 on Settlement of Industrial Relations Disputes,[5] and most recently the enactment of Law No. 11 of 2020 on Job Creation, where in the second part and its articles discuss specifically about employment as a refinement and synchronization of Law No. 13 of 2003 on employment. The birth of the various regulations in question is none other than a form of state responsibility towards citizens in realizing a prosperous, just, prosperous and equitable human and society, both material and spiritual.

One important component in the regulation of employment is labor. Labor is an individual who offers skills and abilities to produce goods or services so that the company can make a profit and for that individual will get a salary or wage according to the skills he has.[6] Labor has a very important role and position as the actor and goal of development. In accordance with the role and position of labor, employment development is needed to improve the quality of labor and its participation in development and increase the protection of labor and their families in accordance with human dignity.

In the midst of various efforts undertaken by the government in realizing welfare and justice for Indonesian workers, in addition to dividing the categories of workers into Specific Time Work Agreements (PKWT) and Indefinite Time Work Agreements (PKWTT), the Manpower Law also regulates the provision of *outsourced* labor or what is also known as outsourcing. The outsourcing system is a new breakthrough in the world of labor by offering *cost of production* efficiency for employers. *Outsourced* labor is outsourced labor provided by a company providing *outsourced* labor services and channeled to other companies that need *outsourced*

---

[2]Adnan Hamid, *Towards a Fair Policy for Migrant Workers*, (Jakarta: PUHP Press, 2012), pp. 1.

[3]Zaimah Husin, Outsourcing as a Violation of Workers' Rights in Indonesia, Journal of Legal Reform Studies (2021) 1:1 1-24 DOI: https://doi.org/10.19184/jkph.v1i1.23396

[4]Endah Pujiastuti, Op. cit, p. 13

[5]Parlin Dony Sipayung, et al, *Labor Law*, (Medan, Pen. Yayasan Kita Tulis, 2022), p. 18.

[6]Ellida Nuriya Putri, et. al. "Optimizing the Supervision of the Outsourcing System as an Effort to Support Labor Protection in Indonesia", NOTARIUS, Volume 13 Number 1 (2020), p. 298. 298.

labor. *Outsourced* labor is contracted by a company that needs *outsourced* labor through a work agreement with a company that provides *outsourced* labor. Work agreements in *outsourcing* are carried out in two stages, namely agreements between companies using *outsourcing* services and *outsourcing* companies as providers of labor services, and agreements between *outsourcing* companies and workers/laborers. A work agreement is an agreement between an entrepreneur or employer and a worker that contains working conditions, rights, and obligations of the parties.[7]

However, inseparable from various problems and even having not yet found a meeting point, it is currently still a pro-contra and is opposed by the majority of labor unions in Indonesia. Labor unions believe that *outsourcing* is no different from modern slavery. *Outsourcing* is also considered to make the working relationship between the worker and the employer company unclear. Many prospective workers who get a job from an outsourcing company are required to pay a certain amount of money, even by deducting their monthly wages during the contract. In addition, many workers from *outsourcing* companies do not receive the normative rights that they should receive.[8] Law No. 13/2003 on Labor is actually strong enough to improve the situation of workers, but its implementation must be carried out seriously and with care. However, changes in outlook and legislation alone are insufficient if they are not accompanied by an increase in employment opportunities and an increase in workers' purchasing power. This new paradigm is based on a very strong rationale, namely that production and trade will not be able to increase if workers or laborers are not given employment opportunities and their wages are insufficient.[9]

