

# **Legal Protection For Outsourcing Workers Based On Perpu No. 2 of 2022 Concerning Employment Creation**

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## **ABSTRACT**

Today, many companies use outsourcing workers to support their operations. Of course, these outsourced workers expect legal protection that guarantees their rights. At the end of 2022, the government issued Perpu No. 2 of 2022 concerning Job Creation. In this regard, this research examines the Legal Protection for Outsourcing Workers based on Perpu No. 2 of 2022 concerning Job Creation and the Legal Consequences of Outsourcing Companies That Do Not Meet Applicable Legal Provisions. This research concludes that the form of protection for outsourced workers is contained in Article 81 number 20 of Perpu Number 2 of 2022 concerning Job Creation. Outsourced workers also receive legal protection through the TUPE Principle (Transfer of Undertaking Protection of Employment) and there are legal consequences if the outsourcing company does not comply with applicable legal provisions. The outsourcing company may be subject to criminal and administrative sanctions.

**Keywords:** Outsourcing, Legal Protection, Legal Consequences

## **1. INTRODUCTION**

On the basis of Pancasila and the Republic of Indonesia's 1945 Constitution, national development is anticipated to produce a society that is prosperous, just, and prosperous for all on an equal basis. Naturally, the position of workers has a very important role and position as actors in achieving development goals on a national level. As a result, workers have rights towards other workers and their families in accordance with their status as human beings (Darmawan, 2021).

The Indonesian state constitution, which is based on the 1945 Constitution of the Republic of Indonesia (1945 Constitution), stipulates in Article 27 paragraph (2) that "Every citizen has the right to work and a life that is worthy of humanity." The legal protections and human rights of workers are governed by and safeguarded by this article. According to Article 28 D, paragraph 2 of the Second Amendment of the 1945 Constitution, "Every person has the right or is entitled to get a job and receive compensation and also fair and proper treatment in a working relationship." In the reform age, the idea of human rights is openly and unequivocally recognized in this way. The right to work is one of the human rights that must be respected in order for it to be applied in light of this.

Structural changes in business management, which aim to reduce the span of management control for greater effectiveness, efficiency, and productivity, have led to an increase in the

outsourcing system or what is known as outsourcing (Sutedi, 2011). Outsourcing is the transfer of a portion of the workload from the employer to the provider of services to employees or labourers (Maimun, 2007). When viewed from the perspective of employment, outsourcing is the use of labour to produce or carry out a task assigned by a labour supply firm (Husni, 2008). Or, to put it another way, outsourcing is a type of contract that takes place when a business enters into agreements with other businesses to perform specific services within a predetermined time frame (Mather, 2008). In 2018, outsourcing employed 16 million people, which is 40% of the total workforce in Indonesia, and provided benefits to the Indonesian economy (Izzati, 2017). Perpu No. 02 of 2022 revokes Law Number 11 of 2020 concerning Job Creation and amends some provisions of Law Number 13 of 2003 concerning Manpower, one of which relates to the provision of outsourced workers. Therefore, the study of work with an outsourcing system is very interesting to discuss regulations and their application so that outsourced workers get protection. Based on the background above, the author has chosen the title "Legal Protection for Outsourced Workers Based on Government Regulation No. 2 of 2022 Concerning Job Creation."

## **2. RESEARCH METHOD**

In this research, the type of research deployed was normative legal research. The problem approach in normative legal research involved the application of a particular legal issue by reviewing applicable legislation. This approach uses the statutory approach. Analysis of the study's findings involved critiquing, supporting, or making remarks before drawing conclusions based on the findings with the help of a literature review and one's own ideas. The analytical method for this type of normative legal research is in the form of a prescriptive method, which provides an assessment (justification) of whether the object under study is right or wrong, or what should be according to the law.

### **Sources of Legal Materials**

This study uses primary and secondary legal materials, including laws and regulations, all legal publications, such as books, texts, legal dictionaries, and legal journals.

## **3. RESULTS AND DISCUSSION**

### **Legal Protection for Outsourced Workers based on Government Regulation No. 2 of 2022 concerning Job Creation**

Legal defense of human rights when they are violated by others provides the community with access to all legal rights (Nursalim & Suryono, 2020). On December 30, 2022, the government formally enacted Government Regulation in Lieu of Law (Perpu) Number 2 of 2022

for Job Creation. Law No. 11 of 2022 is ruled invalid as per the publishing of Perpu No. 2 of 2022 addressing employment creation.

