

Ensuring Constitutional Rights: Legal Protection for Outsourced Workers at PT. MBS (Mie Gacoan)

Hendra Saputra^{1*}, Khalisah Hayatuddin², Abdul Latif Mahfus³, Rina Dwi Wulandari⁴

^{1,2,3,4}Universitas Muhammadiyah Palembang, Indonesia

*Corresponding Author: Hendra211985@gmail.com

Article History:

Submitted:

07-08-2024

Received:

26-09-2024

Accepted:

12-01-2025

Keywords:

legal protection;
constitutional rights;
outsourced workers

Abstract

Workers who carry out work in outsourcing companies should not lose their rights, which are protected by the Constitution. Such guarantees and protection cannot be implemented properly only through binding work agreements between companies and workers because workers are in a weak bargaining position as a result of the large number of job seekers or oversupply of labor. The implementation of the outsourcing system is considered to be widely practiced in order to reduce the cost of workers' wages with minimal protection for workers. Moreover, Law No.11/2020 further legalizes the existence of outsourcing and the types of work that are not restricted. Further provisions governing outsourcing are stipulated in Government Regulation No. 35/2021, which stipulates that the working relationship between outsourcing companies and the workers/laborers employed is based on PKWT or PKWTT. The practice of outsourcing is not in accordance with the prevailing laws and regulations, for example at PT MBS (Mie Gacoan) in relation to the protection of wages, welfare, labor social security, occupational safety and health protection, which is not fulfilled by the employer, so that it is very contrary to the law and the responsibility of the state to be able to guarantee that workers obtain their rights. From the results of the research, it was found that after the enactment of the Job Creation Law and Government Regulation Number 35 of 2021, Article 64 and Article 65 of the Manpower Law were abolished and the regulation on the provision of worker/labor services in Article 66 was changed to a regulation on the working relationship between outsourcing companies and the workers/laborers they employ. The provisions in Law No. 11 of 2020 on Job Creation allow for no time limit for outsourced workers, so that workers can be outsourced indefinitely and even for life, such as the sociological facts of outsourced workers at PT MBS (Mie Gacoan) related to protection regarding wages, welfare, labor social security, occupational safety and health protection are not fulfilled by the employer so that it is very contrary to the law and the responsibility of the state to be able to guarantee that workers obtain their basic rights in accordance with the provisions in Article 27 paragraph (2) of the 1945 Constitution and Article 28 D paragraph (2) of the 1945 Constitution.

1. Introduction

Outsourcing also has another name, namely "contracting out", which is a transfer of operations from one company to another or can also be called a work contracting agreement. The outsourcing system is a breakthrough in the world of work by bringing cost-effective production efficiency to employers. By using this outsourcing system, companies seek to save the financial costs of Human Resources (HR) working in companies, both private and public. Law No. 13/2003 on Manpower (hereinafter referred to as Law No. 13/2003) justifies the transfer of part of the work done to another company or to a service provider company

through a labor contractor¹. Outsourcing is the transfer of part of the work from a company that gives work to a company that provides worker/labor services through a written work contract. Seen from the field of employment, outsourcing is the utilization of labor to be able to produce or perform a job that is given by a labor provider company or simply. outsourcing is a form of contract that occurs when a company enters into a commercial contract with another company to provide certain services within a certain period as well. The contract system (outsourcing), which is defined as contracting out work and providing labor services, is explained in Indonesian Labor Law, precisely in Article 64 of Law No. 13/2003. In addition, Law No. 11/2020 on Job Creation (hereinafter referred to as Law No.11/2020) has been passed which amends some of the provisions of Law No. 13/2003, one of which is related to the provision of outsourced workers. Outsourcing in Law No.11/2020 deletes Articles 64 and 65 and changes the substance of Article 66 in Law No. 13/2003. Articles 64 and 65, which previously regulated the limitation of work contracting and outsourcing or outsourcing work to work outside the main activity or production process, were directly deleted because the government did not want to enter into the realm of business or civil agreements. The government only regulates the protection of workers from employment agreements that put workers in a vulnerable position when faced with employers. Based on Article 66 of Law No. 13/2003, outsourcing work is a type of work that is not the main business. However, in its revision, Article 66 of Law No.11/2020 no longer includes restrictions on the types of work that outsourced workers are prohibited from doing. Article 66 of Law No.11/2020 stipulates that work agreements between outsourcing companies and workers must be made in writing, the protection of workers is the responsibility of the outsourcing company, and requires protection in the event of a change of outsourcing company as long as the object of work remains, and the outsourcing company must be a legal entity and have a business license. The deletion of Article 64, Article 65, and the amendment of Article 66 of Law No.13/2003 regarding provisions that limit the work that can be done by outsourcing in Law No.11/2020 also drew opposition among workers. The reason for this opposition is that the Outsourcing regulation in Law No.11/2020 is considered to exploit and marginalize the human side of workers because it expands the scope of Outsourcing work².

Outsourcing can also lead to a decrease in long-term job security and the number of permanent workers. The more work that is outsourced, the more a person's hopes of becoming a permanent worker in the company will be dashed. In addition, if an outsourced worker's contract period ends, the outsourced worker's working period also ends. As a result, workers have to face the risk of not getting further work because the company providing worker services no longer gets an extension contract from the company that is the employer. A further impact is that workers will experience uncertainty about the period of work that has been carried out because it is not clearly calculated due to the frequent changes in the company providing outsourcing services, which has the effect of depriving outsourced workers of the

¹ Tri Budiyo, "Perlindungan Hukum Tenaga Kerja Kontrak Dan Outsourcing, Serta Problematika Implementasinya," *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 2 (2021): 145-60, <https://doi.org/10.24246/jrh.2021.v5.i2.p145-160>.

