

**LEGAL PROTECTION OF OUTSOURCING WORKERS FROM TERMINATION OF EMPLOYMENT UNDER LAW NUMBER 6 OF 2023****(PERLINDUNGAN HUKUM PEKERJA OUTSOURCING DARI PEMUTUSAN HUBUNGAN KERJA BERDASARKAN UNDANG-UNDANG NOMOR 6 TAHUN 2023)****Rr. Winarti Pudji Lestari**Universitas Singaperbangsa Karawang  
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**ABSTRACT**

*In the increasingly fierce business competition, the outsourcing system is felt to be more effective for the company. On the other hand, the outsourcing system opens opportunities for employers to carry out Termination of Employment (PHK) actions easily. In the outsourcing system, there are weaknesses, there is no guarantee of continuity of work for workers. Law Number 6 of 2023 of Job Creation has regulated legal protection for outsourcing workers against arbitrary actions by employers in carrying out layoffs, through the principle of Transfer of Undertakings Protection of Employment (TUPE). But in practice, the TUPE principle is still not running effectively. The purpose of this research is to find out and understand the principles of the employment relationship between outsourced workers and employers so that unfair layoffs do not occur and legal protection for outsourced workers from employers' arbitrariness in implementing layoffs. This study uses a normative juridical approach. It is necessary to develop regulations regarding outsourcing in which legal protection for workers is further enhanced, determine sanctions and law enforcement for those who commit violations, and carry out more intensive supervision of the implementation of outsourcing.*

**Keywords:** *Legal protection, outsourcing, continuity of work*

**ABSTRAK**

Dalam persaingan bisnis yang semakin ketat, sistem outsourcing dirasakan lebih efektif bagi perusahaan. Di sisi lain, sistem outsourcing membuka peluang bagi pengusaha untuk melakukan tindakan Pemutusan Hubungan Kerja (PHK) dengan mudah. Pada sistem outsourcing terdapat kelemahan yaitu tidak adanya jaminan kelangsungan bekerja bagi pekerja. Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja telah mengatur perlindungan hukum bagi pekerja outsourcing terhadap tindakan kesewenangan pengusaha dalam melakukan PHK yaitu melalui prinsip Transfer of Undertakings Protection of Employment (TUPE). Namun dalam praktiknya prinsip TUPE masih belum berjalan dengan efektif. Bahkan di dalam perjanjian kontrak antara pekerja dengan perusahaan outsourcing seringkali terdapat klausul-klausul yang memudahkan pengusaha untuk memutuskan kontrak sehingga mengakibatkan tidak adanya jaminan kelangsungan bekerja bagi pekerja outsourcing. Tujuan dari penelitian ini adalah untuk mengetahui dan memahami prinsip-prinsip hubungan kerja antara pekerja outsourcing dengan pengusaha agar tidak terjadi PHK yang tidak berkeadilan serta perlindungan hukum bagi pekerja outsourcing dari tindak kesewenangan pengusaha dalam pelaksanaan PHK. Penelitian ini menggunakan metode pendekatan yuridis normatif.

Diperlukan pengembangan peraturan mengenai outsourcing dimana perlindungan hukum bagi pekerja lebih ditingkatkan, menentukan sanksi dan penegakan hukumnya bagi pihak yang melakukan pelanggaran, serta melakukan pengawasan yang lebih intensif terhadap pelaksanaan outsourcing.

**Kata Kunci:** Perlindungan hukum, outsourcing, kelangsungan bekerja

## I. INTRODUCTION

Currently, business competition is increasingly fierce, companies are required to be able to generate profits by making production costs more effective. Many companies choose to implement an outsourcing system because this system is felt to be more effective for the company. Outsourcing saves costs, allocates resources to more valuable activities, reduces internal competition for capital, makes the company faster and more responsive, and even increases the company's level of innovation. Managers and executives themselves can better focus their energy and thoughts on external things, such as customers, rather than day-to-day operations.<sup>1</sup>