The outsourcing system was previously regulated in Law Number 13 of 2003 concerning Manpower, which was then amended in Perpu Number 2 of 2022 concerning Job Creation. Indonesia itself does not yet have a separate law that regulates outsourcing, although the rules regarding outsourcing are regulated in Articles 64 to 66 of Law Number 13 of 2003 concerning Manpower in conjunction with Perpu Number 2 of 2022 concerning Job Creation. With the issuance of Perpu Number 2 of 2022 concerning Job Creation, it is hoped that there will be protection for outsourced workers.

Perpu No. 2 of 2022 concerning Job Creation related to employment is regulated in Article 81 number 1-71. And for outsourced workers, it is regulated in Article 81 number 18-19 of Perpu Number 2 of 2022 concerning Copyright. The form of protection for outsourced workers is contained in Article 81 number 20 of Perpu Number 2 of 2022 concerning Job Creation, where the article changes the wording of Article 66 of Law Number 13 of 2003 concerning Manpower to become:

- (1) A written work agreement, either one for a set period of time or one without one, establishes the basis for the employment relationship between an outsourced firm and the worker or labourer it employs.
  - (2) The outsourcing company manages worker/laborer protection, salaries and welfare, working conditions, and any disputes, at least in accordance with the requirements of laws and regulations.
  - (3) If the outsourcing company hires workers or labourers based on a work agreement for a specific period of time as mentioned in paragraph (1), the work agreement for a specific period of time must stipulate that if the outsourcing company changes and the job's primary objective remains the same, the transfer of protection of rights for workers or labourers must also occur.
  - (4) The outsourced company mentioned in clause (1) is a legitimate business that must adhere to the terms of a Central Government-issued business permit.
  - (5) The licencing of an undertaking, as mentioned in clause (4), must adhere to the rules, regulations, guidelines, and standards established by the Central Government.
  - (6) A government regulation governs additional requirements relating to worker/laborer protection as described in paragraph (2) and company licencing as mentioned in paragraph (4).
- Based on the changes above, it can be seen in paragraph 1 that the working relationship between outsourcing companies and the workers/laborers they employ is based on a written work agreement, either a specified time work agreement (PKWT) or an unspecified time work



agreement (PKWTT). This is a form of protection for outsourced workers, where there is clarity regarding the working relationship that occurs between outsourced workers and outsourcing companies. That way, outsourced workers also get the same rights as workers/laborers who are employed through a specified time work agreement (PKWT) or an unspecified time work agreement (PKWTT). Then, paragraphs 2 and 3 also contain legal protection for outsourced workers. According to the lines, the outsourcing business is in charge of overseeing working conditions, salaries and welfare, worker/labor protection, and any issues that may arise. If the worker is employed based on a work agreement for a certain period of time (PKWT), the agreement must specify that the worker's rights must be transferred if the outsourced firm changes and for as long as the job is performed there. This is also a form of protection for outsourced workers, so that if the outsourcing company goes bankrupt based on a court decision, the outsourced workers will have clarity regarding who has the obligation to fulfill their rights. In paragraph 4, it states that "the outsourcing company as referred to in paragraph (1) is in the form of a legal entity and must comply with the Business Permit issued by the Central Government". This is also included as an effort to protect outsourced workers because with an outsourcing company in the form of a legal entity, it is certain that the outsourcing company has clear legality.

#### **TUPE (Transfer of Undertaking Protection of Employment) as a Form of Protection for Outsourced Workers**

Legal protection for workers is one of the essential things which is then constantly being evaluated and improved because several arrangements often put workers in a weak position. Such conditions have the potential to result in exploitation and reduction of the rights that they should receive as workers. Social relations between workers and employers are thus filled with fundamental conflict because they are one-sided and exploratory (Susetiawan, 2000). In an effort to increase legal protection for workers, especially for outsourced workers who are bound or based on PKWT. The Constitutional Court through Decision of the Constitutional Court No.27/PUU-IX/2011 emphasized that employers can implement an outsourcing system with PKWT status as long as the PKWT then contains a clause that guarantees protection of workers' rights (TUPE) (Agus Sudiarawan, 2015).

An outsourcing company Z may take over a project that was previously handled by an outsourcing company Y while the employee is still employed by the original company, in accordance with TUPE (Transfer of Undertaking Protection of Employment) (Agus Sudiarawan, 2015). It is also known as the concept of transmitting preventive measures. The Constitutional Court decision Case Number 27/PUU-IX/2011 (MK Decision), which outlines the legal considerations of this principle, states that: "By applying the principle of transfer of protection,

when the employer company no longer provides contract work or worker/labor service providers to an old outsourcing company, and assigns the work to a new outsourcing company, then as long as the work ordered to be done is still there and continues, then the principle of transfer of protection shall apply.