The term outsourcing is not explicitly mentioned in Law No. 13/2003 on Labor. However, the term is interpreted as in Article 64, which is the transfer of part of the performance of work from a company to another company through a work contractor agreement or a worker service provider agreement.[10] The work relationship that occurs in outsourcing is due to a work agreement (outsourcing work agreement), made with an Indefinite Time Work Agreement (PKWT) or a Fixed Time Work Agreement (PKWT) as long as it meets the requirements of Article 59 of Law No. 13/2003. Meanwhile, the Law on Job Creation uses the term "outsourcing" as stated in Article 66 of Law No. 11 of 2020, which is etymologically more in line with the meaning in Indonesian.[11] According to the Civil Code, Article 1601 b outsourcing is equated with a contracting agreement so that the definition of outsourcing is an agreement in which the contractor binds himself to make a certain work for another party who contracts the work to the contracting party for a certain fee.[12] Outsourcing is one of the ways taken by the government to make it easier for entrepreneurs to run businesses in the midst of the economic crisis that has hit Indonesia since the last few years. The policy to enforce outsourcing was issued by the government to improve the investment climate in

---

[7]Chairunnisa Ramadhani, et. al. Legal Protection of Labor in *Outsourcing* Work Agreements*,* Media of Law and Sharia*, Vol. 2, No. 1, 2020, 47-62*

[8]I Nyoman Putu Budiarta, Outsourcing Law, Concept of Outsourcing, Forms of Protection, and Legal Certainty, (Malang, Publisher: Setara Press, 2016), p. 14. 14.

[9]Adnan Hamid, *Towards a Fair Policy for Migrant Workers*, (Jakarta: PUHP Press, 2012), p. 26. 26.

[10]Hidayat Muharam, *Guide to Understanding Labor Law and Its Implementation in Indonesia*, (Bandung: Citra Aditya Bakti, 2006), pp. 13

[11]Wikipedia, https://id.wikipedia.org/wiki/Alih_daya, accessed, October 23, 2023.

[12]Ellida Nuriya Putri, et. al. Op. cit. p. 299.

Indonesia through several conveniences in the system of recruiting workers who are transferred to other parties, namely with the outsourcing system. With an outsourcing system, it is hoped that companies can save money in financing human resources (HR) working in the company concerned.

For this reason, it is very necessary to protect workers in order to guarantee the basic rights of workers/laborers and to guarantee equal opportunity and treatment without discrimination on any basis in order to realize the welfare of workers/laborers and their families while taking into account the progress of the business world.[13] The legal protection of outsourced workers that is regulated by Law No. 13/2003, both the protection of wages, welfare, working conditions and others, including in the settlement of industrial relations disputes, is still unclear. For example, UIN Mataram in 2020 recruited outsourced workers for security service work through a service provider company, but in 2021 the service provider company was unable to continue the work contract with UIN Mataram, because it did not win in the goods/services procurement auction system, so UIN Mataram appointed another service provider who was declared the winner of the auction. As a result, outsourced workers have no certainty as to the continuity of their status, with a sense of restlessness, etc., because there is no guarantee that they will be re-employed.

From several cases that have occurred, the legal protection of outsourced workers still does not reflect the principles of legal certainty and justice, because it appears that the laws protecting outsourced workers are not yet adequate and need to be reviewed, including Law No. 11 of 2020 concerning Job Creation and Law No. 3 of 1992 concerning labor social security, so that outsourced workers become more existent and constitutional, and obtain legal protection in the form of legal certainty, justice and guarantee the upholding of the constitutional rights of citizens.

Normatively, the legislation and its implementing regulations are good in terms of legal protection for workers, but there are no sanctions for employers who violate these legal provisions, and even if there are, they are only moral sanctions. Meanwhile, the government when there is a conflict between workers and employers, their superiors always side with the employers, even though according to the provisions the workers are in the right position.[14]

B. RESEARCH METHOD

The research method uses normative juridical legal research (doctrinal law). Normative research conducted through literature studies, reviewing laws and regulations as well as research results, results of studies and other references that are analyzed qualitatively. The approach used is a *statutory* approach with the type of data collected is secondary data from various sources, with the main reference in the form of primary, secondary and tertiary legal materials. The data analysis used is *deductive reasoning*.