² Chairunnisa Ramadhani Putri Nursalim and Leli Joko Suryono, "Perlindungan Hukum Tenaga Kerja Pada Perjanjian Kerja Outsourcing," *Media of Law and Sharia* 2, no. 1 (2021): 47-62, <https://doi.org/10.18196/mls.v2i1.11478>.

opportunity to obtain income and benefits that are under their length of service and dedication. The right to work, which is attached to a wage, must be interpreted as permanent work for a long time, not short-term work such as outsourcing and contract work. Wages are a vital element in workers' rights because workers who have put themselves into a working relationship must expect a wage. In line with the vital function of wages for the lives of workers, violations of workers' rights can be said to violate the constitutional and human rights of workers that have been regulated by the state. Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia regulates a person's right to work and receive fair and appropriate compensation and treatment in employment relationships. In addition, Article 38 paragraph (3) of Law No. 39/1999 on Human Rights (hereinafter referred to as Law No. 39/1999) states that everyone, both men and women who perform the same, comparable, equal or similar work, are entitled to the same wages and terms of employment agreement.

Outsourcing or contract work systems do not provide a clear and certain future. Apart from not receiving THR, contract workers also do not receive other benefits such as pension funds for old age or labor social security³. They only receive wages. The absence of workers' rights in receiving wages can be said to be a form of violation of constitutional rights and human rights relating to the survival of workers. These rights have been regulated in Article 28 H paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945), which states that everyone has the right to social security that enables his or her full development as a human being with dignity. In addition, Article 99 paragraph (1) of Law No. 13/2003 also states that every worker and his or her family has the right to obtain social security for labor. The uncertainty of the fate of workers in connection with outsourcing work, such as not providing a guarantee of certainty for outsourced workers to work and receive compensation, has made the main essence of labor law, namely the protection of workers' rights, neglected. Workers who carry out work in outsourcing companies should not lose their rights, which are protected by the Constitution. Such guarantees and protections cannot be implemented properly only through binding work agreements between companies and workers because workers are in a weak bargaining position. As a result of the large number of job seekers or the oversupply of labor, many employers look for outsourcing companies or outsourcing agents. On the other hand, many workers rely on their skills and level of education to find work that is in accordance with their educational background. But in reality, the number of job seekers is not fully proportional to

³ Inas Ainun Machfiroh, Benny K. Heriawanto, and Isdiyana Kusuma Ayu, "Perlindungan Hukum Tenaga Kerja Outsourcing Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *DINAMIKA* 27, no. 17 (2021): 2447-61, <http://dx.doi.org/10.1038/s41421-020-0164-0><https://doi.org/10.1016/j.solener.2019.02.027><https://www.golder.com/insights/block-caving-a-viable-alternative/><http://dx.doi.org/10.1038/s41467-020-15507-2><http://dx.doi.org/10.1038/s41587-020-05>.

the companies that are looking for job seekers⁴. Therefore, job seekers inevitably work in a way that is not under their educational background and are willing to work under the auspices of outsourcing. With these provisions removed, Law No. 11/2020 will only make the labor market more flexible by giving employers the freedom to use contract or outsourced workers who can be recruited and dismissed easily and cheaply. This will inevitably reduce the number of permanent workers, with long-term job security. Instead of permanent workers, contract and outsourced workers tend to earn lower wages and have fewer workers' rights, making them quite tempting for employers. This has led employers to try to increase the use of contract and outsourced workers rather than permanent workers because this way, labor costs can be reduced as little as possible. Several field studies have proven that the flexible labor system makes the fate of workers more vulnerable. In practice, the implementation of outsourcing does not always run under the applicable regulations. It is not uncommon to find violations that have implications for the rights and welfare of workers. Until now, regulations regarding outsourcing have not been considered sufficient to provide justice, especially to workers. Especially after the passing of Law No. 11/2020. The government prioritizes the interests of capital owners, which in this case does not sufficiently consider the negative impact on workers, which is strongly influenced by the success of the free market and efficiency.

The change in policy regarding outsourcing in Law No. 11/2020 shows that the government has not paid full attention to the welfare of workers in formulating policies and is more concerned with aspects of a flexible labor market system that will benefit employers/companies. Law No. 11/2020 will give employers the flexibility to use outsourced workers, which can trigger the practice of modern slavery, a decrease in the guarantee and certainty of permanent employment, and the vulnerability of guarantees and constitutional rights of outsourced workers. The practice of outsourcing has several inconsistencies, even contradictions, such as the example of the sociological facts of the outsourced labor system at PT Mitra Bali Sukses/Gacoan Noodles (hereinafter referred to as PT. MBS) which is detrimental to employees, among others:

(1) The employment relationship is always in the form of a contract and is not permanent; (2) Wages are lower than workers or permanent workers; (3) Social Security is minimal; and (4) There is no guarantee of career advancement⁵.

In this study, researchers compared 3 (three) previous studies. First, research by Suandi with the title "Government Responsibility for the Constitutional Rights of Outsourced Workers" and the results of this research show that the government's responsibility for the constitutional rights of outsourced workers has not been fulfilled, this is because the fulfillment of the right to work of outsourced workers focuses more on access to the world of work without discrimination based on religion, ethnicity, and so on. Meanwhile, the implementation of the fulfillment of rights in work, namely normative rights for workers such

⁴ May Linda Iswaningsih, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Tenaga Kerja Lokal Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Omnibus Law Cipta Kerja," *Jurnal Preferensi Hukum* 2, no. 3 (2021): 478-84, <https://doi.org/10.22225/jph.2.3.3986.478-484>.