The outsourcing system has a legal basis so the business potential through this system in the future is very broad and promising.<sup>2</sup>Regarding outsourcing work relationships, the dynamic competition in the business world has certainly forced companies to concentrate on a series of processes or activities for creating products and services related to their main competencies. The logical

consequence of this strategy is the company's decision to outsource or hand over processes that are not the company's core competence to other parties in a system known as outsourcing.<sup>3</sup>Judging from the needs of the business and economic world, every operating company needs workers who can be permanent, contract workers, or in the form of outsourced workers. In this case, outsourcing workers is a form of delegation or delegation of certain business activities to companies providing outsourcing services, after which the company providing outsourcing services will carry out work that has been previously delegated by the agreement that has been agreed between the company providing outsourcing services and the company using outsourcing services.<sup>4</sup>

The outsourcing system in Indonesia often creates pros and cons between entrepreneurs and workers. Entrepreneurs consider that the outsourcing system is effective for company development, while workers consider that the outsourcing system is a form of modern slavery. The outsourcing system opens up easier opportunities for

<sup>1</sup>Tunggal Iman Sjahputra, *Dasar-Dasar Hukum Ketenagakerjaan*, Harvarindo, Jakarta, 2007, hlm. 266.

<sup>2</sup>Sehat Damanik, *Outsourcing dan Perjanjian Kerja*, DSS Publishing, Jakarta, 2006, hlm.20.

<sup>3</sup>Richardus Eko Indrajit, *Proses Bisnis Outsourcing*, Grasindo, Jakarta, 2003, hlm.1.

<sup>4</sup>Heru Suyanto & Andriyanto Adhi Nugroho, *Perlindungan Hukum Terhadap Hak-Hak Pekerja Outsourcing Berdasarkan Asas Keadilan*, Jurnal Yuridis, 3 (2), 2016.

employers to take arbitrary action in terminating employment relationships (PHK). The reasons for layoffs vary, for example: the number of jobs decreasing, workers' contracts ending, or the transfer of work objects from one outsourcing company to another outsourcing company. These various reasons are the basis for Termination of Employment (PHK), which in essence there is a weakness in this system, namely that there is no guarantee of continuity of work for outsourced workers.

Legal protection for workers, especially agency workers, is very much needed because workers are in a weak position compared to entrepreneurs. According to Satjipto Rahardjo, legal protection is protecting human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law.<sup>5</sup>

Legal protection for workers has been confirmed in Article 28D paragraph (2) of the 1945 Constitution, namely that every person has the right to work and receive fair and decent compensation and treatment in the employment relationship. This legal protection is needed to guarantee all the basic rights of workers and to realize prosperity and prosperity by the objectives of the welfare state. The Constitution has mandated the granting of every person the right to

recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. In providing legal protection, according to Philipus M. Hadjon, there are 2 (two) types of legal protection, namely preventive legal protection and repressive legal protection.<sup>6</sup> Preventive legal protection means that outsourced workers are given guaranteed certainty and legal protection for normative rights that they deserve such as wages, welfare, work conditions, work safety and accidents, social security, and others as mandated by statutory regulations. -invitation. Meanwhile, repressive legal protection can be provided in the form of protection when employment termination (PHK) and other industrial relations disputes occur.<sup>7</sup>

Forms of legal protection for outsourcing workers against arbitrary actions by employers in carrying out layoffs, one of which is regulated through the principle of Transfer of Undertakings Protection of Employment (TUPE). TUPE has been practiced in many developed countries, one of which is the European Union which issued a regulation in the form of a Directive known as Transfer of Undertakings for Protection of Employment, Regulations 2006 (TUPE).

*"From a business perspective for employers, the goal of the EU Directive for transfer of undertakings is to prevent unfair*

<sup>5</sup>Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, hlm. 53

<sup>6</sup>Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Percetakan M2 Print, Edisi Khusus, Surabaya, 2007, hlm. 2

<sup>7</sup>I Nyoman Putu Budiarta, *Hukum Outsourcing: Konsep Alih Daya, Bentuk Perlindungan, Dan Kepastian Hukum*, Setara Press, Malang, 2016.

*dismissals or unfair terminations as a result of a legal transfer or merger of companies and entities."*<sup>8</sup>

In Indonesia, the TUPE principle is applied for the transfer of work objects from one outsourcing company to another outsourcing company. Before the birth of the Job Creation Law, the TUPE principle was established through Constitutional Court Decision Number 27/PUU-IX/2011, namely that protection and guarantees for outsourced workers were implemented through 2 (two) models, namely:

- 1) The work agreement between the worker/laborer and the outsourcing company is not in the form of a PKWT, but in the form of a PKWTT.
- 2) If the work agreement is in the form of a PKWT then it must be implementing the principle of Transfer of Undertaking Protection of Employment (TUPE).

