

**PROTECTION OF OUTSOURCING WORKERS IN THE PERSPECTIVE OF LAW**  
**NUMBER 11 OF 2020 CONCERNING JOB CREATION**

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**Abstract**

The purpose of this article is to find out the legal protection for outsourcing workers according to the provisions of Law Number 11 of 2020 concerning Job Creation. The type of research used is empirical legal research. Associated with the type of empirical legal research, the data used in the form of primary data and secondary data. Primary data were obtained through interviews while secondary data were obtained from primary legal materials, secondary legal materials and tertiary legal materials. The results of the study can be concluded that legal protection efforts against outsourcing workers/labor must be carried out maximally and more specifically, considering that in the practice of outsourcing there is a triangular employment relationship involving the employer (principal), the employer (vendor) and the worker/laborer. Under these conditions, outsourcing workers/laborers are very vulnerable to exploitation and inhumane acts, either because of their status as non-permanent (contracted) workers/laborers or because of the treatment of entrepreneurs who tend to act like capitalists who seek profit from their hard work. The vendor's business is to employ workers/laborers for the benefit of the principal, while the vendors themselves benefit from the difference between the wages/services provided by the principal to the vendor and the wages paid by the vendor to the workers/laborers. This practice has been analyzed by Marx, who said that workers are alienated (exiled) from work, because once the worker/laborer is in an outsourcing situation, the worker will work based on the purpose of the vendor who pays and pays wages, and they (the worker/labor) it will be exploited for the benefit of the vendor and principal.

**Keywords: legal protection, outsourcing workers, Job Creation Act.**

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Regulations regarding decent work, the state also regulates legal protection for workers. Where such protection is the fulfillment of basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, which states that "The economy is

structured as a joint effort of kinship". Protection of workers is intended to guarantee workers' rights and ensure equal opportunity and treatment without discrimination on anything to realize the welfare of workers and their families while taking into account the

development of the progress of the business world and the interests of entrepreneurs.<sup>1</sup>

Keep in mind that the basis for workers to do their work is an agreement. As stated in Article 1313 of the Civil Code, it is "an act by which one or more people bind themselves to one or more other people". The agreement made then applies as a law for the parties who bind themselves, and results in the emergence of a relationship between the two parties.<sup>2</sup>

The industrial relations dimension has three dimensions, namely the dimensions of employment relations, the dimensions of trade unions and the dimensions of industrial conflicts and their resolution. In this section, the three dimensions will be described in a neoliberal, Marxian and Pancasila perspective which refers to Salomon.<sup>3</sup>

Humans as workers must receive protection, welfare and tranquility, security in carrying out work relationships because humans face uncertainty, both speculative uncertainty and pure uncertainty that always causes losses. Therefore, to guarantee all of this,

various regulations regarding social security were formed. Protection of workers in industrial relations can be carried out, either by providing guidance, or by increasing recognition of human rights, protection physical and technical, as well as social and economic through the norms prevailing in the environment work.<sup>4</sup>

In this case, it is necessary to provide social security, namely workers, because workers are the backbone of the company who have an important role in the company. Without workers it is impossible for the company to run, and participate in development. Recognizing the importance of workers for employers, government and society, it is necessary to think so that workers can maintain safety in carrying out their work. Likewise, it is necessary to strive for peace and health of workers so that what they face at work can be considered as much as possible, so that vigilance in carrying out the work is guaranteed. These ideas constitute a worker protection program, which in daily

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<sup>1</sup> Heru Suyanto & Andriyanto Adhi Nugroho, 2016, *Perlindungan Hukum Hak - hak Pekerja Outsourcing berdasarkan Asas Keadilan*, Jurnal Universitas Pembangunan Nasional - Vol 1, , p.1

<sup>2</sup> Nafia, Erlin Kristine, Endra Wijaya, 2017, *Perlindungan Hak-hak Buruh pada Praktik Sistem Outsourcing sebuah Kesenjangan Penerimaan*, Jurnal Novelty - Vol 8 No. 2, , p. 253.