⁵ Anri Darmawan, "Pengaturan Hukum Terhadap Pekerja Outsourcing Ditinjau Dari Undang-Undang Ketenagakerjaan Dan Undang-Undang Cipta Kerja," *Varia Hukum* 3, no. 2 (2021): 12-25, <https://doi.org/10.15575/vh.v3i2.12607>.

as salary, security facilities, and work safety, as well as their future is still not guaranteed⁶. Second, research by Windi Arista with the title "Constitutional Rights of Indonesian Migrant Workers in Malaysia" The results of this study indicate that the constitutional rights of migrant workers in the 1945 Constitution after the amendment include: the right to work and a decent livelihood, every citizen has the right to work and a decent livelihood for humanity, the right to fight for rights, the right to legal certainty and justice, and the right to work and a decent livelihood, namely everyone has the right to work and receive fair and decent compensation and treatment in labor relations⁷. Third, research by Fadhli Junaidi with the title "Legal Protection of Domestic Workers Based on Constitutional Rights" the result of this research is the existence of legal protection for domestic workers that has been implemented in Indonesia, such as the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower, Civil Code, and Permenaker. It is hoped that there will be no more overlap between employers and domestic workers that is not based on constitutional rights⁸.

2. Methods

This writing uses empirical research (field research), namely finding legal truth in the form of behavior (*das sein*) and supported by the truth in legal rules (*das sollen*)⁹.

3. Results and Discussion

3.1. Outsourcing Labor Regulations in Indonesia Before the Enactment of Law No. 11/2020

Law No. 13/2003 was born in response to the 1997-1998 Asian economic crisis that triggered a surge in unemployment and economic instability in Indonesia. The crisis worsened labor market conditions and created an urgent need to improve labor regulations to protect workers while encouraging the labor market flexibility needed to attract investment. Therefore, this regulation is designed to create a balance between the protection of workers' rights and the need for a more flexible labor market. However, despite its good intentions, this law creates a dilemma. On the one hand, it provides basic protections such as minimum wage and social security. On the other hand, the flexibility allowed, especially through outsourcing and Fixed-Term Employment Agreements, is considered detrimental to workers.

In Law No. 13/2003, the scope of work that can be transferred to third parties or outsourced is limited to work that is supporting, such as security, cleaning, catering, transportation, and other services that are not directly related to the main production process. This is aimed at protecting the workforce and ensuring that the company's main work is performed by permanent workers who have a direct working relationship with the employer. However, Law No. 11/2020 significantly amended the provision by removing restrictions on the scope of work that can be transferred to third parties. Thus, all types of work, including work directly related to the main production process, can now be outsourced. This change provides greater flexibility for companies in managing their labor needs. Companies can more

⁶ Suandi and Sefa Martinesya, "Tanggung Jawab Pemerintah Terhadap Hak Konstitusional Tenaga Kerja Outsourcing," *Jurnal Cakrawala Ilmiah* 1, no. 4 (2021): 877-88.

⁷ Windi Arista, Joni Emirzon, and Mada Apriandi, "Hak-Hak Konstitusional Buruh Migran Indonesia Di Malaysia," *Lex Librum: Jurnal Ilmu Hukum* 6, no. 1 (2019): 107-18, <https://lexlibrum.id/index.php/lexlibrum/article/view/178>.

⁸ Fadhli Junaidi, "Perlindungan Hukum Pekerja Rumah Tangga Berbasis Hak Konstitusional," *Ekasakti Jurnal Penelitian & Pengabdian* 1, no. 1 (2020): 197-208, <https://doi.org/10.31933/ejpp.v1i1.228>.

⁹ Peter Mahmud Marzuki, *Metode Penelitian Hukum*, 2016.

easily adjust the number of workers according to production needs without being bound by long-term employment contracts. For example, in industries that are seasonal or face significant market fluctuations, this flexibility allows companies to reduce operational costs while ensuring production continuity.

The assignment of work is carried out based on an operational cooperation agreement between the employer company (principal) and the company receiving the work (outsourcing company).¹⁰ Outsourcing is the use of labor from a third party to complete certain work within the company. Outsourcing itself is an initiative usually undertaken by companies to cut their operational costs. As such, employees recruited from outsourcing must be able to do a variety of jobs, ranging from customer service, and manufacturing workers, to Office Administration. Outsourcing can be implemented through two forms of activities, namely work contracting and labor service providers¹⁰.

The outsourcing system was previously regulated in Article 64, article 65, and Article 66 of Law No. 13/2003, which states that a company can hand over part of the implementation of work to another company through a work contracting agreement or the provision of labor services made in writing. Law No. 13/2003 does not expressly regulate the criteria and limitations of supporting work in work contracting¹¹. Article 65 paragraph (2) of Law No. 13/2003 stipulates that the nature of work that can be handed over to a work contracting company is:

- 1) carried out separately from the main activity;
- 2) carried out with direct or indirect orders from the employer;
- 3) is a supporting activity for the company as a whole, and
- 4) 4) does not directly hamper the production process.

These requirements are cumulative requirements that must be fulfilled as a whole. Failure to fulfill one of the conditions results in the outsourced work not being handed over to another company. This results in discretion for the employer in handing over part of the implementation of the work to the company receiving the contracting in his company. If the company has determined the type of supporting work, then the company that provides the work only has to report and seek approval from the local Manpower Office. In the opinion of the author, a working relationship means a relationship between a worker/laborer and an employer that is based on the elements of an order, wages, and work. This describes the rights and obligations of the worker toward the employer and vice versa. In outsourcing, workers only have a working relationship with the company receiving the work (outsourcing company) and not with the company giving work (user company)¹². The provision in Article 65 paragraph (2) letter b of Law No. 13/2003 stipulating that work that can be outsourced to another company can be done by direct or indirect orders from the work-giver can give rise to criticism, namely, how it is possible for a company that has outsourced work to another person

¹⁰ Arista, Emirzon, and Apriandi, "Hak-Hak Konstitusional Buruh Migran Indonesia Di Malaysia."

¹¹ Ismail Koto and Ida Hanifah, "Aspek Hukum Pelaksanaan Pekerjaan Pokok Oleh Tenaga Kerja Outsourcing Di Indonesia," *Legalitas: Jurnal Hukum* 14, no. 2 (2023): 193, <https://doi.org/10.33087/legalitas.v14i2.333>.