The TUPE principles are aimed at protecting workers' rights in displacement situations thereby allowing workers to enjoy the same terms. The new outsourcing company must continue the previously existing work contract. The principle of transfer of protective measures (TUPE), is a guarantee of continuity of employment relations and working conditions for workers/laborers with rewards

for years of service (experience) as well as the application of appropriate wage provisions.<sup>9</sup>

In practice, the TUPE principles have not worked effectively. As happened at PT. PKSS and CV. Andilla Riqullah is located in Balikpapan, where previous research has been carried out by Ahmad Fathir Dean Ariandi, that the TUPE principle is still difficult to implement in outsourcing with a system of providing worker services.<sup>10</sup>As in legal documents in the form of contract agreements (PKWT) between workers and several outsourcing companies, these do not contain the TUPE principles. Moreover, contract clauses generally state that under several conditions the company can terminate the employment relationship. This results in outsourced workers being vulnerable to termination of employment (PHK).

The problems raised in this research are:

- 1) What are the principles of the working relationship between outsourcing and employers to avoid unfair layoffs?
- 2) What is the legal protection for outsourced workers from arbitrary actions by employers in implementing layoffs?

## II. RESEARCH METHODS

<sup>8</sup>Fisher Phillips, *The European Union: Compliance With Transfer of Undertaking*, posting 19 September 2012, akses 22 Oktober 2022.

<sup>9</sup>Muhammad Johar Fathoni, *Transfer Of Undertakings Protection Of Employment (TUPE) Dalam Perjanjian Outsourcing*, *Media Iuris*, 1(2), 2018.

<sup>10</sup>Ahmad Fathir Dean Ariandi, *Praktik Outsourcing Dalam Prespektif UU Ketenagakerjaan (Studi Beberapa Perusahaan di Kota Balikpapan)*, Tesis, Universitas Islam Indonesia, 2018.

This research uses a normative juridical approach. The research specification uses a descriptive analytical method that describes events in the form of legal documents, with a normative legal research typology. The author conducted library research to obtain secondary data by collecting data obtained from:

- 1) Primary legal materials are: Law No. 13 of 2003, Law no6 of 2023, PP No. 35 of 2021, Constitutional Court Decision Number 27/PUU-IX/2011
- 2) Secondary legal materials are books, articles, scientific journals, theses, results of previous research,
- 3) Tertiary legal materials are dictionaries and encyclopedias.

As supporting data, namely: contract agreement between the employing company and the outsourcing company, PKWT between the worker and the outsourcing company.

The data that has been obtained is then analyzed qualitatively using the problematic legal reasoning method.

### III. DISCUSSION

According to the school of natural law, *lex naturalis* (natural law) indicates that there are fundamental demands in human life that become apparent in their form as rational creatures. Natural law is stronger than positive law because it concerns the meaning of human life itself. Therefore, the law precedes the law

formulated in the law and functions as a principle for the law formulated in the law.<sup>11</sup> According to Thomas Aquinas, natural law as the principle of all positive law, is directly related to humans and the world as God's creation. These principles are divided into two, namely:

- 1) Primary natural law principles, namely: *honeste vivere* (living honorably), *neminem laedere* (not harming others), *unicuique suum tribuere* (giving others their rights).
- 2) Principles of secondary natural law, via moral norms such as don't kill, steal, and so on.<sup>12</sup>

Grotius stated the a priori principle, namely natural law that applies positively. According to Grotius, there are two kinds of principles in his concept, namely:

- 1) The basic principles include the principle of has-been, the principle of loyalty to promises, the principle of compensation, and the principle of the need for punishment.
- 2) The principles inherent in legal subjects include the right to freedom, the right to rule over other people, the right to rule as an employer, and the right to rule over property.<sup>13</sup>

One of the functions of law is to create justice.

<sup>11</sup>Anwar Hidayat, *Pengantar Filsafat Hukum*, FBIS Publishing UBP Karawang, Karawang, 2020, hlm. 62-63..

<sup>12</sup>Ibid., p. 64.

<sup>13</sup>Ibid., p. 64.