C. DISCUSSION

1. Legal Regulation of Outsourced Workers

Komang Priambada, in Nurhadi, and Edi Rohaedi defines outsourcing as the transfer of part or all of the work and or authority to another party in order to support the strategy of the outsourcing service user, whether an individual, a

[13]Asri Wijayanti, *Labor Law after Reform*, (Jakarta, published by Sinar Grafika, 2009), p.6.
[14]H.R. Abdussalam, *Employment Law (Labor Law*), (Jakarta Restu Agung, 2009), pp. 32.

company, a division or a unit within a company.[15] Outsourcing in Indonesian labor law is defined as the contracting out of work and the provision of labor services, the arrangements for which are found in Article 64 through Article 66 of Law Number 13 of 2003 concerning Labor (Law No. 13 of 2003), as well as the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.101/Men/VI/2004 of 2004 concerning Procedures for Licensing Companies Providing Worker/Labor Services. [16]

Thus it can be concluded that outsourced workers are defined as the utilization of labor to produce or carry out a certain job by a company, through a labor provider/employer company that is established and has obtained a license for its business. This means that there is a company that specifically trains/prepares, provides, and employs labor for the benefit of another company. It is this company that has a direct employment relationship with the laborers/workers employed. Meanwhile, workers/laborers do not have a contractual relationship with service users (companies or agencies).

Arrangements concerning outsourced workers, prior to the birth of Law No. 13/2003, can be found in the Civil Code, which is referred to in terms of contracting, as Article 1601b of the Criminal Code states: Work contracting is an agreement by which one party, the contractor, binds himself to perform a work for the other party, the contracting party, by receiving a specified price.

Then the term outsourcing is translated as "contracting out part of the work to another company (contractor)", found in Circular Letter of the Minister of Manpower No. SE-08/MEN/ 1990 concerning the Responsibility of Companies Providing Work for the Protection and Welfare of Workers of Contracting Companies.[17]

Provisions in Law No. 13/2003 on Labor that regulate *outsourcing* were eventually submitted for *judicial review* to the Constitutional Court (MK). As a result, the Constitutional Court issued Decision No. 27/PUU-IX/2011.6 The Constitutional Court's decision was then followed up with Circular Letter (SE) No. B.31/PHIJSK/I/2012 concerning the implementation of Constitutional Court Decision No. 27/PUU-IX/2011 and was also accompanied by other SEs governing *outsourcing*, but these SEs have not been able to become a strong legal umbrella to provide legal certainty for the protection of workers with *outsourcing* systems. This is because the Circular is not a type of legislation based on Law No. 12/2011 on the Formation of Legislation and the Circular is categorized as an administrative instrument that is internal in nature only and clarifies regulations that must be implemented.[18]

Arrangements concerning *outsourcing* have come to the fore again since the enactment of Law No. 11/2020 on Job Creation, which deleted several provisions in *outsourcing*, namely Article 64 and Article 65 of Law No. 13/2003 on Labor, but retained Article 66 with several changes. The deletion of these Articles and the changes in Article 66 emphasize that *outsourcing* is still allowed by law. This has further opened up opportunities for *outsourcing* types of employment relationships.

---

[15] Nuradi, and Edi Rohaedi, op.cit. p. 82

[16]Republic of Indonesia, Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.101/Men/VI/2004 of 2004 concerning Licensing Procedures for Companies Providing Worker/Labor Services.

[17] I Nyoman Budiarta, Op.cit. pp. 71

[18] Wiwin Budi Pratiwi, et. al. Legal Protection of Labor with *Outsourcing* System in Indonesia, Journal of Law IUS QUIA IUSTUM No. 3 VOL. 29 September 2022: 652 - 673

The provisions in Law Number 11 of 2020 on Job Creation are considered to be legalizing *outsourcing* work relations.