<sup>3</sup> Dinar Wahyuni, 2011, *Posisi Pekerja Outsourcing dalam Undang-Undang Nomor 13 tahun 2003 tentang*

*Ketenagakejaan*, Jurnal Pengelolaan Data dan Informasi Sekriatan Jendral DPR RI, , p.139

<sup>4</sup> Taryono, Arie Purnomosidi, Ratna Riyanti, 2019, *Perlindungan Bagi Pekerja Di Era Revolusi Industri 4.0 Dalam perspektif Hubungan Industrial Pancasila*, The Proceedings of The National Seminar on Trancendental Law, Surakarta: Program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta, p. 51

practice is useful for maintaining company activity and stability.<sup>5</sup>

According to Soepomo in Asikin, labor protection is divided into 3 (three) types:<sup>6</sup>

1. Economic protection, namely the protection of workers in the form of sufficient income, including if the workforce is not able to work against their will.
2. Social protection, namely the protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize.
3. Technical protection, namely the protection of workers in the form of work security and safety.

The protection of the workforce can provide its own spirit for the workforce but from that it also has a positive impact on efforts to increase discipline and labor productivity and ultimately improve the welfare of the workforce and their families.

### **Outsourcing Workers.**

The definition of outsourcing itself is an agreement made between a company and a labor service provider company, for a particular job. Here the workers/laborers enter into an employment agreement not with the company

where they work, but they make a work agreement with a labor service provider company. Likewise, the provision of wages is also given by the labor service provider company. They are usually contracted for two years, and can be extended for another year. Up to 3 years. If his work contract will be extended, he will automatically become a permanent employee, who works at the company. The problem is that this contract work time is continuously carried out, so it is very detrimental to workers/workers whose condition is very weak.<sup>7</sup>

This is what really distinguishes outsourcing workers from workers who have been officially contracted or can be called permanent workers. Where outsourcing workers will not have a career path because it is based on a contract or agreement, in which the agreement can be extended or not with the same position without any increase in position or position. Meanwhile, permanent workers will get the opportunity to develop their careers because they actually meet the provisions in the applicable Manpower.

Outsourcing workers/laborers. For example, outsourcing that uses a certain time

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<sup>5</sup> Lalu Husni, 2004, *Penyelesaian Perselisihan Hubungan industrial melalui Pengadilan dan Di Luar Pengadilan*, Jakarta: PT Raja Grafindo Persada, p. 95

<sup>6</sup> Abdul Khakim, 2018, *Pengantar Hukum Ketenagakerjaan*, Bandung: PT Citra Aditya Bakti, p. 61.

<sup>7</sup> Khairani, 2012, *Analisis Permasalahan Outsourcing (Alih Daya) dari prespektif Hukum dan Penerapannya*, Kanun Jurnal Ilmu Hukum No. 56 Th. XIV, p. 66

work agreement. A work agreement for a certain time clearly does not guarantee job security, the continuity of a worker's work, because a worker with a work agreement for a certain time must know that at some point the employment relationship will be broken and will no longer work there, as a result, the worker will look for another job. So that the sustainability of work becomes a problem for workers who are outsourcing with work agreements for a certain time. If job security is not guaranteed, then it is against the constitutional guarantee of getting a decent job.

Agreements in outsourcing (Outsourcing) are also not solely based on the principle of freedom of contract according to article 1338 of the Civil Code, but also must comply with labor provisions, namely Law Number 11 of 2020 concerning Job Creation. In the provision of worker services, there are 2 stages of the agreement, namely:<sup>8</sup>

1. An agreement between the company providing the job and the company providing the worker/labor. The company may hand over part of the work to another company through a work charter agreement or a written agreement for the provision of worker services. Jobs that can be submitted

to other companies must meet the following requirements:

- 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.
- d. Does not hinder the production process directly.

In the case of the placement of workers/labor, the company that uses the worker's services will pay a certain amount of funds (management fee) to the company providing the workers/labor.

2. The agreement of the worker/labor provider company with the employee. The provision of services for workers or laborers for company supporting activities must meet the following requirements:
  - a. There is a working relationship between the worker or laborer and the service provider company for the worker or laborer.
  - b. A work agreement that applies in an employment relationship is a work agreement for a certain time that meets the requirements and or an indefinite work agreement made in writing and signed by both parties.

