

ABSTRACT

Aspects of Protecting the Employment Relationship Status of Outsource workers before and after the enactment of Law Number 11 of 2020 concerning Job Creation

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Abstract. The practice of the outsourcing system in Indonesia has developed since the early 2000s and is believed to be able to overcome labor problems. The practice of outsourcing is in great demand by corporate businesses because it can increase the company's production efficiency to reduce worker costs. The purpose of this study was to determine the aspect of protecting the employment relationship status of Outsourced workers before (according to Law Number 13 of 2003) and after the enactment of Law Number 11 of 2020 concerning Job Creation. In Indonesia, the government legalized the practice of outsourcing system because it can be an alternative to absorb labor and support a better economic system. In fact, after the enactment of Law Number 11 of 2020, this outsourcing system is felt to only benefit the company and harm the workers. This research is a legal research conducted with qualitative data analysis method logical normative based on logic and syllogism legislation (drawing conclusions that already exist) and fact in the field. The benefit of this research is as a recommendation from the formulation of laws and regulations in Indonesia.

Keywords: *Outsource Worker, Employment Relationship Status, Law Number 11 of 2020.*

INTRODUCTION

The purpose of this study is analyze the the aspect of protecting the employment relationship status of Outsourced workers before (according to Law Number 13 of 2003) and after the enactment of Law Number 11 of 2020 concerning Job Creation. This study is a legal research conducted with qualitative data analysis method normative logic based on logic and syllogism legislation (drawing existing conclusions) which is called the Normative Legal Research Method from the point of view of the The Labour and Transmigration Office of East Java Province.

1. Indonesian Labour Structure

Based on the results of a survey by the Central Statistics Agency (BPS) in August 2021, the number of the workforce in Indonesia is 140.15 million people, of which 131.05 million are working residents and 9.10 million people are unemployed.²¹⁵ We can see the description on Figure 1.).

²¹⁵ Badan Pusat Statistik, *Berita Resmi Statistik 05 November 2021*, h. 2., <https://www.bps.go.id/pressrelease/2021/11/05/1816/agustus-2021--tingkat-pengangguran-terbuka--tpt--sebesar-6-49-persen.html>, diakses pada 24 Juli 2022.

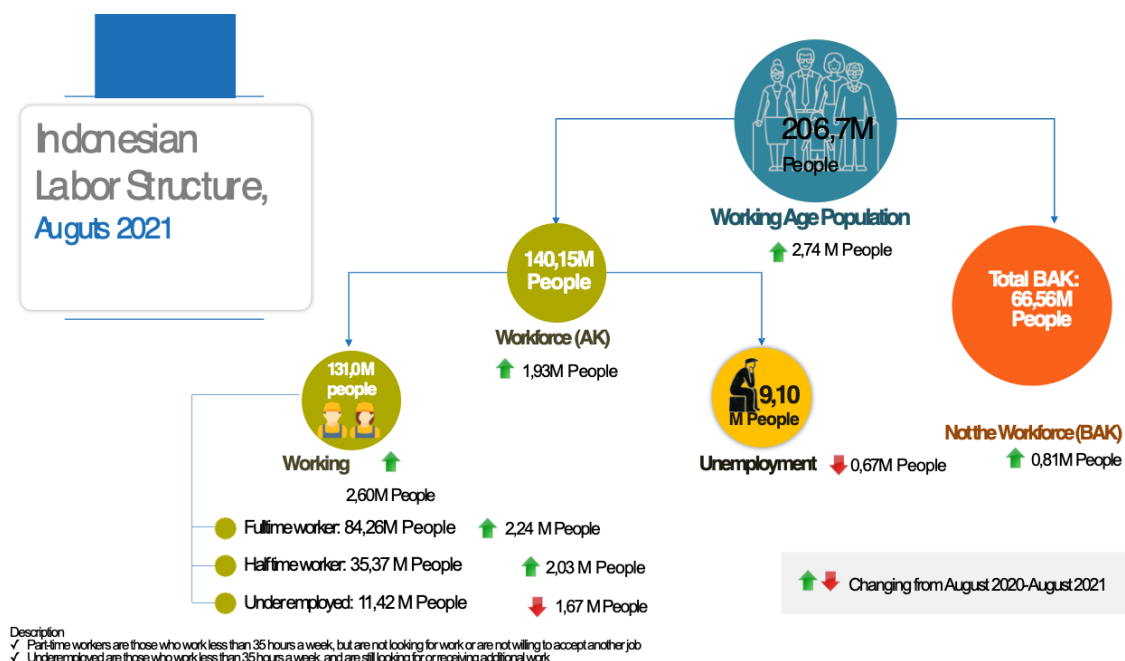


Figure 1. Indonesian Labour Structure

Unemployment that occurs in Indonesia tends to be due to the significant lack of absorption of human resources in the labor market and the large number of people of working age who lack work skills. Unemployment occurs other than because the acceleration of economic growth does not pay attention to quality aspects, namely the existence of efficiency, sustainability, and pro employment opportunities.²¹⁶

