

# Legal Certainty of Specific Time Work Agreements (PKWTT) Against Outsourced Labor Based Outsourcing Law Number 6 of 2023 concerning Determination Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation Becoming Law

Mellan Noviani <sup>1)</sup>, Jum Anggriani <sup>2)</sup>

<sup>1)</sup> Postgraduate Student of the Faculty of Law, Pancasila University, Jakarta

<sup>2)</sup> Lecturer at the Faculty of Law, Pancasila University, Jakarta

Corresponding Author: [5222220035@univpancasila.ac.id](mailto:5222220035@univpancasila.ac.id)

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## Abstract

Outsourcing is the use of labor from a third party for certain parts of work in a company. In terms of Human Resources or worker management, the Government continues to make improvements through regulations with the aim of maintaining the stability of relations between business actors and workers. One of them is Job Creation Law Number 11 of 2020 which regulates outsourcing with no limitations on the scope of work that can be outsourced. This changes some of the provisions of Law Number 13 of 2003 concerning employment. Perppu Number 2 of 2022 in conjunction with Law Number 6 of 2023 concerning Ratification of Perppu Number 2 of 2022 concerning Job Creation, where the cluster that regulates employment is newly regulated in this Law, including regarding outsourcing and/or outsourcing with revoke the provisions of the Job Creation Law Number 11 of 2020. In Law Number 6 of 2023 concerning Ratification of Perppu Number 2 of 2022 concerning Job Creation, it is emphasized that outsourcing is regulated more specifically through Government Regulation (PP) Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Time Rest, and Termination of Employment. So this creates legal loopholes and uncertainty as per the constitutional rights of citizens regarding welfare rights and as in Article 28 paragraph 1 and paragraph 2. Every person has the right to work and receive fair and decent compensation and treatment in the employment relationship.

**Keywords:** *Outsourcing, Law Number 6 of 2023 concerning Ratification of Perppu Number 2 of 2022 concerning Job Creation, work agreements, constitutional rights*

## I. INTRODUCTION

Differences in views mean that every regulation cannot satisfy and please all parties, in Government Regulation Number 35 of 2021 Outsourcing again limits the types of work that can be outsourced or outsourced. The significant thing that differentiates Law Number 11 of 2020, which is no longer in effect, is that Law Number 11 of 2020 removes provisions regarding restrictions on work that can be outsourced, however Law Number 6 of 2023 brings back this article and is regulated more specifically through Government Regulation Number 35 of 2021 .

This of course aims to ensure that the company can manage with a system where the work that is outsourced is limited to supporting work so that the company can run more effectively and the company can make production cost efficient (cost of production). One solution is an outsourcing system, where with this system the company can save expenses in financing human resources (HR) who work in the company concerned (Wirawan, 2022) .

If you look at it from the company's perspective, of course it is very profitable to transfer the procurement of outsourcing services to a third party, namely a company in the field of outsourcing service providers) including the outsourcing service provider who has and bears legal responsibility for the implementation of pre-contracts and contracts, especially those relating to rights. and obligations of outsourced workers (Purwanidjati, 2011) .

However, if you look at it from the worker's perspective, Law Number 6 of 2023 explains that outsourced employees are not permitted to carry out work that involves main activities or is related to the production process, except for supporting activities. However, it is not specifically explained what types of work can or cannot be done by outsourcing workers. In Government Regulation Number 35 of 2021 there are no restrictions regarding the types of work that can be outsourced, where the types of work that can be outsourced are adjusted to the needs of the company or industrial sector (Djumiladji, 2006).

One of the legal products that is binding on workers or laborers, namely the Specific Time Work Agreement (PKWT), is a form of government intervention to participate and take part in handling workers' welfare, of course dealing with this outsourcing (Tampongangoy,2013) . Because the regulations imposed by the government as the regulatory holder certainly

greatly influence the fate and welfare of outsourcing workers. The implementation of statutory regulations and deregulation can provide legal certainty regarding the rights and obligations for a balance between both employers and workers (Khakim, 2009)

Law Number 13 of 2003 concerning employment divides three basic aspects of the definition of employment as follows:

1. Before the employment period (pre-employment);
2. During the employment period;
3. After work period.

Based on this description, is it true that a Fixed Time Work Agreement can provide legal certainty for workers? Is it true that the constitutional rights of workers/laborers to be able to provide a decent living for humans are truly achieved through outsourcing businesses or are business actors only with lifelong contracts without certainty for outsourcing workers? so that in this research two research questions will be identified, namely:

1. Do agency workers get legal certainty with the Specific Time Work Agreement system?
2. What is the ideal concept for providing legal certainty and providing a decent living for outsourcing workers ?