¹² Akhmad Nazar Virgiawan, Dian May Syifa, and Ergina Faralita, "Kebaruan Hukum Ketenagakerjaan Setelah Lahir Undang-Undang Cipta Kerja," *Journal of International Multidisciplinary Research* 1, no. 2 (2023): 889-98, <https://journal.banjaresepacific.com/index.php/jimr/article/view/131>.

to still have the authority to give direct or indirect orders for work that has been outsourced to another company. Thus, according to the provisions in Article 65 paragraph (6) of Law No. 13/2003, the working relationship through a work contractor agreement is regulated in a written agreement between the company receiving the work contractor (outsourcing company) and the worker who is employed¹³.

One of the main issues highlighted in Law No. 13/2003 is the ambiguity in the definition of “supporting work” contained in Articles 65 and 66. This phrase provides space for companies to outsource work that is considered not directly related to the company's main activities. However, in the absence of clear criteria, many companies utilize this loophole to outsource core work that should be done by permanent workers. This creates legal uncertainty for workers and often puts them at a disadvantage. This ambiguity creates a particularly disadvantageous situation for outsourced workers, who are often in a vulnerable position to exploitation. Workers in the manufacturing sector, for example, are often outsourced even though their work is directly related to the main production process. The legal uncertainty associated with their status causes outsourced workers to lose their permanent status and face long-term job insecurity. In addition, many workers do not receive adequate social protection, such as health insurance and pensions, to which they are entitled. On the other hand, even though they do the same work as permanent workers, the wages received by outsourced workers are often lower.

Based on the Articles described by the author above, shows that the employment relationship is not between the worker and the company providing the work, but with the company receiving the work contract. The employment relationship can be transferred to the company that provides the work if there is a violation as mentioned in Article 65 paragraph (8) of Law No. 13/2003. If the provisions referred to in Article 65 paragraphs (2) and (3) of Law No. 13/2003 are not fulfilled, then by operation of law, the status of the employment relationship between the worker and the company receiving the work contract (outsourcing company) is changed to an employment relationship with the company providing the work. This means that:

- 1) if the work to be performed is not supporting work or work that may be outsourced; and
- 2) if the company hiring the work is not a legal entity, then the employment relationship between the worker and the company hiring the work will automatically change to an Indefinite Time Work Agreement (hereinafter referred to as PKWTT) with the company hiring the work. The employing company is obliged to recruit them as permanent employees. This provision is considered burdensome for the employer company.

The employment relationship between a worker and a contracting company may be based on a Fixed-Term Employment Agreement (hereinafter referred to as PKWT) if it meets the conditions set out in Article 59 of Law No. 13/2003. This provision indicates that the type of work at the company receiving the work contractor that is regulated under the PKWT must be temporary. Law No. 13/2003 does not regulate in detail the protection of the rights of

¹³ Budiyo, “Perlindungan Hukum Tenaga Kerja Kontrak Dan Outsourcing, Serta Problematika Implementasinya.”

workers who are employed. The protection of workers is regulated in Article 65 paragraph (4) of Law No. 13/2003 that the protection of the work and working conditions of outsourced workers must be the same as the protection of the work and working conditions in the company that gives the work or in accordance with the applicable laws and regulations.

Therefore, in the opinion of the author, there is a lack of clarity in the regulation of outsourcing that gives rise to multiple interpretations that are prone to have an impact on the disharmony of working relationships between workers and companies in the outsourcing system. The vagueness of the regulation in question is related to the legal certainty of the working relationship that exists in Law No. 13/2003, namely that it can be with PKWT and/or PKWTT working relationships, as stipulated in Article 65 paragraphs (6) and (7) and Article 66 paragraph (2) letters (b and d) jo Article 59 in Law No. 13/2003. Based on these provisions, the working relationship that occurs in an outsourcing agreement is between the outsourced worker or laborer and the outsourcing company (the recipient of the work). If some requirements specified in the law are not met, then by operation of law, the status of the working relationship between the worker or laborer and the company providing the worker or laborer's services (the outsourcing company) switches to a working relationship between the worker or laborer and the employer company. The practice in outsourcing work agreements tends to be to use PKWT/contracts so that it is easy for the company to lay off workers if the company no longer needs them. An indication of the weak regulation of legal protection for workers with the outsourcing system is the many irregularities and violations that occur and harm workers. Over time, the practice of outsourcing has become incompatible with the prevailing laws and regulations, especially in the field of wages and discrimination in the treatment of permanent workers and outsourced workers¹⁴.

Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 220/2004 (hereinafter referred to as Kepmenakertrans No. 20/2004) regulates the protection of the rights of outsourced workers on the condition that the terms of employment agreed in the work agreement should not be lower than the provisions in the prevailing laws and regulations. Article 5 of Kepmenakertrans No. 20/2004 stipulates that every work outsourcing agreement must guarantee the fulfillment of the rights of workers/laborers in employment relationships as stipulated in legislation¹⁵. Therefore, the Kepermenkertrans was issued to ensure that the rights of outsourced workers are equal to those of permanent workers. This regulation stipulates that outsourcing companies must be officially licensed and ensures that outsourced workers receive appropriate protection under the law, including ensuring that their wages and working conditions cannot be lower than those of permanent workers in the employing company. However, while these regulations are designed to protect outsourced workers, their implementation often falls short of expectations. Many outsourcing companies ignore their obligations, especially in relation to equal pay and social security. Outsourced workers in the service sector, for example, often receive lower wages even though

¹⁴ Suandi and Martinesya, "Tanggung Jawab Pemerintah Terhadap Hak Konstitusional Tenaga Kerja Outsourcing."