There are two factors that can overcome and open the labor market in Indonesia, First, there is investment made by investors. The relationship between investment and labor is very close, because investment is one of the drivers of economic growth and the impact of this investment is the absorption of labor. One form of linkage is seen in the stipulation of provisions regarding employment, especially regarding Indonesian workers in the regulations regarding investment. In Article 10 paragraph (3) of Law no. 25 of 2007 concerning Investment states that, "Investment companies are required to improve the competence of Indonesian citizens through job training . in accordance with the provisions of the legislation."

Second, the government's labor market improvement program, one of which is outlined in the National Medium-Term Development Plan (RPJMN). In the 2020-2024 RPJMN, one of the policy directions in the context of assessing economic value added in 2020-2024 is regarding increasing labor productivity and creating job opportunities. By pouring out the manpower sector in the RPJMN, it will optimize the absorption of labor.

2. Outsource Worker

Various efforts have been made by the government to overcome the problem of unemployment, one of which is the practice of outsourcing systems. Through outsourcing, the company only thinks about how to do business, while the procurement of outsourcing

²¹⁶ Ike Farida, *Perjanjian Perburuhan: Perjanjian Kerja Waktu Tertentu dan Outsourcing*, Sinar Grafika, Jakarta, 2019, h. 21.

services is left to other parties. In Law Number 13 of 2003 concerning Manpower, Outsourcing work is limited to work outside the main activity or not related to the production process except for supporting activities. Meanwhile, in Law Number 11 of 2020 concerning Job Creation, there are no further restrictions on what jobs are prohibited from being carried out by Outsourced workers. This regulatory change is considered to expand the scope of work for outsourcing and the loss of guarantees and certainty of permanent employment. All types of work can use outsourcing or outsourcing workers, including jobs that are directly related to the production process.²¹⁷

Several studies on outsourcing issues have often been raised by other references which emphasize three things: First, the implementation of outsourcing in Indonesia does not provide adequate protection for workers;(Budyono, 2021)²¹⁸; and (Kartika, 2021)²¹⁹. Second, regarding the elimination of restrictions on the types of work that can be outsourced (Terjomurti & Sukarmi, 2020)²²⁰; (UNPAD, 2020)²²¹. Third, the expansion of outsourcing work practices does not prove that the welfare of workers is getting better as research conducted by (Juliawan, 2010)²²²; (Tjandraningsih, 2013)²²³; and (Indrasari Tjandraningsih et al., 2010)²²⁴ can also be used as reference material.

A study by (Mitchel & James, 2017) in the UK also on outsourcing resulted in outsourcing can be a difficult transition to go through, with the potential for harm to terms and conditions of work during the outsourcing process.²²⁵

At the field level, many outsourcing problems occur due to unclear protection of the status of outsourced employees. In 2021, there were 22 cases of outsourcing which were reported to the Manpower and Transmigration Office of East Java Province.²²⁶

From the problems above, a common thread can be drawn that these problems affect the protection of relationship status which is caused protection of workers' welfare. The author tries to analyze : How about the aspect protecting relationship status before and after issuance of the Job Creation Act ?

²¹⁷ Alnick Nathan dan Sunardi, *Gonjang Ganjing Omnibus Law Cipta Kerja*, Insight, Vol.19, No.9 (2020), 1–38

²¹⁸ Tri Budyono, *Perlindungan Hukum Tenaga Kerja Kontrak dan Outsourcing, Serta Problematika Implementasinya*, Jurnal Ilmu Hukum, Vol.5, No.2 (2021), p.145–60.

²¹⁹ Rini Kartika, *The Omnibus Law Employment Copyright's Affected Legal Certainty on The Status of Outsourcing Workers*, ICILS 2020 Proceedings of the 3rd International Conference on Indonesia Legal Studies, Semarang, 1 Juli 2020.

²²⁰ Kukuh Terjomurti dan Sukarmi Sukarmi, *The Critical Study of the Omnibus Bill on Job Creation Based on John Rawls View on Justice*, Legal Studies, Law and Justice, Vol.6, No.2 (2020), p.187–204.