The relationship between law and justice is often linked to each other until the famous legal adage *iustitia fundamental regnum* emerged, which means that justice is the highest, fundamental, or absolute value in law.<sup>14</sup> According to Aristotle, justice is defined as balance. The measures of balance according to Aristotle are numerical equality and proportional equality.<sup>15</sup>

Theory of Justice According to John Rawls, the principles of justice are divided into two, namely:

- 1) The principle of equal freedom, that every individual has equal rights to basic freedoms whose system is the same as freedom for all (*liberty for all*).<sup>16</sup>
- 2) The principle of difference concerns socio-economics, namely the principle of social and economic inequality which is designed to provide the greatest benefit to disadvantaged parties.<sup>17</sup>

The term disadvantaged (least advantaged) refers to those who have the least opportunities to achieve prospects of prosperity, income, and authority. In employment relations, the disadvantaged party refers to the worker.

One of the most fundamental forms of

justice is justice regarding Human Rights (HAM). Human rights have the main and first position or degree in social life because the existence of human rights has essentially been owned, carried, and attached to the human person since the moment of birth. Immediately, the obligation of other humans to respect him arose.<sup>18</sup> One of the human rights is economic human rights (property rights), including the right to own something, the right to sell and buy something, the right to enter into an agreement or contract, and the right to have a job.

In the literature, there are five types of concepts of the rule of law as a species, namely: Islamic nomocracy, *rechtsstaat*, rule of law, socialist legality, and the Pancasila rule of law.<sup>19</sup> Of these five theories, two main types are developing in the world, namely:

#### 1) *Rechtsstaat*

Is a Continental European type. According to Frederich Stahl, there are at least 4 elements of *Rechstaat*, namely: guarantees of human rights, division of power, government based on statutory regulations, and existence of an independent State Administrative Court.

<sup>14</sup>Hyronimus Rhiti, *Filsafat Hukum*, Universitas Atma Jaya Yogyakarta, Yogyakarta, 2011, hal. 239.

<sup>15</sup>*Ibid.*, p. 241.

<sup>16</sup>Karen Leback, Penerjemah Yudi Santoso, *Teori-Teori Keadilan*, Cetakan ke-6, Nusa Media, Bandung, 2018, hal. 53.

<sup>17</sup>Hyronimus Rhiti, *Filsafat Hukum*, Yogyakarta: Universitas Atma Jaya Yogyakarta, 2011, hal. 246-247 dan Karen Leback, Penerjemah Yudi Santoso, *Teori-*

*Teori Keadilan*, Cetakan ke-6, Nusa Media, Bandung, 2018, hal. 57

<sup>18</sup>A. A. Masyhur Effendi, *Perkembangan Dimensi Hak Asasi Manusia (HAM) & Proses Dinamika Penyusunan Hukum Hak Asasi Manusia (HAK HAM)*, Ghalia Indonesia, Bogor, 2005, hal.8.

<sup>19</sup>M Tahir Azhary, *Hukum Negara*, Bulan Bintang, Jakarta, 1992

## 2) *Rules of law*

It is an Anglo-Saxon type, developed in England which adheres to the common law system. Three important elements in the rules of law are Supremacy of Law, Equality Before the Law, and Due Process of Law (guaranteed human rights by the constitution).<sup>20</sup>

Meanwhile, Indonesia adheres to the Pancasila rule of law theory, which prioritizes harmony and balance. Pancasila recognizes and protects individual personality (differences). However, this recognition and protection is given to individuals in the context of the safety and happiness of the unity of which the individual is a part. Article 1 paragraph (3) of the 1945 Constitution states that "The State of Indonesia is a State of Law." The explanation of the 1945 Constitution states that the Indonesian state is based on law (*rechtsstaat*) not based on mere power (*machtsstaat*). According to Oemar Seno Adji, the Indonesian legal state has unique Indonesian characteristics, because Pancasila must be adopted as the main basis and source of law, the Indonesian legal state can also be called the Pancasila legal state.<sup>21</sup>

One of the characteristics of a rule of law is that it guarantees the protection of human rights for its citizens. According to Philipus M. Hadjon, legal protection is the protection of honor and dignity, as well as the recognition of

human rights possessed by legal subjects based on legal provisions against arbitrariness. Indonesia as a rule of law must guarantee the fulfillment of human rights, one of which is the right to have a job. According to Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "Every citizen has the right to work and a living that is worthy of humanity." In article 28D paragraph (1) "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." Meanwhile, article 28D paragraph (2) states that "Everyone has the right to work and receive fair and appropriate compensation and treatment in employment relationships."<sup>22</sup>