And with the passing of Law Number 11 of 2020 concerning Job Creation, which is an amendment and improvement to Law Number 13 of 2003 concerning Manpower. It expressly regulates *outsourced* workers, in Article 86 or the second part of Law No. 11 of 2020 in Article 66, explains:

1) The work relationship between outsourcing companies and the workers/laborers they employ is based on a work agreement made in writing, either a specific time work agreement or an indefinite time work agreement;
2) Protection of workers/laborers, wages and welfare, working conditions, and disputes arising shall be implemented at least in accordance with the provisions of laws and regulations and shall be the responsibility of the outsourcing company.
3) In the event that the outsourcing company employs workers/laborers based on a specific period work agreement as referred to in paragraph (1), the work agreement shall require the transfer of protection of rights for workers/laborers in the event of a change of outsourcing company and as long as the object of work remains.

The scope of outsourcing workers is carried out in the form of work agreements made for a certain time (PKWT) or work agreements made for an indefinite period (PKWTT). As the provisions of Article 56 of Law No. 11 of 2020 read as follows:

1) Work agreements are made for a certain time or for an indefinite period.
2) Work agreements for a certain time as referred to in paragraph (1) are based on: a. a period of time; or b. the completion of a certain job.
3) The period of time or the completion of a certain job as referred to in paragraph (21) shall be determined based on the employment agreement.
4) Further provisions concerning specific time work agreements based on a period of time or the completion of a certain job shall be regulated in a Government Regulation.

From the above explanation, it can be said that juridically formal outsourcing in terms of labor law has elements:

1. The assignment of part of the performance of work by a company.
2. To another company; and
3. Through a work contracting agreement or a worker/labor service provider agreement.

Then the terms labor and worker/labor are defined differently. According to Maimun, an adult worker/laborer (commonly called worker/laborer) is anyone who works by receiving wages or other forms of compensation. In this definition, there are two elements, namely the element of a person who works and the element of receiving wages or other forms of compensation. This is different from the definition of labor, which is every person who is able to do work in order to produce goods and/or services, both to meet their own needs and those of the community.[19]

The definition of labor includes workers/laborers, civil servants, soldiers, people who are looking for work, people with free professions such as lawyers, doctors, traders, tailors, and others. Each of these professions is different from one another even though they are all included in the labor category. This is because the

[19] I Nyoman Budiarta, Op.cit. p. 78

relationships and regulations governing them are also different. For workers/laborers, the legal relationship with the employer is civil in nature, which is made between parties who have a civil position. The legal relationship between the two parties is not only regulated in the employment agreement they sign (autonomous law) but also regulated in laws and regulations made by agencies/institutions authorized to do so (heteronomous law). For civil servants and soldiers, the legal relationship between them and the government is based on heteronomous public law.

The importance of *outsourcing* arrangements in terms of labor law is to provide legal certainty for the implementation of *outsourcing* and to provide protection to workers/laborers. The implementation of the *outsourcing* system is still experiencing weaknesses due to the lack of regulations governing legal protection for *outsourced* workers and as a form of anticipation of injustice in the implementation of working relationships between companies and *outsourced* workers.[20]

2. Company Relations with Outsourced Workers

The relationship between companies and outsourced workers occurs because of an agreement made by the two parties (companies and workers). The agreement binds both parties juridically to carry out their rights and obligations. The purpose of the agreement here is a work agreement that is executed by the company and the worker. As stated by Soebekti[21] that the Work Agreement is: "An agreement between a worker and an employer, which agreement is characterized by characteristics; the existence of a certain wage or salary that is promised and the existence of a relationship at the top, namely a relationship based on which the one party (employer) has the right to give orders that must be obeyed by the other party."

Employment Agreements are regulated in Chapter IX of Law No. 13 Year 2003. Article 1 point 14 of the 2003 Manpower Law states that a work agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains working conditions, rights and obligations of the parties. Article 1 point 15 states that employment is a relationship between an employer and a worker/laborer based on a work agreement, which has the elements of work, wages, and orders.