²²¹ BEM KEMA UNPAD, *Catatan Kritis Omnibus Law Membedah RUU Cipta Kerja*, Departemen Kajian Strategis BEM Kema Unpad 2020 Kabinet Eksplorasi Makna, Bandung, 202

²²² Benny Hari Juliawan, *Extracting Labor from Its Owner: Private Employment Agencies and Labor Market Flexibility in Indonesia*, Critical Asian Studies, Vol.42, No.1 (2010), p.25–52, <https://doi.org/10.1080/14672710903537464>.

²²³ Indrasari Tjandraningsih, *State-Sponsored Precarious Work in Indonesia*, American Behavioral Scientist, Vol.57, No.4 (2013), p.403–19.

²²⁴ Indrasari Tjandraningsih, Rina Herawati dan Suhadmadi, *Diskriminatif dan Eksploitatif Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia*, Penerbit AKATIGA-FSPMI-FES, Bandung dan Jakarta, 2010.

²²⁵ Mitchell, I. and James, P. (forthcoming) *Outsourcing transitions and the employment relationship implications*. Human Resource Management Journal., 2017

²²⁶ Dinas Tenaga Kerja dan Transmigrasi Provinsi Jawa Timur : <http://siap.disnakertrans.jatimprov.go.id/>

LITERATURE REVIEW

1. Outsourcing in Law Number 13 of 2003 concerning Manpower and its implementing regulations

Outsourcing arrangements in Law Number 13 of 2003 concerning Manpower are contained in Articles 64, 65, and 66 where outsourcing is divided into two outsourcing models, namely Job Chartering and Employment Service Provider Companies (PPJP) and Article 64 states "Companies may submit part of the execution of the work to other companies through a written contract of work or the provision of worker services." Furthermore, Article 65 paragraph (1) states that the submission of part of the implementation of the work must be made in writing. Work that can be submitted to another company must meet the requirements as stated in paragraph (2), namely a. Done separately from the main activity, b. Done by direct or indirect order from the employer, c. It is a supporting activity for the company as a whole; and d. Does not hinder the production process directly.

Article 65 paragraph (3) requires that the other company referred to must be a legal entity. Whereas in article (4) it is also required for employers to provide work protection where the work agreement uses a certain time or an indefinite time with reference to Article 59 of the Manpower Act. Whereas in Article 66 it is stated that "Workers from companies providing worker services may not be used by employers to carry out main activities or activities directly related to the production process, except for supporting service activities or activities not directly related to the production process.

Article 66 paragraph (3) states that a worker/labor service provider is a form of business that is a legal entity and has a permit from the agency responsible for manpower affairs. Then the phrase is given if it is not in accordance with the provisions of Article 66 paragraphs (1), (2) and (3) then by law the status of the employment relationship between the worker and the company providing the worker's services will change to a working relationship between the employee and the company providing the job.

In 2011, triggered by public dissatisfaction with the article, the Non-Governmental Organization of the Alliance of Indonesian Electric Meter Readers (AP2ML) proposed a judicial review of the Manpower Act, especially Article 59 and Article 64 which were deemed to contradict Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution. This was followed by the issuance of the Constitutional Court Decision Number 27/PUU-IX/2011 in 2011. The Constitutional Court (MK) has partially granted a judicial review of Law Number 13 of 2003 about Employment. The following is the contents of the Constitutional Court Decision Number 27/PUU-IX/2011.²²⁷

The Panel of Judges in their decision is of the opinion that there are two models that can be implemented to protect and guarantee the rights of workers. First, it requires that the work agreement be in the form of a PWKTT. Second, the application of the principle of Transfer of Undertaking Protection of Employment (hereinafter referred to as TUPE) or the principle of transfer for companies that implement outsourcing system practices.

To provide technical clarity to Article 65 and Article 66 of Law Number 13 of 2003 concerning Manpower, the Minister of Manpower and Transmigration Regulation Number 19 of 2012 concerning Conditions for Submission of Partial Work Implementation to Other Companies was issued which was also a follow-up demonstration. and a national strike

²²⁷ Putusan Mahkamah Konstitusi Nomor Nomor 27/PUU-IX/2011.

carried out by workers demanding the abolition of outsourcing as well as a follow-up to the decision of the Constitutional Court Number 27/PUU-XI/2011.