The basic concept of this TUPE clause contains a provision that the employment relationship of the worker concerned will be continued at the next company in the event that the object of their work remains there. If the work object still exists while the conditions for the transfer of rights protection are not regulated in the PKWT, then the worker's employment relationship automatically changes to PKWTT. Technically, the terms of the PKWT can be regulated in the closing part of the agreement. In the end, this clause serves as a measuring tool to assess the form of a working relationship, whether it is in the form of PKWT or PKWTT.

The Government Regulation No. 35 of 2021 covering Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment now includes Article 19 that outlines the TUPE (Transfer of Undertaking Protection of Employment) principle. It refers to:

- (1) If the Outsourcing Company hires Workers/Labourers based on PKWT, the Work Agreement must stipulate that rights protection for Workers/Labourers be transferred in the event that the Outsourcing Company changes and for as long as the job's objectives remain the same.
- (2) The requirements for the transfer of rights protection mentioned in clause (1) serve as a guarantee for the continuity of employment for workers/labourers associated with PKWT-based activities in an outsourcing firm.
- (3) The Outsourcing Company is in charge of ensuring that Workers' and Labourers' rights are upheld if they do not get the assurance of continued employment mentioned in paragraph (2).

According to the article, if an outsourcing company (Outsourcing) hires workers based on PKWT, the Work Agreement must stipulate that workers' rights must be transferred if the outsourcing company changes and for as long as the work is still being done at that location. This is a form of guarantee of protection for Outsourcing workers so that later, if the Outsourcing Company is declared bankrupt based on a court decision, workers' rights can still be fulfilled. In particular, the TUPE Principle (Transfer of Undertaking Protection of Employment) should be able to provide benefits to workers. There are two types of transfers protected under TUPE (Transfer of Undertaking Protection of Employment), namely business transfers and changes in service provision.

**Legal Consequences of Outsourcing Companies That Do Not Meet Applicable Legal Provisions**

Legal consequences refer to the consequences given by law for a legal event or action of a legal subject (Mas, 2003). According to Hamidi, (2006), the term legal impact/legal effect implies a direct, strong, or explicit legal impact or effect. In legal science literature, three types of legal consequences are known, as follows:

Legal repercussions include:

- a. the emergence, change, or disappearance of a particular legal situation;
- b. the emergence, change, or disappearance of a particular legal relationship;
- c. sanctions that are not desired by legal subjects (acts that violate the law).

The legal consequences discussed in this study are in the form of sanctions, which are not desired by legal subjects (acts against the law). The discussion of legal consequences starts with the existence of legal relations, legal events, and legal objects. According to Dirdjosisworo, (2010) in his book *Introduction to Law*, legal consequences arise because of legal relations, where there are rights and obligations. Events or incidents that can give rise to legal consequences exist between parties who have a legal relationship, and these legal events exist in various aspects of law, both public and private law. In order for a legal consequence to arise, Rahardjo, (2000) formulates that there are two stages, namely the existence of certain conditions in the form of the occurrence of an event in reality, which fulfills the formulation in the legal regulations referred to as the legal basis. It is advisable to distinguish between legal basis and regulatory basis by referring to legal regulations that are used as a frame of reference.

In Law Number 13 of 2003 concerning Manpower, there are two types of sanctions regulated in chapter XVI, namely criminal provisions and administrative sanctions, which are regulated in Articles 183–190 (Yuliardi & Santoso, 2022). However, after the issuance of Perpu No 2 of 2022 concerning Copyright, several articles contained in Chapter XVI regarding criminal provisions and administrative sanctions in Law Number 13 of 2003 concerning Manpower were deleted and amended. The article that was deleted was article 184, and the article that was amended was articles 185–190.

According to Law Number 13 of 2003 Concerning Manpower and Perpu No 2 of 2022 Concerning Job Creation, if an outsourcing business violates any applicable legal requirements, notably those affecting employment, legal repercussions may be brought against them. Criminal penalties could be one of these repercussions. Article 81, Number 66, about Job Creation, of Perpu No. 2 of 2022 modifies Article 185 of Law Number 13 of 2003 about Manpower. It states that if an outsourcing company violates provisions such as employing children (Article 68), failing to





provide opportunities for workers to perform religious duties required by their religion (Article 80), failing to provide rest for female workers for 1.5 (one and a half) months before giving birth to children and 1.5 (one and a half) months after giving birth, calculated by the obstetrician or midwife, or failing to give 1.5 (one and a half) months of rest for female workers after having a miscarriage (Article 82), not paying wages to workers/labor according to the agreement (Article 88 A paragraph 3), or if the company outsourcing pays wages to workers lower than the minimum wage (Article 88E paragraph 2), obstructing or arresting workers/laborers and trade unions/labor unions who carry out legal, orderly, and peaceful strikes in accordance with applicable laws and regulations (Article 143), not paying severance pay and/or gratuity pay and compensation for rights that should be received by workers (Article 156 paragraph 1), and not employing workers/laborers again after being declared not guilty according to a court decision (Article 160 paragraph 4), then the corporation might be fined a minimum of Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 400,000,000.00 (four hundred million rupiahs) and/or imprisoned for a minimum of 1 (one) year and a maximum of 4 (four) years.