¹⁵ Osgar Sahim Matompo and Wafda Izziyana, "Perlindungan Hukum Bagi Pekerja Migran Perempuan Indonesia Non Prosedural Di Saudi Arabia Berdasarkan Hak Konstitusional Warga Negara," *Egalita Jurnal Kesetaraan Dan Keadilan Gender* 17, no. 2 (2022): 44-53, <https://doi.org/10.18860/egalita.v17i2.18282>.

they do the same work as permanent workers. In addition, social security such as BPJS Kesehatan and BPJS Ketenagakerjaan are also often not provided in full to outsourced workers.

Non-compliance with Kepermenkertrans No. 220/2004 has a serious impact on the welfare of outsourced workers. One of the most striking impacts is wage discrimination, where outsourced workers often receive lower wages despite doing the same work as permanent workers. In addition, many outsourced workers do not have full access to health benefits or pension funds, to which they are entitled. The uncertainty of employment status that outsourced workers face also adds to their burden, as their short-term contracts make them vulnerable to losing their jobs without adequate compensation. A major weakness in the implementation of Kepermenkertrans No. 220/2004 is the lack of government supervision of its implementation. To address this problem, several steps need to be taken. The government should increase supervision of outsourcing companies to ensure that they comply with existing regulations. In addition, stricter sanctions need to be applied to companies that violate the regulation. Revisions to regulations are also needed to close existing legal loopholes and provide better protection for outsourced workers so that they are not constantly in a vulnerable position and exploited by companies.

3.2. Outsourcing Labor Arrangements in Indonesia After the Enactment of Law No 11/2020

The flexibility stipulated in Law No. 11/2020 regarding outsourcing has made it easier for companies to expand the use of contract labor. However, this policy brings significant social impacts, especially in creating instability in the world of work and economic uncertainty for workers. The increased use of outsourcing often leaves workers trapped in a cycle of short-term contracts with no guarantee of job security. In addition, wage discrimination between outsourced workers and permanent workers, even though they perform similar work, exacerbates social inequality and lowers workers' welfare. The flexibility provided by Law No. 11/2020 in the outsourcing system has the potential to create instability in the world of work. With the widespread use of outsourcing, workers may face greater job insecurity, as short-term contracts become more common. This uncertainty can contribute to economic instability for workers, who lack long-term job security and face more frequent threats of termination. In addition, expanded outsourcing policies can also create social injustice, as outsourced workers often receive lower wages than permanent workers for the same work. They are also often denied equal social security, such as BPJS Kesehatan and BPJS Ketenagakerjaan. These problems can exacerbate social inequality and widen the gap between permanent and outsourced workers, which in turn can add to tensions in industrial relations.

The legal basis for the removal of restrictions on work that can be outsourced is contained in Law No. 11/2020. This change was made to increase labor market flexibility and make it easier for companies to manage their human resources. However, the removal of these restrictions has the potential to threaten basic labor principles that have long been regulated in Indonesian law, such as the protection of workers' rights, workers' welfare, and the guarantee of decent work. Law No. 11/2020 provides greater space for the use of outsourcing, which potentially contradicts the basic principles of labor, as stated in the 1945 Constitution and international regulations that have been ratified by Indonesia. One of the basic principles

of labor that is under threat is the right to decent work, which includes the right to fair wages, safe working conditions, and adequate social security.

After the enactment of Law No. 11/2020, which amended some of the provisions regarding outsourcing in Law No. 13/2003, especially Article 64, Article 65, and Article 66. In Article 66 of Law No. 11/2020, there are no longer any restrictions on the types of work that are prohibited from being performed by workers under the outsourcing system. This change in the regulation of the outsourcing system opens up the possibility for Worker Service Provider companies to employ workers for various tasks that are not regulated in Law No. 11/2020. Article 65 paragraph (2) of Law No. 13/2003 previously stipulated that work that can be outsourced to another company must fulfill the conditions of being carried out separately from the main activity; being carried out with direct or indirect orders from the job provider; being a support activity for the company as a whole; and not directly hampering the production process¹⁶. This provision also allows for no time limit for outsourced workers and can even be for life. This provision can, of course, allow companies to employ outsourced workers in all lines of work. This will have an impact on the free use of outsourced labor if there are no derivative rules or regulations from Law No. 11/2020. Outsourced labor can also be used to carry out basic activities or activities related to the production process, which means that in all types of work, Worker Service Provider (PJP) companies can be used. Protection for workers with an outsourcing system, in Law No. 11/2020 the protection of rights for outsourced workers still exists which is regulated in Article 66 paragraph (5) of Law No. 11/2020 which is related to wages and welfare, working conditions and disputes that arise are the responsibility of the outsourcing company (Worker Service Provider Company). In Law No. 11/2020 the relationship that exists between outsourcing companies and workers/laborers is based on PKWT or PKWTT. Meanwhile, if we look at the provisions regarding PKWT in Law No. 11/2020, they are regulated in Article 56, which states:

- 1) Work agreements are made for a certain period or an indefinite period.
- 2) Specified Time Work Agreements are based on the time or the completion of a certain job.
- 3) The time or the completion of a certain job as referred to in paragraph (2) is determined based on the agreement of the parties.
- 4) Further provisions regarding specified time work agreements based on a time or the completion of a job are regulated by the Government¹⁷.

Based on the provisions in Article 56 of Law No. 11/2020, outsourcing in its implementation is based on a certain time or the completion of certain promised work. In the case of outsourced work, the period for the performance of the work is not limited by time and becomes an agreement between the parties. In particular, outsourcing that is based on PKWT is regulated in the provisions of Article 57 of Law No. 11/2020 which states:

¹⁶ I Dewa Gede Oka Nuryawan, "Rekonstruksi Perjanjian Kerja Bersama Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Analisis Hukum* 1, no. 2 (2020): 255, <https://doi.org/10.38043/jah.v1i2.415>.

¹⁷ Kedudukan D A N Fungsi, "Kedudukan Dan Fungsi Perjanjian Kerja Bersama Dalam Pelaksanaan Hubungan Industrial Berdasarkan Undang-Undang Nomor 13 Tahun 2003," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2014): 111-21, <https://doi.org/10.35968/jh.v7i1.126>.