In 2014 a judicial review was carried out at the Constitutional Court on the basis of the submission of M. Komarudin, et al. Article 65 paragraph (8) and Article 66 paragraph (4) of Law Number 13 of 2003 concerning Manpower where there is a phrase for the sake of law on condition that it has been carried out a bipartite meeting and an inspection is carried out by an employee of the Labor Inspector.²²⁸

The important part that is outlined in this regulation is regarding the determination of the type of work or supporting activities that are the object of the agreement and the implementation of the TUPE contained in Articles 28 and 29.²²⁹

2. Outsourcing in Law Number 11 of 2020 concerning Job Creation and its implementing rules.

After the issuance of Law Number 11 of 2020 concerning Job Creation, there were several changes regarding the regulation of the outsourcing or outsourcing work system. The outsourcing system in this law is undergoing “expansion”. Law Number 11 of 2020 concerning Job Creation abolishes Articles 64 and 65 and changes the substance of Article 66 of Law Number 13 of 2003 concerning Manpower. Articles 64 and 65 which previously stipulated restrictions on job charter and Worker Service Provider Companies on work outside the main activity or production process, were immediately abolished because the government did not want to enter into the realm of business or civil agreements. The government only regulates the matter of protecting workers from work agreements that place workers in a vulnerable position when faced with employers.

Based on Article 66 of Law Number 13 of 2003 concerning Manpower, outsourcing is a type of work that is not the main business.²³⁰ However, in its revision, Article 66 of the Job Creation Law no longer includes restrictions on what jobs are prohibited. by outsourcing workers. Article 66 of the Employment Creation Act regulates the protection of workers who are the responsibility of the outsourcing company, requires protection in the event of a change of outsourcing company as long as the object of work remains, the outsourcing must be a legal entity and have a business license.²³¹

Article 81 number 20 paragraph (2) of Law Number 11 of 2020 concerning Job Creation, protection of workers or laborers related to wages and welfare, working conditions, and disputes that arise are carried out at least in accordance with the provisions of the legislation and become responsibility of the outsourcing company. Article 81 number 20 paragraph (3), legal protection where the outsourcing company must require in the work agreement as referred to in paragraph (1) there is legal protection for the rights of workers or outsourced workers in the event of a change in the outsourcing company and as long as the object the job is still there.

Protection for outsourced workers in terms of obligations regarding outsourcing companies must be in the form of a legal entity and must meet the business licensing

²²⁸ Putusan Mahkamah Konstitusi Nomor 7/PUU-XII/2014

²²⁹ Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor 19 Tahun 2012 tentang Syarat-Syarat Penyerahan Sebagian Pelaksanaan Pekerjaan Kepada Perusahaan Lain.

²³⁰ Undang-undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan

²³¹ Milinum, Sela Nopela. Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang- Undang Nomor 11 Tahun 2020 tentang Cipta Kerja Klaster Ketenagakerjaan. *Rewang Rencang :Jurnal Hukum Lex Generalis*. Vol.3. No.5 (Mei 2022).

requirements that have been determined by the Central Government, the provisions are stated in Article 81 number 20 paragraphs (4) and (5) in an Online Single Submissions (OSS) system.

Implementing regulations of Law Number 11 of 2021 concerning Job Creation as outlined in Government Regulation Number 35 of 2021 about Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

In Article 18 of Government Regulation Number 35 of 2021 it is explained that the working relationship between outsourcing companies and workers is based on one of two work agreements, namely PKWT or Indefinite Time Work Agreements (PKWTT). This arrangement is different from the Manpower Act where work agreements can only use PKWT only. Article 19 explains that it requires the transfer of protection of rights as a guarantee for workers, and the company must be a legal entity.¹⁸ In the event that the Worker/Labourer does not receive a guarantee for the continuity of work, the Outsourcing Company is responsible for fulfilling the rights of the Worker/Labourer.

The writing from Suyoko & Mohammad Ghufon AZ²³² in 2020 stated that the regulations regarding the outsourcing system in Indonesia are contained in Article 64 to Article 66 of the Manpower Act, where in 2020 after the issuance of Law Number 11 of 2020 concerning Job Creation there are changes regulated in Article 81 numbers 18 to 20. Legal protection for outsourced workers /laborers in the work copyright law is regulated in Article 81 point 20, however until now the implementing regulations of this article have not been issued by the Government.

Previous writers only limited to implementing regulations that have not been made by the government. So the author wants to explore further how the implementation of outsourcing after the issuance of Law Number 11 of 2020 concerning Job Creation and its implementing rules, namely Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time and Termination of Employment.