From the above explanation, it can be said that an outsourcing work agreement is a work agreement that is made in writing to regulate the working relationship between a worker/laborer and an outsourcing company (work contractor company) or a company that provides worker/labor services). To carry out some of the work that is handed over by the company providing the work. In other words, an outsourcing work agreement must fulfill the material and formal requirements mentioned above in order to give rise to an outsourcing work relationship.

Law No. 11 of 2020 has also emphasized that worker relations begin as a result of an agreement, as in Article 59 reads:

(1) Work agreements are made for a certain time or for an indefinite period.
(2) Work agreements for a certain time as referred to in paragraph (1) are based on: a. a period of time; or b. the completion of a certain work.
(3) The period of time or the completion of a certain work as referred to in paragraph (2) shall be determined based on the employment agreement.

[20] Wiwin Budi Pratiwi, et. al. Op. cit. pp. 652 - 673

[21] Ibid. pp. 117

(4) Further provisions regarding specific time employment agreements based on a period of time or the completion of a certain work are stipulated in a Government Regulation.

There are two important aspects of the employment relationship: the relationship between the employer and the work contractor or worker service provider and the relationship between the work contractor or worker service provider and the worker. The relationship between the employer and the work contractor or worker service provider company can be interpreted as a business legal relationship. On the other hand, the work contracting company or worker service provider company gets a reward in the form of profit from the results of contracting work or providing worker services to carry out work from the company providing work. On the other hand, the employment relationship as intended in labor relations is a relationship between a worker and an employer. The employment relationship should show the position of both parties, which basically describes the rights and obligations of the worker towards the employer as well as the rights and obligations of the employer towards the worker in performing work.[22]

3. Forms of Responsibility of Outsourcing Companies for Termination of Employment Relations

Termination of employment is a step to terminate work between workers and employers for a certain reason. Meanwhile, according to Article 1 paragraph 4 of the Decree of the Minister of Manpower Number Kep.15A / Men / 1994, termination of employment is the termination of employment relations between employers and workers based on the permission of the regional committee or central committee. The two definitions above have different backgrounds. The first definition is more general in nature because in reality, termination of employment does not only arise from the initiative of the employer, but also from other causes and does not require permission from the regional labor dispute settlement committee (P4D) and the central labor dispute settlement committee (P4P). The second definition is specific in nature, where the dismissal is carried out by the employer because the worker/laborer commits a violation or misconduct, and therefore, prior permission must be given to the P4D/P4P in accordance with statutory provisions.

Government intervention in the field of employment through these laws and regulations has brought about fundamental changes, namely making the nature of labor law dual, namely private and public. The private nature is attached to the basic principle of employment relationship which is characterized by the existence of a work agreement between the worker and the employer.[23] Meanwhile, the public nature of labor law can be seen from:[24]

1) The existence of criminal sanctions, administrative sanctions for violators of provisions in the field of labor/employment.

---

[22] Ibid. pp. 123.

[23]Adnan Hamid, *Towards a Just Policy for Migrant Workers*, (Jakarta, FHUP Press Publisher, 2012), p. 69.

[24]Lalu Husni, *Introduction to Indonesian Labor Law,* (Jakarta: Rajawali Press, 2010), p. 13. 13.

2) Government intervention in determining the amount of wage standards (Minimum Wage).

The provisions of Article 151 of Law No. 11 of 2020 paragraph (1) reads: Employers, workers/laborers, labor unions, and the Government must strive to avoid termination of employment. (2) In the event that termination of employment cannot be avoided, the intention and reasons for termination of employment shall be notified by the employer to workers/laborers and/or trade unions/labor unions. (3) In the event that workers/laborers have been notified and refuse the termination of employment, the settlement of the termination of employment must be carried out through bipartite negotiations between the employer and workers/laborers and/or trade unions/labor unions. (4) In the event that the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, the termination of employment shall be carried out through the next stage in accordance with the mechanism for settlement of industrial relations disputes.