### **3.1 Principles of Working Relations Between Outsourcing and Employers to Avoid Unfair Layoffs**

The definition of a company according to Law Number 3 of 1982 concerning Compulsory Company Registration, "A company is any form of business that carries out any type of business that is permanent and continuous and that is established, works and is domiciled within the territory of the Republic of Indonesia, to make a profit. and or profit." There are several types of companies, namely: Individual Companies, Partnerships (Civil Partnerships, Firms, CVs), Limited

<sup>20</sup><https://dosenpendidikan.co.id>, State of Law Paper, posted 06 November 2022, accessed 04 December 2022.

<sup>21</sup>Lili Rasjidi, *Filsafat dan Teori Hukum*, Bandung, 2017, hlm. 5.

<sup>22</sup>The 1945 Constitution of the Republic of Indonesia

Liability Companies, BUMN, Foundations, and Cooperatives.

To carry out its business activities, the company recruits workers. In the General Provisions of Article 1 of Law Number 13 of 2003, the definition of worker is anyone who works and receives wages or other forms of compensation. Meanwhile, the definition of a company is any form of business whether it is a legal entity or not, owned by an individual, owned by a partnership, or owned by a legal entity, whether privately owned or state-owned, which employs workers/laborers by paying wages or other forms of remuneration. Every company has a worker recruitment mechanism that aims to screen human resources that are suitable and in line with the company's vision and mission. In general, the employee recruitment process starts with the administrative selection process, interviewing with HRD, user interview stage, psychological test stage, and interview with HRD Manager.<sup>23</sup>Candidates who are declared to have passed the selection are then placed on the job.

The principle of job placement is that every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad (Article 31 of Law No. 13 of 2003). Protection

of workers is intended to guarantee the basic rights of workers/laborers and guarantee equality of opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to developments in the business world (Considerations letter d of Law No. 13 of 2003 ). The term discrimination is defined as different treatment of fellow citizens based on skin color, class, ethnicity, economics, religion, and so on.<sup>24</sup>

The definition of employment relationship according to Soepomo, is a relationship between a worker and an employer, where the employment relationship occurs after an employment agreement is established between the two parties. They are bound by an agreement, on the one hand, the worker/laborer is willing to work by receiving a wage and the entrepreneur employs the worker/laborer by giving a wage.<sup>25</sup>Based on Article 1 point 15 of Law No. 13 of 2003, "Employment relations are relationships between entrepreneurs and workers/labor based on work agreements, which have elements of work, wages, and orders." Some experts think that in the employment agreement which is the basis of the employment relationship there are four important elements, namely: work, orders,

<sup>23</sup><https://www.talenta.co/blog/insight-talenta/kenali-bisnis-rekmen-dan-seleksi-kerja>, access 09 December 2022.

<sup>24</sup>Sugono, Dendy, *Kamus Besar Bahasa Indonesia*, Cetakan VIII, Edisi ke-4, PT Gramedia Pustaka Utama, Jakarta, 2014

<sup>25</sup>Soepomo, Iman, *Hukum Perburuhan-Bidang Hubungan Kerja*, Cetakan VI, Djembatan, Jakarta, 1987.



wages, and a certain time limit.

A work relationship does not last forever, it will end one day. Article 1 number 25 of Law No. 13 of 2003 states that "Termination of employment is the termination of the employment relationship due to certain matters which result in the end of the rights and obligations between the worker/laborer and the entrepreneur." For workers/laborers, layoffs are the beginning of loss of livelihood, so this is a scourge for workers/laborers because their survival is threatened by layoffs. Since the impact of layoffs is very complex and tends to give rise to disputes, layoff mechanisms, and procedures are regulated in such a way that workers/laborers continue to receive adequate protection and obtain their rights by applicable laws and regulations.<sup>26</sup>

Layoffs are something that is not prohibited by law, however, layoffs should be avoided and are the last resort after other efforts have been taken. The provisions for layoffs are regulated in Article 151 of Law no. 6 of 2023, that entrepreneurs, workers/laborers, and the government make efforts to prevent layoffs. The state sets regulations regarding layoffs to prevent arbitrariness. Work is a source of livelihood for workers, therefore employers cannot lay off workers arbitrarily. According to Article 154A of Law No.6 of 2023, the reasons for layoffs are as follows:

- 1) About the running of the company, namely:
  - a. Changes in company status (merger, consolidation, takeover, or separation of companies).
  - b. Companies carry out efficiency because they experience losses.
  - c. The company closed because it experienced continuous losses for 2 years.
  - d. The company closed due to force majeure.
  - e. The company is in a state of postponement of debt payment obligations.
  - f. Bankrupt company.
- 2) Ended by law, namely:
  - a. Filed by workers (resignation, claims for layoffs by workers because the company committed certain actions as regulated in Article 154A of Law no.6 of 2023).
  - b. Decided by the court.
  - c. Workers are entering retirement age.
  - d. The worker died.
  - e. Terminated on probation.
  - f. Expiration of the term of the agreement.
  - g. With the consent of both parties.
- 3) Regarding employee behavior
  - a. The worker is absent for 5 or more consecutive working days without

<sup>26</sup>Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Cetakan ke-5 Edisi Revisi, PT Citra Aditya Bakti, Bandung, 2020

written information and valid evidence and has been summoned by the employer twice properly and in writing.

b. Workers violate the provisions of the Employment Agreement, Company Regulations, or Collective Labor Agreement.

c. The worker was detained by the authorities because he was suspected of committing a criminal act.

4) Circumstances inherent in the worker

a. Prolonged illness of workers (more than 12 months)

b. Permanent total disability

5) Other reasons regulated in the Company Regulations/Collective Labor Agreement.

### **3.2 Legal Protection for Outsourced Workers from Employers' Abusive Actions in Implementing Layoffs**

The working relationship between employers and workers is a form of engagement. Basically, in these agreements, the principle of freedom of contract applies, namely a principle which teaches that the parties to a contract are in principle free to make or not make a contract, as well as their freedom to regulate the contents of the contract themselves. In its development, freedom of contract can bring injustice because this

principle achieves the goal of optimal welfare if the parties have an equal position. However, this often does not happen, so the state needs to protect the rights of weak parties. State intervention in private agreements has become a norm and even a necessity to protect weak parties. Thus unlimited freedom of contract has long been abandoned.<sup>27</sup>

Legal protection has the meaning of protection using legal means or protection provided by law, protection is aimed at certain interests. The Constitution has mandated the granting of every person the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. In providing legal protection, according to Philipus M. Hadjon, there are 2 (two) types of legal protection, namely preventive legal protection and repressive legal protection.<sup>28</sup> Preventive legal protection relating to outsourced workers means that outsourced workers are given guaranteed certainty and legal protection for normative rights that they deserve such as wages, welfare, work conditions, work safety and accidents, social security, and others as specified. has been mandated by statutory regulations. Meanwhile, repressive legal protection can be provided in the form of protection when there are problems with termination of employment, layoffs, and other industrial relations

<sup>27</sup>Irdanuraprida Idris, *Ketidakadilan Dalam Kebebasan Berkontrak dan Kewenangan Negara Untuk Membatasinya*, Lex Jurnalica, 4(2), 2007

<sup>28</sup>Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Percetakan M2 Print, Edisi Khusus, Surabaya, 2007, hlm. 2.

disputes.<sup>29</sup>

As regulated in Article 4 Letter C of the Employment Law, one of the objectives of employment development is to protect workers/laborers in realizing prosperity. From a socio-economic perspective, workers need legal protection from the state against possible arbitrary actions from employers.<sup>30</sup>The form of protection provided by the government is by making regulations that bind workers/laborers and employers, providing guidance, and implementing industrial relations processes. Industrial relations is a process of fostering communication, deliberation consultation, and negotiation and is supported by high capability and commitment from all elements within the company.<sup>31</sup>

In an outsourcing system, workers are in a vulnerable position. UU no. 6 of 2023 regulates that work agreements between workers and outsourcing companies can be in the form of an Indefinite Time Work Agreement (PKWTT) or a Certain Time Work Agreement (PKWT). For agreements in the form of PKWT, outsourcing companies must apply the TUPE (Transfer of Undertakings Protection of Employment) principle. This is intended to protect the continuity of work for agency workers. Most work agreements between workers and outsourcing companies are in the form of PKWT. The PKWT often

states conditions that could lead to layoffs other than the end of the agreement period. Outsourcing companies often list the reasons for layoffs, namely: the end of the agreement between the outsourcing company and the employer, the number of jobs decreasing, the performance of the workers being considered poor, violations of the outsourcing company's regulations, and the employer's company regulations. These various reasons make it easy for employers to lay off outsourcing workers.