METHOD, DATA, AND ANALYSIS

1. METHOD

This study is a legal research conducted with qualitative data analysis method normative logic based on logic and syllogism legislation (drawing existing conclusions) combine with the practical law in the society which is called the Empirical Normative Legal Research Method. This research uses empirical normative legal research method which is a research method which in this case combines normative legal elements which are then supported by additional data or empirical elements.) in action in every particular legal event that occurs in a society.²³³

“This is done as a consequence of the view that law is an autonomous institution that does not have any relationship with other social institutions. Therefore, the law as a system has the ability to live, grow and develop within its own system. So, if indeed a research is

²³² Suyoko., Ghufon AZ, M. (2020). Tinjauan yuridis terhadap sistem alih daya (outsourcing) pada pekerja di Indonesia. *JurnalCakrawala Hukum*, 12(1). 99-109.

²³³ Rianto Adi. *Metodologi Penelitian Sosial dan Hukum*. Graniat: Jakarta, 2004, hlm. 1

recognized as one of the (scientific) ways to solve existing problems, then what is seen as a problem in research with this approach is only limited to problems that exist within the legal system itself. "

2. DATA AND ANALYSIS

The procedure for collecting legal materials in this study begins with collecting primary legal materials and secondary legal materials, then reading and understanding the two legal materials such as legislation, legal literature, legal journals, as well as the opinions of legal experts related to the issues raised and then followed by conducting interviews with informants to classify based on the issues raised.

The following is data on outsourcing company licensing issued by the Department of Manpower and Transmigration of East Java Province in 2019. The rest of the data is issued by the Online Single Submission System.

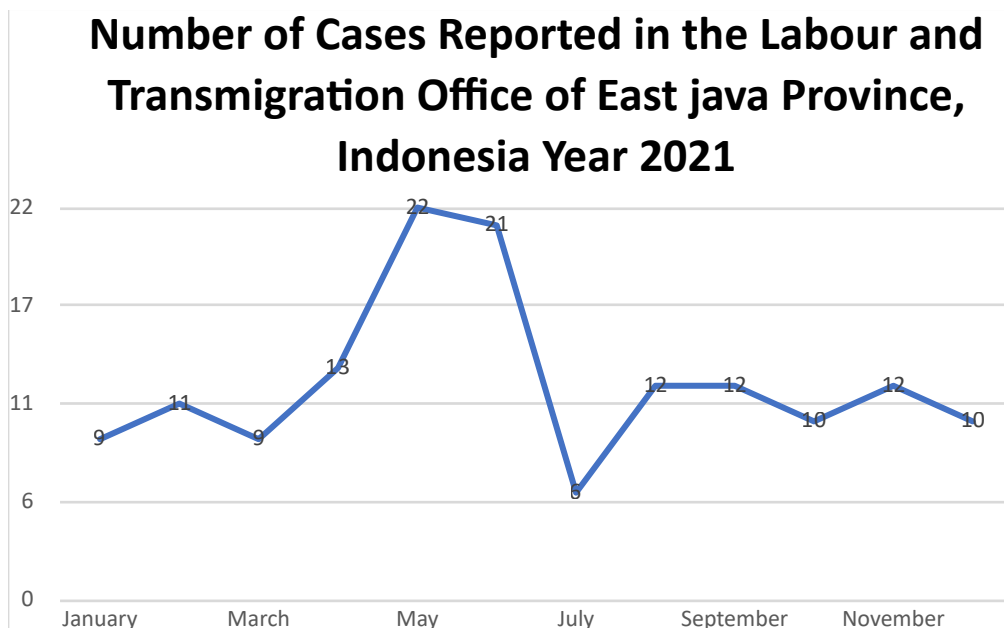
Business License Data of Outsourcing Company in the Cities of East Java Province in 2019

No	Kab/Kota (Cities)	Number of Outsourcing Company	Number of Worker
1	Kota Surabaya	32	17528
2	Kab. Gresik	6	130
3	Kab. Sidoarjo	18	9563
4	Kota Mojokerto	0	0
5	Kab. Mojokerto	2	890
6	Kab. Malang	3	2223
7	Kota Malang	2	155
8	Kota Batu	0	0
9	Kota Pasuruan	0	0
10	Kab. Pasuruan	1	15
11	Kota Madiun	0	0
12	Kab. Madiun	1	98
13	Kab. Ponorogo	0	0
14	Kab. Pacitan	0	0
15	Kab. Magetan	0	0
16	Kab. Ngawi	0	0
17	Kab. Jombang	0	0
18	Kota Kediri	0	0