In fact, this article raises concerns about the possibility of unilateral dismissal because dismissal is simply done through notification from the employer without having to be preceded by prior negotiations. Although it still opens the opportunity for workers to make bipartite efforts and resolve industrial relations disputes (PPHI) if they refuse to be laid off. The problem is that this provision is built on a fatally flawed logic, which views the employment relationship as an idealized one that places workers and employers in an equal position. In reality, refusing layoffs and defending rights is not an easy thing for workers to do. Inequality of bargaining position, fear of superiors, and ignorance of their rights as workers often make workers helpless when layoffs occur.[25]

Workers/laborers who are dismissed by employers/companies for reasons as mentioned above, as compensation the legal protection given to workers/laborers is as regulated in Article 166 to Article 172 of Law No. 13 of 2003 which basically workers are entitled to severance pay, long service pay, compensation pay that must be given by employers with the amount varying according to the length of service and the type of dismissal given in accordance with the work agreement, company regulations, collective bargaining agreements and applicable laws and regulations.

Being a critical note of the amount of severance pay as a result of termination of employment, previously in the Manpower Law, the amount of severance pay and tenure awards obtained when layoffs occur was influenced not only by the length of service, but also the reason for layoffs. On the contrary, in the Job Creation Law, the correlation between the reason for termination and the amount of severance pay and/or tenure award is eliminated, so that the multiplier of severance pay and/or tenure award that previously could reach 32 times the wage also no longer exists.25 In the Job Creation Law, the maximum limit of severance pay and/or tenure award required by employers is 19 times the wage.[26]

4. Legal Protection Due to Termination of Employment

Legal protection has the meaning of protection by using legal means or protection provided by law, shown against certain interests, namely by making the interests that need to be protected into a legal right. In law "rights" are also called subjective law. Subjective law is an active aspect of the legal relationship provided

[25]Sigit Riyanto, et al, Critical Notes on Law No. 11 of 2020 Concerning Job Creation, (Yogyakarta: Faculty of Law, Gadjah Mada University, 2020), pp. 48

[26]Ibid, p. 50

by objective law, in the case of subjective law is norms, rules.[27] One form of labor protection is pouring in the form of clear legal norms, so as to obtain legal certainty, in line with Zainal Asikin's opinion, the protection of workers from the power of the employer is carried out if the regulations in the field of labor that require or force the employer to act as in the legislation are properly implemented by all parties because the validity of the law cannot be measured juridically alone, also measured sociologically, and philosophically.[28]

Workers are one of the important elements for companies, as well as in government agencies, so in the world of outsourcing, both work contracting and the provision of labor services, companies are obliged to guarantee protection / guarantee the rights of workers /, this protection starts from the obligation that the company must be a legal entity.[29] In addition, the company is obliged to provide rights to workers.

The concept of legal protection in question is the legal protection of outsourced workers preventively and repressively. Preventive legal protection in this case is interpreted as protection of the normative rights of outsourced workers provided by the state (government) through legal arrangements in legislation. Repressive legal protection, on the other hand, is interpreted as protection of the rights of outsourced workers to maintain or defend their normative rights in the event of a dispute in their working relationship with employers (outsourcing companies) in order to obtain a fair legal settlement.[30]

Problems concerning outsourcing are quite varied. This occurs because the use of outsourcing in the business world in Indonesia is now increasingly practiced and has become a necessity that cannot be delayed by business actors, while existing regulations are not yet adequate to regulate outsourcing. The practice of outsourcing is only more profitable for companies, but not for workers. The practice of outsourcing is more detrimental to workers, because the working relationship is always in the form of a non-permanent contract (PKWT), wages are lower, social security is only minimal, there is no job security, and there is no guarantee of career development. Under these circumstances, the implementation of outsourcing will make laborers miserable and cause them to run away and usually cause problems in industrial relations.