Perpu No. 2 of 2022, Number 67, Addressing Job Creation, amends Article 186 of Law Number 13 of 2003 related to Manpower. It states that if an outsourcing company fails to pay its workers' wages because the worker is sick, if female workers are sick on the first and second day of their menstrual period, if the worker is absent from work because of marriage, circumcision, baptism of a child, giving birth or having a miscarriage, if the husband or wife or children or in-laws or parents or in-laws or family members in the same household die, if the worker cannot do his job because he is carrying out his obligations to the state, if the worker is unable to do his job for carrying out the worship ordered by his religion, if the worker/laborer is willing to do the work that has been promised but the entrepreneur does not employ him, either due to his own mistakes or obstacles that the entrepreneur should have avoided, if workers/laborers exercise the right to rest, if the worker/laborer performs the tasks of a trade union/labor union with the approval of the entrepreneur, and if workers/laborers carry out educational tasks from the company (Article 93 paragraph 2), then the company, in this case an outsourcing company, may be subject to imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a minimum fine of Rp. 10,000,000.00 (ten million rupiah) and a maximum fine of Rp. 400,000,000.00 (four hundred million rupiah).

In accordance with the provisions of article 81 number 68 of Perpu No. 02 of 2022 concerning Job Creation, which amends article 187 of Law Number 13 of 2003 concerning Manpower, entrepreneurs/directors of outsourcing companies can also face criminal sanctions. If an outsourcing company fails to pay overtime wages (Article 78 paragraph 2), fails to provide time



for rest and leave or violates provisions for weekly rest, annual leave, etc. (not in accordance with Article 79 of the Manpower Act as amended by the Job Creation Perpu), or does not provide overtime pay to workers who work on statutory holidays (Article 85 paragraph 3), it may be subject to criminal sanctions of imprisonment from 1 to 12 months and/or a fine of IDR 10,000,000.00 (ten million rupiah) to IDR 100,000,000.00 (one hundred million rupiah).

Apart from criminal sanctions, outsourced companies may also face administrative sanctions. Provisions regarding administrative sanctions are included in article 81 number 70 of Perpu No. 02 of 2022 concerning Job Creation, which amends article 190 of Law Number 13 of 2003 concerning Manpower. Articles 5 and 6 of the Manpower Law, which prohibit discrimination, as well as Article 81 point 17 Perpu Cipta Kerja, which adds Article 61A to the Manpower Law, which modifies the wording of Article 66 of the Manpower Law, which modifies the form of Article 66, which modifies the implementation of an integrated management system, provide additional grounds for administrative sanctions against an outsourcing company. A government legislation will later specify the kind of administrative penalties that will be applied to outsourced corporations who violate these rules.

The administrative penalties are governed by Government Regulation No. 35 of 2021 on Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. For violations of Article 15 paragraph (1), Article 17, Article 21, Article 22, Article 29 paragraph (1) letters b and c, Article 53, and/or Article 59, administrative sanctions are imposed under Article 61 of the Government Regulation. The punishments could include:

- a. written warning;
- b. restrictions on business activities;
- c. temporary suspension of part or all of the means of production; and
- d. suspension of business.

According to Article 61 paragraph 2 of Government Regulation No. 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment, the application of administrative punishments as mentioned above takes place in stages.

#### **4. CONCLUSIONS**

In accordance with Perpu Number 2 of 2022 about Job Creation, article 81, paragraph 20, defines the protection for outsourced employees. This provision amends provision 66 of Law Number 13 of 2003 Concerning Manpower to offer protection for outsourced employees. Outsourced Workers are also protected under the TUPE Principle (Transfer of Undertaking





Protection of Employment), as stated in Article 19 of Government Regulation No. 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Work Relationship.

If an outsourcing company fails to comply with applicable legal provisions, it can face criminal and administrative sanctions. After the issuance of Perpu No 2 of 2022 concerning Job Creation, the criminal sanctions are regulated in articles 183, 185 - 189. Meanwhile, administrative sanctions are regulated in Article 61 of Government Regulation No. 35 of 2021 regarding Time Work Agreements, Certain Outsourcing, Working Time and Rest Time, and Termination of Employment.

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