- 1) A work agreement for a specified time shall be made in writing and shall use the Indonesian language and Latin characters.
- 2) If a work agreement for a specified time is made in Indonesian and a foreign language, if there is a difference in interpretation between the two, the work agreement for a specified time made in the Indonesian language shall prevail.

Still related to the provisions in PKWT, Article 58 of Law No. 11/2020 states: a. A work agreement for a certain time cannot require a probationary period. b. If a probationary period is required as stated in Article 58 of Law No. 11/2020. If a probationary period is required as referred to in paragraph (1), the required probationary period shall be null and void and the period of employment shall continue to be calculated¹⁸. The changes in labor regulations reflected in Law No. 11/2020 have significant positive and negative impacts on the dynamics of industrial relations and workers' rights in Indonesia. On the one hand, these changes are intended to increase labor market flexibility and encourage job creation. However, on the other hand, these changes have raised concerns regarding the protection of workers' rights, particularly about the use of outsourcing systems and employment contracts.

The positive impact of these regulatory changes, especially about outsourcing systems, is the increased flexibility for companies to manage their workforce according to dynamic business needs. Companies can more easily adjust the number of workers to fluctuations in demand, which can help reduce operational costs and improve competitiveness. In addition, Law No. 11/2020 is expected to attract more investment, create new jobs, and reduce unemployment. However, the negative impact is more pronounced on the worker protection side. Changes that expand the scope of work that can be outsourced, without clear restrictions, have the potential to worsen job insecurity for workers. Outsourced workers who are involved in the core work of the company often do not receive the same protection as permanent workers, whether in terms of wages, social security, or long-term job security. This exacerbates inequality in the world of work and increases economic uncertainty for workers.

Law No. 11/2020 expands the scope of work that can be outsourced, changing the dynamics of industrial relations in Indonesia. Under Law No. 11/2020, many jobs that were previously considered permanent jobs can now be outsourced to outsourcing companies. This makes workers engaged in the core work of the company more vulnerable to exploitation. Outsourced workers often face uncertainty over their employment status, lose the rights of permanent workers such as social security, and receive lower wages even though the work performed is the same as that of permanent workers. The dynamics of industrial relations, which previously favored permanent employment relationships, are now increasingly shifting toward the use of contract labor or outsourcing, which is more flexible. While this flexibility is expected to boost economic growth, its impact on workers' rights and fair industrial relations is significant. Companies have an incentive to outsource more work to reduce costs and improve efficiency, while workers lose their basic rights that should be protected by labor laws.

¹⁸ Surya Nita and Joko Susilo, "Peranan Serikat Pekerja Dalam Membentuk Perjanjian Kerja Bersama Sebagai Hubungan Kerja Ideal Bagi Pekerja Dengan Pengusaha," *De'Rechtsstaat* 6, no. 2 (2020): 143-52, <https://doi.org/10.30997/jhd.v6i2.2819>.

Based on the provision in PKWT that cannot require a probationary period. The fundamental difference between a Fixed-Term Employment Agreement (PKWT) and an Indefinite-Term Employment Agreement (PKWTT) lies in the status of workers and the rights they enjoy. Workers on fixed-term contracts have time-limited contracts, and they have no guarantee of long-term employment. Meanwhile, workers on non-permanent contracts have a more stable status, with the right to continuous employment and better protection in terms of social security, wages, and working conditions. Law No. 11/2020 provides more room for the use of PKWT, which allows companies to more easily avoid the obligation to provide permanent employment. This wider use of non-permanent contracts potentially contradicts the principles of labor protection stipulated in the constitution and international regulations ratified by Indonesia, such as the ILO Convention on the Right to Decent Work and Protection of Workers. The increased use of non-permanent contracts has the potential to exacerbate job insecurity for workers and reduce their access to basic rights that they should receive as permanent workers. Overall, while Law No. 11/2020 is intended to increase flexibility and encourage investment, there needs to be greater attention to the protection of workers' rights, especially in relation to the use of outsourcing and non-permanent contracts, so as not to disadvantage workers and add uncertainty to the world of work.

It is the opinion of the author that in outsourcing agreements there is no requirement for a probationary period in carrying out work. If there is an outsourcing company that requires a trial period of work for outsourced workers, then the trial period of work is declared null and void and the work period is still counted. The existing provisions in Law No. 11/2020 still provide for the regulation of outsourcing. The existing provisions open up great opportunities for the practice of outsourcing work relations. Outsourced work relationships are not limited in time and are not limited in the type of work that can be outsourced. The practice of outsourcing work is more profitable for the company because the working relationship is limited to a contract, and the wages earned are also lower. The implementation of the outsourcing system is considered to be widely practiced in order to reduce the cost of workers' wages with minimal protection for workers. Moreover, the issuance of Law No. 11/2020 has further legalized the existence of outsourcing and the types of work that are not restricted¹⁹. Further provisions governing outsourcing are regulated in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (hereinafter referred to as PP No. 35/2021). PP No. 35/2021 stipulates that the working relationship between outsourcing companies and employed workers/laborers is based on PKWT or PKWTT.

3.3. Legal Protection for Outsourced Workers at PT. MBS (Mie Gacoan)

Changes in Indonesia's labor regulations, particularly in relation to outsourcing, underwent a significant transformation with the enactment of Law No. 11/2020 which amended the provisions in Law No. 13/2003. Previously, Law No. 13/2003 placed strict restrictions on the work that could be outsourced, allowing only supporting work that was not

¹⁹ Wiwin Budi Pratiwi and Devi Andani, "Perlindungan Hukum Tenaga Kerja Dengan Sistem Outsourcing Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 29, no. 3 (2022): 652-73, <https://doi.org/10.20885/iustum.vol29.iss3.art9>.

directly related to the company's main activities. This was intended to protect workers from being exploited in the company's core work. However, the unclear definition of "supporting work" in Law No. 13/2003 opens a legal loophole, allowing companies to outsource work that should be permanent jobs. In practice, this often results in outsourced workers involved in core work not receiving the same protection as permanent workers, such as lower wages, lack of social security, and uncertainty over employment status.