19	Kab. Kediri	0	0
20	Kab. Nganjuk	0	0
21	Kab. Tulungagung	0	0
22	Kota Blitar	1	390
23	Kab. Blitar	0	0
24	Kab. Trenggalek	0	0
25	Kota Probolinggo	1	5
26	Kab. Probolinggo	2	1010
27	Kab. Lumajang	0	0
28	Kab. Jember	0	0
29	Kab. Bondowoso	0	0
30	Kab. Situbondo	0	0
31	Kab. Banyuwangi	1	13
32	Kab. Bojonegoro	0	0
33	Kab. Tuban	0	0
34	Kab. Lamongan	0	0
35	Kab. Pamekasan	0	0
36	Kab. Sumenep	0	0
37	Kab. Bangkalan	0	0
38	Kab. Sampang	1	4
	Sum	71	32024

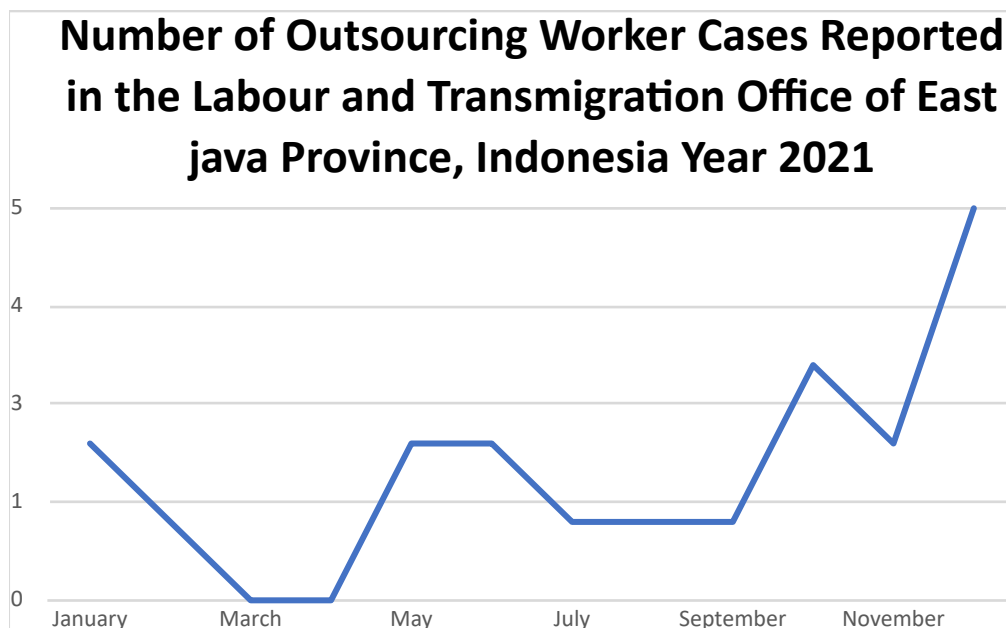
Source : The Labour and Transmigration Office of East Java Province,Indonesia

From the data above, we can see that in 2019 the number of outsourcing companies registered with the East Java Province Manpower and Transmigration Office was 71 companies with 32,024 workers. The number of outsourcing companies located in the city of Surabaya with a total of 32 companies with 17,528 workers. It can be concluded that the potential for outsourcing problems in the city of Surabaya is greater than others.



Source : <http://siap.disnakertrans.jatimprov.go.id/>, The Labour and Transmigration Office of East Java Province,Indonesia

The graph above shows the number of complaints in general every month that goes to the Manpower and Transmigration Office of East Java Province in 2021 with a total of 147 complaints. Most complaints occurred in May with a total of 22 cases.



Source : <http://siap.disnakertrans.jatimprov.go.id/>, The Labour and Transmigration Office of East Java Province,Indonesia

Meanwhile, above is a graph that shows the number of complaints related to outsourcing every month that enter the Manpower and Transmigration Office of East Java Province in 2021 with a total of 20 complaints. Most complaints occurred in December with a total of 5 cases.

To get answers to the problems, the analytical method used in writing this research uses descriptive analysis methods, namely by analyzing and identifying legal materials associated with related legal theories to answer the issues raised.