The means used in efforts to resolve industrial relations, including for outsourced workers to maintain or fight for their normative rights, is the institution for settling industrial relations disputes as specified in Article 136 in conjunction with Article 103 of Law No. 13/2003, through the procedures set out in Law No. 2/2004. The procedure for resolving industrial relations disputes is carried out through the mechanisms of bipartite negotiations, mediation, conciliation, arbitration, and the Industrial Relations Court (PHI).

The best dispute resolution is a resolution by the disputing parties so that a favorable outcome can be obtained for both parties. Such Bipartite settlement can be

---

[27]Heru Suyanto, et. al. "Legal Protection of the Rights of Outsourced Workers Based on the Principle of Justice", Journal of the Faculty of Law, National Development University "Veteran" Jakarta.

[28]Nuradim, *Labor Law in the Perspective of Outsourced Worker Protection*, (Jakarta: . Mandala Nasiona, 2021), pp. 166

[29]Amelia Syafira Parinduri, Legal Protection for Laborers Journal of Restitution, Volume I Number 1, January - July 2019 95

[30]I Nyoman Putu Budiartha, *Outsourcing Law, the Concept of Outsourcing, Forms of Protection, and Legal Certainty,* (Malang: Setara Press, 2016), pp. 171

done through consensus deliberation by the parties without being interfered by any party. As an effort to provide community services, especially to workers/laborers and employers, the government is obliged to facilitate the settlement of industrial relations disputes. Facilitation efforts are carried out by providing mediators whose task is to bring together the interests of the two disputing parties.[31]

The fundamental issue that is the subject of discussion/study in this case is whether efforts to resolve industrial relations disputes for outsourced workers guarantee legal certainty or reflect the principle of legal certainty? To examine this issue, the concept/theory of legal certainty and the concept/theory of legal protection in litigation procedures, namely PHI in the District Court and the Supreme Court, will be presented. Litigation settlement is a dispute settlement conducted through the court. In the settlement of industrial relations disputes, litigation settlement is conducted through PHI after non-litigation settlement, namely mediation and conciliation of the parties fail to reach a settlement agreement or one of the parties submits a request for annulment of the arbitration award to the Supreme Court. Litigation settlement based on Law No. 2 Year 2004 jo Law No. 13 Year 2003 is conducted through the PHI of the District Court and the Supreme Court (MA). The parties to the dispute, in this case outsourced workers and employers, after failing to reach agreement in mediation and conciliation, either party may file a lawsuit with the PHI at the local district court.

In industrial relations disputes involving interest disputes and disputes between trade unions/labor unions, PHI at the district court will give a decision at the first and final level. This means that cassation cannot be requested to the Supreme Court, which is intended to ensure a quick, precise, fair and inexpensive settlement. Meanwhile, for rights disputes and layoff disputes, PHI decisions at the district court can be appealed and reviewed to the Supreme Court. This can be understood because rights disputes and layoff disputes are complex legal issues. For this reason, the basis for testing is not only the provisions of civil law, especially the agreement aspect, but also the provisions of public law, namely labor legislation. Therefore, there is an opportunity to file a cassation application for parties who are not satisfied with the PHI decision at the district court by re-examining the dispute at a higher court, namely through the Cassation Panel of Judges. Cassation decisions that have permanent legal force can be submitted for review (PK), as the last legal remedy. This is of course in order to provide the last opportunity for parties who feel unsatisfied to seek justice as fair as possible, even though at the same time the other party (the opposing party) views less or no legal certainty.

Actually, the most important and concrete thing that is expected by every outsourced worker in the event of a layoff is the form of legal protection given to workers/laborers as set out in Articles 166 to 172 of Law No. 13 of 2003, which basically states that workers are entitled to severance pay, long service pay, and compensation pay that must be given by employers with the amount varying according to the length of service and the type of layoff given in accordance with work agreements, company regulations, collective labor agreements and applicable laws and regulations.

D. CONCLUSION

Based on the discussion above, several points can be concluded as follows:

[31]Asri Wijayanti, *Post-reform labor law* (Jakarta: Sinar Grafika, Ed. 1. Cet. 1. 2009), p. 180. 180.