Law No. 11/2020, as part of efforts to create labor market flexibility, removed such restrictions and expanded the scope of work that can be outsourced, including work directly related to the company's main activities. This change provides more flexibility for companies to manage their workforce according to their business needs, but it also creates greater potential legal loopholes. Without clear restrictions, companies can more easily outsource core work, which risks harming workers. Outsourced workers engaged in the company's core work are now more vulnerable to job insecurity, lower wages, and the loss of permanent workers' rights, such as social security and long-term job security. PP No. 35/2021, which was issued as an implementing regulation of Law No. 11/2020, aims to provide better protection for outsourced workers. This regulation stipulates that outsourced workers must receive the same rights as permanent workers, including in terms of wages and social security. However, despite this regulation, its implementation is still weak in the field. Many outsourcing companies do not comply with their obligations, such as providing equal wages or adequate social security, which in turn exacerbates uncertainty and injustice for outsourced workers. Potential legal loopholes arising from these regulatory changes, such as the lack of clarity in determining the types of work that can be outsourced and weak supervision of the implementation of the regulations, have led to workers being further marginalized in working relationships that are unfavorable to them. With the changes introduced by Law No. 11/2020, outsourced workers are now facing a worse situation than before, where they not only have to deal with irregular employment status but also with the lack of protection they receive. Despite efforts to improve protection through PP No. 35/2021, existing legal loopholes and less stringent supervision remain a major challenge in ensuring that the rights of outsourced workers are well protected. Therefore, a revision of stricter regulations and more intensive supervision are needed so that outsourced workers can receive protection equal to that of permanent workers, as well as to reduce the potential for exploitation that occurs due to legal uncertainty and weaknesses in the implementation of regulations.

The implementation of the outsourcing system is considered to be widely practiced because it reduces the cost of workers' wages with minimal protection for workers. Moreover, Law No.11/2020 further legalizes the existence of outsourcing and the types of work that are not restricted. Further provisions governing outsourcing are stipulated in Government Regulation No. 35/2021, which stipulates that the working relationship between outsourcing companies and the workers/laborers employed is based on PKWT or PKWTT. The practice of outsourcing is not in accordance with the prevailing laws and regulations, for example at PT. MBS (Mie Gacoan) in relation to the protection of wages, welfare, labor social security, occupational safety and health protection, which is not fulfilled by the employer, so that this is very contrary to the law and the responsibility of the state to be able to guarantee that workers obtain their basic rights in accordance with the provisions in Article 27 paragraph (2)

of the 1945 Constitution to protect every citizen in the right to work and a livelihood worthy of humanity and Article 28 D (2) UUD NRI 1945 which provides legal protection to every person to work and obtain compensation and fair and decent treatment in employment relations²⁰. As a sociological fact, outsourced workers at PT MBS in relation to the protection of wages, welfare, labor social security, occupational safety, and health protection are not fulfilled by the employer so it is very contrary to the law and the responsibility of the state to be able to guarantee workers to obtain their basic rights in accordance with the provisions in Article 27 paragraph (2) Article 28 D paragraph (2) of UUD NRI 1945. Therefore, there is a need for a more specific regulation governing outsourcing as a whole, both for companies that provide outsourcing services, companies that use outsourcing services, and outsourced workers themselves. This is because Law No. 13/2003 and Law No. 11/2021 do not regulate outsourcing much. There are also no provisions for sanctions regarding outsourcing²¹. So that it sometimes makes it difficult to prosecute if there are violations committed, and there must be supervision of outsourcing service companies that is tightened so that outsourced workers are better protected. Legal protection for workers with outsourcing systems is important to realize considering that the practice of outsourcing still exists in the field of labor in Indonesia²². It is important that there be a special law governing outsourcing systems that clearly regulates legal protection for workers followed by implementing regulations that clearly regulate the rights and obligations of workers, service-providing companies, and service-giving companies as well as sanctions that can be implemented.

Critics of the outsourcing system introduced by Law No. 11/2020 point out some weaknesses, such as wage discrimination, lack of social security, and job instability. However, to make the analysis more constructive, it is necessary to include concrete solutions that can improve this situation. One of the main steps is to improve regulation, for example by establishing rules that prohibit wage discrimination between outsourced workers and permanent workers for similar jobs. This regulation can ensure equality of income while reducing social inequality in the workplace. In addition, stricter government supervision of outsourcing companies needs to be improved. The government could adopt a periodic audit system to ensure that companies comply with labor regulations, including the provision of social security and fair treatment for workers. The government can also apply strict sanctions for companies that violate the rules. On the other hand, additional protection for outsourced workers can be realized through the obligation of companies to provide full access to social security programs such as health insurance, pensions, and termination compensation. This combination of solutions can create a balance between company flexibility and worker protection, making outsourcing policies more inclusive and fair.

4. Conclusions

Workers who carry out work in outsourcing companies should not lose their rights, which are protected by the Constitution. Such guarantees and protection cannot be implemented properly only through binding work agreements between companies and

²⁰ Nursalim and Suryono, "Perlindungan Hukum Tenaga Kerja Pada Perjanjian Kerja Outsourcing."

²¹ Nuryawan, "Rekonstruksi Perjanjian Kerja Bersama Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan."