RESULT AND DISCUSSION

1. Protection of Employment Relationship Status of Outsourced Workers Before the Law Number 11 of 2020 concerning Job Creation

In Pancasila Industrial Labor relations, there is a legal principle which states that workers and employers have equal positions. According to labor terms, they are called work partners. However, in practice, the position of the two is not equal. Entrepreneurs as owners of capital have a higher position than workers. This is clearly seen in the creation of various company policies and regulations.²³⁴

The Indonesian government, assisted by technical assistance by the IMF and financial support from USAID (United States Agency for International Development) started a labor law reform program, which included “the review, revision, formulation or reformulation of practically all labor legislation with a view to modernizing, and making it more relevant to and in step with the changing times and requirements of a free market economy”.²³⁵

The manifestation of the Labor Law reform program is the birth of a package of three laws that breathe liberalization, namely Law Number 13 of 2003 concerning Manpower which accommodates contract work and outsourcing systems, Law Number 21 of 2000 concerning Trade Unions/Labour Unions which changing the single union model to a multi union and Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement which adopts legal rationality.²³⁶

The presence of certain time work agreements and outsourcing illustrates that in the name of overcoming the high unemployment rate, the Manpower Act is based on creating the widest possible employment opportunities by reducing the protection and job security that currently exists. With the presence of a flexible labor market, job security is reduced.

However, the existence of dominant state control and intervention in the flexible labor market in Indonesia through the Manpower Law is considered not permissive for the investment climate. The Manpower Law is still seen as rigid and not accelerative to the business world which demands more flexibility. The rigidity of labor laws is considered to be one of the biggest contributors to the insignificant economic growth.

The labor market is not yet fully flexible because the state is still exercising control and intervention. A number of restrictions and requirements on the contract work system and outsourcing in the Manpower Act show that on paper, the existence of the state in

²³⁴ International Labour Organization, 1999, *Demystifying The Core Conventions of the ILO through Social Dialogue : The Indonesian Experience*, ILO Jakarta Office, Jakarta.

²³⁵ International Labour Organization, 1999, *Demystifying The Core Conventions of the ILO through Social Dialogue : The Indonesian Experience*, ILO Jakarta Office, Jakarta.

²³⁶ Surya Tjandra dan Rani Hanggrahini, 2007, *Hukum Perburuhan, Desentralisasi dan Rekonstruksi Rezim Perburuhan “Baru”*, Trade Union Rights Centre, Jakarta, Hlm.10 -11. Dalam buku tersebut dijelaskan bahwa ketiga undang-undang tersebut merupakan satu paket tidak terpisahkan, yang menggantikan seluruh sistem Hukum Perburuhan sebelumnya. Reformasi Hukum Perburuhan tersebut adalah persyaratan dari liberalisasi pasar dan ekonomi yang terakselerasi di Indonesia, perlu untuk memenuhi resep dari IMF dan Bank Dunia yang menjadi aktor utama Indonesia meraih pertumbuhan dan pembangunan ekonominya.

protecting workers is still relatively strong. Law Number 13 of 2003 concerning Manpower is still considered rigid and not relevant to the spirit of liberalization needed by the business world.

Therefore, the articles in Law Number 13 of 2003 concerning Manpower which are felt to hinder investment need to be revised to be more relevant, in line with changing times and the needs of the market economy. The revision discourse emerged in line with the issuance of a number of policy packages to improve the investment climate, one of which requested that the Manpower Law be less rigid and more conducive to investment.

2. Protection of Employment Relationship Status of Outsourced Workers after the Law Number 11 of 2020 concerning Job Creation

Economic growth which is correlated with employment, in the logic of the free market is always associated with the pattern of labor relations in a country. Two years after Law Number 13 of 2003 concerning Manpower came into effect, by the World Bank, Indonesia is still considered one of the countries with the most rigid labor relations in Asia.²³⁷

Therefore, the articles in Law Number 13 of 2003 concerning Manpower which are felt to hinder investment need to be revised to be more relevant, in line with changing times and the needs of the market economy. The revision discourse emerged in line with the issuance of a number of policy packages to improve the investment climate, one of which requested that the Manpower Law be less rigid and more conducive to investment.

The Employment Creation Act through the labor cluster is considered to answer these problems. To restore Indonesia's economic conditions, the business world needs assistance, one of which is by implementing a flexible work system that is broader than just what is regulated in the Manpower Act. The business world must be given leeway in the rules for recruiting and laying off workers as a condition for the survival of the business. With this kind of flexibility, employers can adjust the number of workers according to market conditions. This means that if production increases, entrepreneurs will recruit new workers, on the other hand, if businesses are sluggish, they can cut production costs by laying off workers. This can be achieved with fixed time work agreements and outsourcing with much greater flexibility.

Since its draft, the Law on Job Creation has indeed been rejected by the workers, not only is the process considered unparticipatory, but its substance is not in favor of the workers. The Law on Job Creation and its derivatives amends several articles in the Manpower Act, one of which is about certain time work agreements and outsourcing.