The regulations regarding TUPE (Transfer of Undertakings Protection of Employment) are intended to protect workers, where when there is a transfer of work objects from one outsourcing company to another outsourcing company, the worker should remain employed and continue his term of employment this principle is often not implemented. The contributing factor to this principle not being implemented is due to the overlapping regulations between TUPE and PKWT compensation, THR, and severance pay regulations. If a job transfer occurs and the worker continues his employment relationship at the next outsourcing company, it is still unclear whose responsibility it will be to provide PKWT compensation, THR, and severance pay. If it becomes the responsibility of the next outsourcing company, then the

<sup>29</sup>I Nyoman Putu Budiarta, *Hukum Outsourcing: Konsep Alih Daya, Bentuk Perlindungan, Dan Kepastian Hukum*, Setara Press, Malang, 2016.

<sup>30</sup>Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2009, hlm. 49.

<sup>31</sup>Adrian Sutedi, *Hukum Perburuhan*, Sinar Grafika, Jakarta, 2009, hlm. 23.

company will certainly be reluctant to accept transfer workers from the previous outsourcing company. Apart from that, another factor that causes the TUPE principle to not be implemented is that each company already has provisions for accepting workers, it is not certain that workers from the previous outsourcing company will meet the qualifications at the next outsourcing company so many workers cannot be transferred.

To avoid arbitrariness by employers in laying off agency workers, the state should provide legal protection for workers. Various economic/business reasons such as efficiency and productivity should not override economic justice towards workers. The government needs to develop regulations regarding outsourcing in which legal protection for workers is enhanced, determine sanctions and legal enforcement for parties who commit violations, and carry out more intensive supervision of the implementation of outsourcing in the field.

#### IV. CONCLUSION

From the results of this research, the author reached the following conclusions:

1) The company recruits workers to carry out its business activities. In job placement there is the principle that every worker has the same rights and opportunities to choose, get or change jobs and earn a decent income. A work relationship does not last forever, it will end one day. Layoffs are a scourge for workers because their survival is threatened by layoffs.

Employers are not prohibited from carrying out layoffs, however, layoffs should be avoided and should be the last resort after other efforts have been taken. UU no.6 of 2023 has regulated layoff provisions to prevent arbitrariness.

2) Outsourced workers tend to be in a position that is vulnerable to layoffs. To provide legal protection for outsourcing workers, Law No. 6 of 2023 regulates the principles of TUPE (Transfer of Undertakings Protection of Employment). However, there are still weaknesses in the arrangements so many companies do not apply the TUPE principles. Work agreements often contain reasons that make it easier for employers to lay off workers. To avoid arbitrariness by employers in laying off outsourcing workers, it is necessary to change the regulations regarding the outsourcing system, taking into account legal protection for the continuity of their work.

#### V. SUGGESTION

1) TUPE is a means of protecting agency workers. However, Law No. 6 of 2023 does not regulate the outsourcing system in detail and does not include any sanctions. Every regulation that contains orders, prohibitions, or obligations should be accompanied by sanctions for those who violate it. Detailed arrangements regarding outsourcing are needed so that continuity of work can be protected. And if outsourcing workers experience layoffs, the workers must receive

the appropriate rights.

2) It is necessary to synchronize regulations between TUPE principles and other regulations such as: providing PKWT compensation, THR, and severance pay. So if there is a transfer of work from one outsourcing company to an outsourcing company workers and workers continue their employment relationship, it will be clearer that the burden of these costs will be borne by the outsourcing company before or after the transfer. One of the factors causing the TUPE principles to not work effectively is the existence of overlapping regulations.

## BIBLIOGRAPHY

### Book

Azhary, M Tahir, *Hukum Negara*, Bulan Bintang, Jakarta, 1992.

Budiartha, I Nyoman Putu, *Hukum Outsourcing: Konsep Alih Daya, Bentuk Perlindungan, Dan Kepastian Hukum*, Setara Press, Malang, 2016.

Damanik, Sehat, *Outsourcing dan Perjanjian Kerja*, DSS Publishing, Jakarta, 2006.