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<sup>8</sup> Pan Mohamad Faiz, Outsourcing dan Tenaga Kerja, sources:

<https://panmohamadfaiz.com/2007/05/19/outsourcing-dan-tenaga-kerja/> access on July 27 2022.

- c. Protection of business and welfare, working conditions and disputes that arise are the responsibility of the service provider company for workers/labor.

With the existence of these 2 (two) agreements, even though the employee works daily at the company providing the job, he still has the status as an employee of the company providing the employee. Fulfillment of employee rights such as protection of wages and welfare, working conditions and disputes that arise are still the responsibility of the service provider company.

Outsourcing workers and also many outsourcing/ outsourcing workers take demonstrations because they feel that the company does not pay attention to the welfare of its workers and hopes that the company makes a company policy that pays more attention to the rights of the outsourcing/outsourcing workers and also provides protection for the rights of outsourcing workers.<sup>9</sup>

Outsourcing contract work system that prioritizes a very young workforce will cause job opportunities for workers aged > 30 years to

narrow.<sup>10</sup> Employment opportunities in the formal sector for the older workforce are narrowing, so there will be an explosion in the informal sector which has so far dominated the structure of the Indonesian workforce. In daily operations in carrying out work activities within a company, of course there is an error that results in work accidents or physical losses experienced by workers which is very disturbing for workers.<sup>11</sup>

Goes well and smoothly, the company will create a better quality working relationship where the workers will feel more respected and their rights protected so that the workers will carry out their work obligations to the fullest because all their rights are properly fulfilled. For this reason, it is necessary for the government's role as a party directly involved in the employment relationship, can be neutral and can guarantee the implementation of the rights and obligations of the parties in the employment relationship, as in Law Number 13 of 2003 concerning Manpower which states "every worker/labor has the right to obtain equal treatment without discrimination from employers".<sup>12</sup> This is also related to Article 66

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<sup>9</sup> Ashabul Khafi, 2016, *Perlindungan Hukum Terhadap Tenaga Kerja*, Jurisprudentie, Vol 3, No. 2, p. 69.

<sup>10</sup> Elisa, Anis, 2009, *Perlindungan Hukum Bagi Pekerja Dalam Perjanjian Pemborongan Pekerjaan Secara Outsourcing*, Jurnal Penelitian Fakultas Hukum Universitas Sebelas Maret Surakarta, Vol. 12 No. 4, p.121.

<sup>11</sup> Fauzi Ridzal, 2000, *Dinamika Gerakan Perempuan di Indonesia*, Yogyakarta: Tiara Wacana, p.5

<sup>12</sup> Darwis Anatai, 2017, *Perlindungan Hukum Tenaga Kerja Outsourcing Menurut Undang-Undang RI Nomor 13 Tahun 2003 dan Hukum Islam*, Jurnal Hukum Darwis Vol 15 No.1, p. 212.

of Law Number 11 of 2020 concerning Job Creation.

Various problems regarding the legal protection of workers in reality are still less than expectations. This can be seen from the implementation that is outside of what has been stipulated in the labor legislation, where there are still entrepreneurs who make their own regulations for the benefit of the company who do not pay attention to the rights of the workers themselves, which workers cannot claim their rights in this current era where Many companies use a contract system with certain time workers. Therefore, it is important for us to know whether there are appropriate legal remedies in carrying out Law Enforcement on Social Security for these outsourcing workers.

Based on the background of the problem above, the formulation of the problem in this study is how to protect outsourcing workers according to the provisions of Law Number 11 of 2020 concerning Job Creation?

#### **RESEARCH METHODS.**

In this study, the type of research that will be used by the author is normative legal research. Empirical legal research focuses on behavior (behavior) that develops in society, or

the operation of law in society.<sup>13</sup>The reason the author uses an empirical legal approach is to conceptualize law as a real behavior that includes actions and consequences in social life relationships. In terms of empirical legal research, it is used to see how the protection provided by the Surakarta City Manpower Office for outsourcing workers and the problems in the protection of outsourcing workers.