## **Literature Review**

### **Legal Certainty Theory**

this is very important in providing a balance between rights and obligations, as well as welfare for society. According to Gustav Radbruch (1952), legal certainty is a product of law or more specifically legislation. Based on his opinion, positive law which regulates human interests in society must always be obeyed even if the positive law is felt to be unfair. Gustav Radbruch (1952) explained that in the theory of legal certainty that he put forward there are four basic things that are closely related to the meaning of legal certainty itself, namely as follows (Rahardjo, 2012: 19) :

1. Law is a positive thing which means that positive law is legislation.
2. The law is based on a fact, meaning that the law is made based on reality.
3. Facts contained or included in the law must be formulated in a clear manner, so that they will avoid errors in terms of meaning or interpretation and can be easily implemented.
4. Positive law must not be easily changed.

Gustav Radbruch's (1952) opinion regarding legal certainty is based on his view regarding legal certainty, which means legal certainty itself. Gustav Radbruch (1952) argued that legal certainty is a product of law or more specifically a product of legislation (Fuller, 1964: 54–58) .

That legal certainty is a guarantee that existing laws can operate properly. So that the regulations made, in this case the laws that are made, should have legal certainty (Santoso, 2012) . In employment, outsourcing workers expect legal certainty in terms of welfare such as wages and career paths. The legal certainty in question is of course to improve the life of the nation and workers are company assets which can be a milestone in whether or not the company continues to work to turn the wheels of the company's economy. A work agreement is an agreement between a worker/laborer and an employer which is characterized by a certain wage or salary relationship that has been negotiated or agreed upon. And it can also be interpreted as a relationship where one party (employer) has the right to give orders and the other party (worker/laborer) is obliged to obey them or what is called *dientsverhoeding* (a relationship above) (Husni, 2005: 54) .

However, in the case of work agreements regulated under Law Number 13 of 2003, this is a Certain Time Work Agreement. In the case of outsourced workers, of course legal protection is very necessary to protect their rights and legal certainty for their fate, for which the law is expected to provide protection. for outsourcing (Kansil & Kansil, 2004) .

### **Legal Protection Theory**

According to Satjipto Rahardjo (1982), legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. This is different from Legal Certainty according to Gustav Radbruch (1952) who explains that in the theory of legal certainty that he put forward there are four basic things which are closely related to the meaning of legal certainty itself, namely as follows (Rahardjo, 2012: 19) :

1. Law is a positive thing which means that positive law is legislation.
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As a product of law or more specifically a product of legislation (Fuller, 1964: 54–58) .

### **Concept, Definition and How Outsourcing Works**

Outsourcing is defined as the transfer or delegation of several business processes to a service provider agency, where

the service provider agency carries out administration and management processes based on definitions and criteria agreed upon by the parties. In the case of a Specific Time Work Agreement (PKWT) in Outsourcing, labor law in Indonesia is defined as contracting out work and providing labor services. The legal regulation of outsourcing (Outsourcing) in Indonesia is regulated in Law Number 13 of 2003 (Articles 64, 65 and 66) as a legal basis which is currently returned and limited only to basic and supporting workers so that there is no legal certainty or opportunity for Outsourcing workers to get the opportunity to earn a decent living or have a higher career path.

Outsourcing is the delegation of daily operations and management of a business process to an outside party (outsourcing service provider company). Through delegation, management is no longer carried out by the company, but is delegated to outsourcing service companies (Suwondo, 2003: 3). Several experts and practitioners of outsourcing (Alih Daya) from Indonesia also provide definitions regarding outsourcing, including stating that outsourcing (Alih Daya) in Indonesian is referred to as outsourcing, is the delegation of daily operations and management of a business process to an outside party (service company). outsourcing).

### **Concept and Understanding of Outsourcing According to Experts**

According to Libertus Jehani (2008) Outsourcing is a form of handing over certain work for a company to a third party which is carried out with the aim of reducing the burden on the company, in this case the company or foundation that distributes/provides labor is the third party. A similar opinion was also expressed by Muzni Tambusai (2003), Director General of Industrial Relations Development of the Department of Manpower and Transmigration who defined the meaning of outsourcing as handing over one or several parts of a company's activities that were previously managed independently to another company which is then referred to as the recipient. work. From the several definitions stated above, there are similarities in viewing outsourcing, namely that there is handing over part of the company's activities to another party (Husni, 2005: 54). It is hoped that this delegation will actually provide legal certainty for agency workers for their future so that it does not become a scary thing to be labeled a life-long contract employee, and career and self-development should be fostered. The phenomenon of labor demonstrations demands many things, starting from increasing wages, decent living allowances, eliminating outsourcing, health insurance, and elimination of discrimination. Not to mention, issues regarding unilateral layoffs by the company, inadequate wages/salaries, substandard worker/labor welfare, discrimination for some workers. The close relationship between outsourcing and work contracts, as contained in Law Number 13 of 2003 concerning Manpower, requires revision and adjustment, because in the outsourcing system and work contracts there is no clarity on work status and relationships, as well as guaranteed worker protection regarding wages, as well as their social security when they have finished their work contract. So in practice, legal violations often occur against outsourced workers/laborers. In contrast to permanent workers, they receive legal protection, both while working and after work. The labor issue is like a tangled thread that is difficult to find the end of, so labor demonstrations often occur, in fact almost every month, especially around the month of May as the month of Commemoration of Labor Day. throughout the world. Not to mention the demonstrations that occur within the company's own area. Labor issues have become a social discourse and a problem in its own country. Public discussions also often appear in electronic and print media which discuss the problems of workers/laborers. (Greaver, 1999).