Effendi, A. Masyhur, *Perkembangan Dimensi Hak Asasi Manusia (HAM) & Proses Dinamika Penyusunan Hukum Hak Asasi Manusia (HAK HAM)*, Ghalia Indonesia, Bogor, 2005.

Hidayat, Anwar, *Pengantar Filsafat Hukum*, FBIS Publishing UBP Karawang, Karawang.

Indrajit, Richardus Eko, *Proses Bisnis Outsourcing*, Grasindo, Jakarta, 2003.

Khakim, Abdul, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Cetakan ke-5 Edisi Revisi, PT Citra Aditya Bakti, Bandung, 2020.

Leback, Karen, Penerjemah Yudi Santoso, *Teori-Teori Keadilan*, Cetakan ke-6, Nusa Media, Bandung, 2018.

M. Hadjon, Philipus, *Perlindungan Hukum Bagi Rakyat Indonesia*, Percetakan M2 Print, Edisi Khusus, Surabaya, 2007.

Raharjo, Satjipto, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000.

Rasjidi, Lili, *Filsafat dan Teori Hukum*, Bandung, 2017.

Rhiti, Hyronimus, *Filsafat Hukum*, Universitas Atma Jaya Yogyakarta, Yogyakarta, 2011.

Sjahputra, Tunggal Iman, *Dasar-Dasar Hukum Ketenagakerjaan*, Harvarindo, Jakarta, 2007.

Soepomo, Iman, *Hukum Perburuhan-Bidang Hubungan Kerja*, Cetakan VI, Djambatan, Jakarta, 1987.

Sutedi, Adrian, *Hukum Perburuhan*, Sinar Grafika, Jakarta, 2009.

Wijayanti, Asri, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2009.

### Legislation

Kitab Undang-Undang Hukum Perdata

Undang-Undang Dasar Negara Republik Indonesia 1945

Undang-Undang Nomor 3 Tahun 1982 tentang Wajib Daftar Perusahaan

Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan

Undang-Undang Nomor 40 Tahun 2007  
tentang Perseroan Terbatas

Undang-Undang Nomor 6 Tahun 2023  
tentang Cipta Kerja

Peraturan Pemerintah No. 35 Tahun 2021  
tentang Perjanjian Kerja Waktu  
Tertentu, Alih Daya, Waktu Kerja  
Dan Waktu Istirahat, Dan Pemutusan  
Hubungan Kerja

Putusan Mahkamah Konstitusi Nomor  
27/PUU-IX/2011

“Teori-Teori Perlindungan Hukum Menurut  
Para Ahli”, <https://hukumonline.com>,  
diakses 04 Desember 2022.

“Kenali Proses Rekrutmen dan Seleksi  
Karyawan”,  
[https://www.talenta.co/blog/insight-  
talenta/](https://www.talenta.co/blog/insight-talenta/), diakses 09 Desember 2022.

### Research Journal

Aprida, Irda Nur, “*Ketidakadilan Dalam  
Kebebasan Berkontrak dan  
Kewenangan Negara Untuk  
Membatasinya*”, Jurnal Hukum, Lex  
Jurnalica, Jakarta, 2007.

Fathoni, Muhammad Johar, “*Transfer Of  
Undertakings Protection Of  
Employment (TUPE) Dalam  
Perjanjian Outsourcing*”, Media  
Iuris, 1(2), 2018.

Phillips, Fisher, “*The European Union:  
Compliance With Transfer of  
Undertaking*”, posting 19 September  
2012, akses 22 Oktober 2022.

Suyanto, Heru dan Nugroho, Andriyanto Adhi,  
“*Perlindungan Hukum Terhadap  
Hak-Hak Pekerja Outsourcing  
Berdasarkan Asas Keadilan*”, Jurnal  
Yuridis, 3(2), 2016.

Ariandi, Ahmad Fathir Dean, 2018, *Praktik  
Outsourcing Dalam Prespektif UU  
Ketenagakerjaan (Studi Beberapa  
Perusahaan di Kota Balikpapan)*,  
Tesis, Program Pasca Sarjana  
Universitas Islam Indonesia,  
Yogyakarta.

### Internet

“Makalah Negara Hukum”,  
<https://dosenpendidikan.co.id>,  
diakses 04 Desember 2022.