It is undeniable that the implementation of Outsourcing does not always run in accordance with 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 enactment of Law Number 11 of 2020 concerning Job Creation. The regulation prioritizes the interests of the owners of capital, which in this case does not adequately consider the negative impact on workers, which is greatly influenced by the success of the free market and efficiency. This efficiency is achieved through a strategy of low-cost labor in a flexible labor market and results in the loss of job security for workers and job security for workers

²³⁷ World Bank the International Finance Corporation and Oxford University Press., "Doing Business in 2005 : Removing Obstacles to Growth", <http://rru.worldbank.org/doingbusiness>. Indonesia memperoleh indeks kekakuan ketenagakerjaan sebesar 57. Nilai indeks kekakuan bervariasi dari 0-100, semakin tinggi nilainya semakin kaku. Kekakuan ketenagakerjaan dilihat dari kesulitan dalam rekrutmen kontrak, kekakuan dalam jam kerja dan kesulitan dalam memberhentikan pekerja.

Certain time work agreements (PKWT) and outsourcing are therefore still maintained in Law Number 11 of 2020 concerning Job Creation, although outsourcing itself is returned to the realm of civil agreements, so that the labor market is more flexible, so that it is able to absorb labor and reduce the unemployment rate. With the economic considerations, the government finally introduced certain time work agreements and outsourcing in the Job Creation Law and Government Regulation Number 35 of 2021 which became its derivatives, with more flexible arrangements. Rules that are considered burdensome for the business world must be shifted to be more friendly to the market.

Outsourcing flexibility can lead to a decrease in long-term job security and the number of permanent workers. More and more jobs are outsourced, the hope of someone becoming a permanent employee in the company will be erased. In addition, if the outsourcing worker's contract period is over, the outsourcing worker's working period will also end. As a result, workers have to face the risk of not getting the next job because the company that provides services for workers no longer gets an extension contract from the company that provides them. The next impact, workers will experience uncertainty over the period of service that has been carried out because it is not clearly calculated due to the frequent changes of outsourcing service providers, resulting in the loss of opportunities for outsourcing workers to obtain income and benefits that are in accordance with their years of service and service. The right to work which is attached to wages must be interpreted as permanent work for a long time, not short specific time jobs such as outsourcing and contract work.

CONCLUSION

This study produces two conclusions. Protecting of employment relationship status of Outsource workers before and after the issuance of the Employment have significant difference. The first can lead to a decrease in long-term job security and the number of permanent workers. More and more jobs are outsourced, the hope of someone becoming a permanent employee in the company will be erased. In addition, if the outsourcing worker's contract period is over, the outsourcing worker's working period will also end. As a result, workers have to face the risk of not getting the next job because the company that provides services for workers no longer gets an extension contract from the company that provides them. The next impact, workers will experience uncertainty over the period of service that has been carried out because it is not clearly calculated due to the frequent changes of outsourcing service providers, resulting in the loss of opportunities for outsourcing workers to obtain income and benefits that are in accordance with their years of service and service. The right to work which is attached to wages must be interpreted as permanent work for a long time, not short specific time jobs such as outsourcing and contract work. The second, violation of the practice of outsourcing is still common. In particular, regarding the fulfillment of the rights of outsourced workers, such as wages paid below the Regency/City Minimum Wage, they are not included in the BPJS program.

IMPLICATION/LIMITATION AND SUGGESTIONS

That workers need social and employment protection that is able to lighten the burden they already carry. First, the existence of a strong social security system from the state. The

social security system serves to protect workers from the vulnerabilities that result from job flexibility. Second, build strong bargaining power from workers to employers. Without these two things, the current practice of outsourcing will only provide business relief for employers but on the other hand it will create uncertainty in the life protection of workers in Indonesia.

This study only focuses on aspects of the impact caused by changes in the rule of law from Law 13 of 2003 where articles 65 to 66 have been amended in article 81 of the Job Creation Act.

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Legislation :

- 1) Undang-Undang Dasar 1945 (Staatsblad Tahun 1847 Nomor 23);
- 2) Undang-Undang No. 13 Tahun 2003 tentang Ketenagakerjaan (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39);
- 3) Undang-Undang No. 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 6);
- 4) Undang-Undang No. 25 Tahun 2007 tentang Penanaman Modal (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 67);
- 5) Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja (Lembar Negara Republik Indonesia Tahun 2020 Nomor 245);
- 6) Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.
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