²² Nursalim and Suryono, "Perlindungan Hukum Tenaga Kerja Pada Perjanjian Kerja Outsourcing."

workers because workers are in a weak bargaining position as a result of the large number of job seekers or oversupply of labor. The implementation of the outsourcing system is considered to be widely practiced in order to reduce the cost of workers' wages with minimal protection for workers. Moreover, Law No.11/2020 further legalizes the existence of outsourcing and the types of work that are not restricted. Further provisions governing outsourcing are stipulated in Government Regulation No. 35/2021, which stipulates that the working relationship between outsourcing companies and the workers/laborers employed is based on PKWT or PKWTT. The practice of outsourcing is not in accordance with the prevailing laws and regulations, for example at PT MBS (Mie Gacoan) in relation to the protection of wages, welfare, labor social security, occupational safety and health protection, which is not fulfilled by the employer, so that it is very contrary to the law and the responsibility of the state to be able to guarantee that workers obtain their rights.

5. References

- Arista, Windi, Joni Emirzon, and Mada Apriandi. "Hak-Hak Konstitusional Buruh Migran Indonesia Di Malaysia." *Lex Librum: Jurnal Ilmu Hukum* 6, no. 1 (2019): 107-18. <https://lexlibrum.id/index.php/lexlibrum/article/view/178>.
- Budiyono, Tri. "Perlindungan Hukum Tenaga Kerja Kontrak Dan Outsourcing, Serta Problematika Implementasinya." *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 2 (2021): 145-60. <https://doi.org/10.24246/jrh.2021.v5.i2.p145-160>.
- Darmawan, Anri. "Pengaturan Hukum Terhadap Pekerja Outsourcing Ditinjau Dari Undang-Undang Ketenagakerjaan Dan Undang-Undang Cipta Kerja." *Varia Hukum* 3, no. 2 (2021): 12-25. <https://doi.org/10.15575/vh.v3i2.12607>.
- Fungsi, Kedudukan D A N. "Kedudukan Dan Fungsi Perjanjian Kerja Bersama Dalam Pelaksanaan Hubungan Industrial Berdasarkan Undang-Undang Nomor 13 Tahun 2003." *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2014): 111-21. <https://doi.org/10.35968/jh.v7i1.126>.
- Iswaningsih, May Linda, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti. "Perlindungan Hukum Terhadap Tenaga Kerja Lokal Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Omnibus Law Cipta Kerja." *Jurnal Preferensi Hukum* 2, no. 3 (2021): 478-84. <https://doi.org/10.22225/jph.2.3.3986.478-484>.
- Junaidi, Fadhli. "Perlindungan Hukum Pekerja Rumah Tangga Berbasis Hak Konstitusional." *Ekasakti Jurnal Penelitian & Pengabdian* 1, no. 1 (2020): 197-208. <https://doi.org/10.31933/ejpp.v1i1.228>.
- Koto, Ismail, and Ida Hanifah. "Aspek Hukum Pelaksanaan Pekerjaan Pokok Oleh Tenaga Kerja Outsourcing Di Indonesia." *Legalitas: Jurnal Hukum* 14, no. 2 (2023): 193. <https://doi.org/10.33087/legalitas.v14i2.333>.
- Machfiroh, Inas Ainun, Benny K. Heriawanto, and Isdiyana Kusuma Ayu. "Perlindungan Hukum Tenaga Kerja Outsourcing Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan dan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja." *DINAMIKA* 27, no. 17 (2021): 2447-61. <http://dx.doi.org/10.1038/s41421-020-0164-0><https://doi.org/10.1016/j.solener.2019.02.027><https://www.golder.com/insights/block-caving-a-viable-alternative/><http://dx.doi.org/10.1038/s41467-020-15507-2><http://dx.doi.org/10.1038/s41587-020-05>.
- Matompo, Osgar Sahim, and Wafda Izziyana. "Perlindungan Hukum Bagi Pekerja Migran Perempuan Indonesia Non Prosedural Di Saudi Arabia Berdasarkan Hak Konstitusional Warga Negara." *Egalita Jurnal Kesetaraan Dan Keadilan Gender* 17, no. 2 (2022): 44-53. <https://doi.org/10.18860/egalita.v17i2.18282>.

- Nita, Surya, and Joko Susilo. "Peranan Serikat Pekerja Dalam Membentuk Perjanjian Kerja Bersama Sebagai Hubungan Kerja Ideal Bagi Pekerja Dengan Pengusaha." *De'Rechtsstaat* 6, no. 2 (2020): 143–52. <https://doi.org/10.30997/jhd.v6i2.2819>.
- Nursalim, Chairunnisa Ramadhani Putri, and Leli Joko Suryono. "Perlindungan Hukum Tenaga Kerja Pada Perjanjian Kerja Outsourcing." *Media of Law and Sharia* 2, no. 1 (2021): 47–62. <https://doi.org/10.18196/mls.v2i1.11478>.
- Nuryawan, I Dewa Gede Oka. "Rekonstruksi Perjanjian Kerja Bersama Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan." *Jurnal Analisis Hukum* 1, no. 2 (2020): 255. <https://doi.org/10.38043/jah.v1i2.415>.
- Peter Mahmud Marzuki. *Metode Penelitian Hukum*, 2016.
- Pratiwi, Wiwin Budi, and Devi Andani. "Perlindungan Hukum Tenaga Kerja Dengan Sistem Outsourcing Di Indonesia." *Jurnal Hukum Ius Quia Iustum* 29, no. 3 (2022): 652–73. <https://doi.org/10.20885/iustum.vol29.iss3.art9>.
- Suandi, and Sefa Martinesya. "Tanggung Jawab Pemerintah Terhadap Hak Konstitusional Tenaga Kerja Outsourcing." *Jurnal Cakrawala Ilmiah* 1, no. 4 (2021): 877–88.
- Virgiawan, Akhmad Nazar, Dian May Syifa, and Ergina Faralita. "Kebaruan Hukum Ketenagakerjaan Setelah Lahir Undang-Undang Cipta Kerja." *Journal of International Multidisciplinary Research* 1, no. 2 (2023): 889–98. <https://journal.banjaresepacific.com/index.php/jimr/article/view/131>.