1. The legal protection of outsourced workers against termination of employment as a means used in efforts to resolve industrial relations, including for outsourced workers to maintain or fight for their normative rights, is the institution for settling industrial relations disputes as specified in Article 136 in conjunction with Article 103 of Law No. 13 of 2003, through the procedures set out in Law No. 2 of 2004. The procedure for resolving industrial relations disputes is carried out through the mechanisms of bipartite negotiations, mediation, conciliation, arbitration, and the Industrial Relations Court (PHI).
2. In the event of termination of employment, employers are obliged to pay severance pay and/or long service pay and compensation for rights that should have been received.
3. Regulations regarding termination of employment in the post-reform era are good. Unfortunately, there are still arrangements regarding labor contracts, outsourcing and permanent workers. The reality in the community is that employers prefer to apply work agreements for a certain period of time through the mechanism of labor contracts or outsourcing. Government supervision of this reality is hardly implemented.
4. Reform of the regulation on layoffs must be accompanied by reform of the regulation on labor contracts and outsourcing. All existing provisions must be harmonized and not contradict each other.

LITERATURE

Asri Wijayanti, *Labor Law after Reform* (Jakarta: Sinar Grafika, Ed. 1. Cet. 1. 2009).

Adnan Hamid, (2012) *Towards a fair Policy for Migrant Workers*, (Jakarta, FHUP Press Publisher).

Abdussalam, HR, Labor Law, (Jakarta: Restu Agung Publisher, 2008).

Agusmidah, Indonesian Labor Law, Dynamics and Theory Studies, (Bogor: Ghalia Indonesia, 2010).

Budiono, Abdul Rachmat, Labor Law in Indonesia, (Jakarta: PT. Rajagrafindo Persada, 1995).

Damanik, Sehat, Outsourcing and Labor Agreements (Jakarta: DSS Publishing, 2006).

Hidayat Muharam, (2006), *Guide to Understanding Labor Law and its Implementation in Indonesia*, (Bandung: Citra Aditya Bakti).

Husni, Lalu, (2010) *Introduction to Indonesian Labor Law,* (Jakarta: Rajawali Press).

Hafulyon, (2011) *Human resource management, outsourcing in companies,* JURIS Journal (Sharia Scientific **Journal**), Volume 10, Number 2 (December 2011).

Hakim, Abdul, Basics of Indonesian Labor Law, (Bandung: Citra Aditya Bakti, 2009).

Heru Suyanto, et. al. "Legal Protection of the Rights of Outsourced Workers Based on the Principle of Justice", Journal of the Faculty of Law, National Development University "Veteran" Jakarta.

I Nyoman Putu Budiarta, (2016) *Outsourcing Law, the Concept of Outsourcing, Forms of Protection, and Legal Certainty*, (Malang, Publisher: Setara Press).

Parinduri, Amelia Syafira, "Legal Protection for Labor in Outsourcing Work Agreements" (2019).

Sonhaji Sonhaji, "*A Review of the Welfare of Outsourced Workers in Banking Companies*" (2020).

Sapoetra, G. Karta, Labor Law in Indonesia Based on Pancasila, (Jakarta: Bina Aksara, 2004).

Sigit Riyanto, et al, Critical Notes on Law No. 11 of 2020 on Job Creation, (Yogyakarta: Faculty of Law, Gadjah Mada University, 2020)

Wijayanti, Asri, *Post-Reform Labor Law*, (Jakarta: Sinar Grafika, 2009).

Zaimah Husin, Outsourcing as a Violation of Workers' Rights in Indonesia, Journal of Legal Reform Studies (2021) 1:1 1-24.

Wikipedia, https://id.wikipedia.org/wiki/Alih_daya, accessed October 23, 2023.

Republic of Indonesia, Law Number 13 of 2013 concerning Labor.