### **The Concept of a Specific Time Work Agreement in Outsourcing**

The concept of a specific time work agreement certainly cannot be separated from outsourcing and is different from contract employees for organic workers and not basic workers, *outsourcing* is a work system where the employer company (client) will use the services of an *outsourcing company* or labor distribution agent to distribute or carry out outsourcing of labor or employees. The reason for implementing an *outsourcing system* is to obtain resources that can fill support positions. The usual types of *outsourcing* worker support services work include:

1. *Cleaning* service business ;
2. Business providing food for workers/laborers ( *catering* );
3. Security personnel business ( *security* /security unit);
4. Business providing transportation for workers/laborers.

In terms of contracts, usually for certain work, for example part of a project that supports organic employees, the contract given is not always 1 (one) year but less or even no contract. Moreover, for outsourced employees, there is no guarantee of benefits and protection: Outsourced employees may not get benefits such as allowances, health insurance and pension guarantees from the parent company. This can provide financial uncertainty and lack of protection in the event of health risks or work accidents.

## **II. METHODS**

In writing this research the author used a normative juridical approach. The normative juridical approach is a qualitative approach (not in the form of numbers) (Amirudin, 2010). This approach is carried out based on basic legal materials by examining theories, concepts, legal principles and statutory regulations related to this research. The method used in this research analysis is the analytical descriptive method, the descriptive research method is research that aims to provide as accurate data as possible about

the state of the research object (Sugiyono, 2018) . In this research the author analyzes the data that has been collected, then draws conclusions and provides an overview of the results that have been analyzed (Nasution, 2008).

### III. RESULTS AND DISCUSSIONS

#### Legal Certainty of Specific Time Work Agreements (PKWTT) for Outsourced Labor

The research results show that the Specific Time Work Agreement (PKWTT) does not provide legal certainty for outsourced workers. This is because:

1. Restrictions on the types of work that can be outsourced: Law No. 6 of 2023 emphasizes that outsourcing is regulated more specifically through Government Regulation (PP) No. 35 of 2021, which limits the types of work that can be outsourced only to supporting activities, not core business activities. This creates legal uncertainty for outsourced workers regarding the scope of work they can perform.
2. Lack of job security: Outsourced workers under PKWTT contracts have limited job security compared to permanent employees. Their contracts can be easily terminated at the end of the agreed period, leading to job insecurity and lack of long-term career prospects.
3. Unequal treatment: Outsourced workers often receive lower wages, fewer benefits, and less favorable working conditions compared to permanent employees doing similar work. This violates the constitutional rights of workers to receive fair and decent compensation and treatment.

#### The Ideal Concept for Providing Legal Certainty and Decent Living for Outsourcing Workers

To provide legal certainty and ensure a decent living for outsourcing workers, the following ideal concept is proposed:

1. Expand the scope of outsourced work: The government should revise the regulations to allow outsourcing of a wider range of work, including core business activities, as long as worker rights and protections are maintained.
2. Ensure equal treatment: Outsourced workers should be granted the same rights, wages, and benefits as permanent employees performing similar work. This would align with the constitutional rights of workers to receive fair and decent compensation and treatment.
3. Strengthen job security: The government should consider introducing measures to increase job security for outsourced workers, such as minimum contract durations, limits on contract renewals, and clear guidelines for termination.
4. Enhance worker protections: Comprehensive regulations should be developed to protect the rights of outsourced workers, including provisions for grievance mechanisms, access to social security benefits, and opportunities for skill development and career progression.
5. Promote social dialogue: Increased collaboration and communication between employers, outsourcing companies, and worker representatives (e.g., labor unions) can help strike a balance between the needs of businesses and the rights of workers.

By implementing these measures, the government can provide a more comprehensive legal framework that ensures legal certainty and a decent living for outsourcing workers, while also addressing the needs of businesses and fostering a stable employment ecosystem.

### IV. CONCLUSIONS

The things that the author can conclude from the writing and description of the discussion above include the following:

1. That indeed, until the issuance of Law Number 6 of 2023 , various provisions were regulated, starting from minimum wages, leave and rest. Including when there is termination of employment or layoffs through Law Number 6 of 2023 . Outsourced employees are entitled to severance pay, but there is no legal certainty regarding Benefits and Protection Guarantees: Outsourced employees may not receive benefits such as allowances, health insurance and pension guarantees from the parent company. This can provide financial uncertainty and lack of protection in the event of health risks or work accidents. As well as their rights to get the opportunity to advance their career path.
2. That the best concept for developing work potential and legal certainty, the government should be able to issue a Government Regulation or Perppu relating to guarantees and career paths for outsourced employees specifically, so that there are no longer any boundaries between basic workers who work through the outsourcing system and are afraid of legal uncertainty if there is a risk of termination of employment or other life-threatening risks.

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