In this study, the type of data that will be used by the author is secondary data. Secondary data is data obtained from official documents, books related to the object of research, research results in the form of reports, theses, theses, dissertations, and laws and regulations.<sup>14</sup> Secondary data is not obtained directly from the field location, but the data is related to relevant data and supports the problem under study from library research and documentation which is the result of research and processing of other people, which is already available in the form of books or documentation that is usually provided in the library. Secondary data sources consist of three legal materials, namely:

1. Primary legal materials. Primary legal materials consist of Law Number 11 of 2020 concerning Job Creation.

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<sup>13</sup> H. Ishaq, 2017, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Bandung. Alfabeta, p.71.

<sup>14</sup> Zainudin, 2016, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, p. 106.

2. Secondary legal material. Secondary legal materials consist of books, journals, and articles in the field of labor law and those related to outsourcing.
3. Tertiary legal materials. Tertiary legal materials consist of dictionaries and websites.

The data analysis technique that will be used in this research is to use an interactive analysis model.

## **DISCUSSION.**

### **Overview of Legal Protection Theory.**

According to Fitzgerald as quoted by Satjipto Raharjo, the beginning of the emergence of the theory of legal protection comes from the theory of natural law or the flow of natural law. This flow was pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the Stoic school). According to the flow of natural law, it states that the law comes from God, which is universal and eternal, and that law and morals cannot be separated. The adherents of this school view that law and morals are a reflection and regulation internally and externally of human life which is realized through law and morals.<sup>15</sup>

Fitzgerald explains Salmond's theory of legal protection that the law aims to integrate

and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations provided by the community which are basically an agreement by the community to regulate behavioral relations between community members and between individuals and the government which are considered to represent the interests of the community.<sup>16</sup>

Legal protection when explained literally can lead to many perceptions. Before describing legal protection in its true meaning in legal science, it is also interesting to elaborate a little on the notions that can arise from the use of the term legal protection, namely legal protection can mean the protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials. Law and can also mean the protection provided by law against something.<sup>17</sup>

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<sup>15</sup> Satjipto Raharjo, 2000, Ilmu Hukum, Bandung: PT. Citra of Aditya Bakti, p. 53.

<sup>16</sup> Ibid, p. 54

<sup>17</sup> Sudikno Mertokusumo, 2009. Penemuan Hukum , Bandung: Citra Aditya Bakti, p. 38

The definition of legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. The opinions quoted from several experts regarding legal protection are as follows: According to Satjipto Raharjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.<sup>18</sup>

According to Setiono, legal protection is an action or effort to protect the community from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings. <sup>19</sup>Meanwhile,

according to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in the social life between fellow human beings.<sup>20</sup>

According to Hetty Hasanah, legal protection is all efforts that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or taking legal action. <sup>21</sup>Legal protection can also raise questions that then cast doubt on the existence of the law. The law must provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Law enforcement officers are obliged to enforce the law and with the functioning of the rule of law, the law will indirectly provide protection for every legal relationship or all aspects of community life regulated by law.

Legal protection is something that protects legal subjects through applicable laws and regulations and enforced its implementation with a sanction. Legal protection can be divided into two, namely:

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<sup>18</sup> Ibid, p. 55

<sup>19</sup> Setiono, 2004, Rule of Law (Supremasi Hukum), Surakarta; Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, p. 3.

<sup>20</sup> Muchsin, 2003, Perlindungan dan Kepastian Hukum bagi Investor di Indonesia, Surakarta: magister

Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, p. 14.

<sup>21</sup> Rimbawanto, 2017, Doddy Kridasaksana, dan Ariyono, Perlindungan Hukum Terhadap Perbatasan Wilayah Antara Negara Republik Indonesia Dengan Timor Leste, Humani, Volume 7 No. 2, p. 143.



1. Preventive Legal Protection, namely protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation.
2. Repressive Legal Protection. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.<sup>22</sup>

### **Understanding About Outsourcing.**

Outsourcing in Indonesian is translated as over power. In practice, the basic understanding of outsourcing is the transfer of part or all of the work and or authority to other parties to support the strategy of outsourcing service users, whether personal, company, division, or even a unit within the company. Outsourcing itself can be interpreted as outsourcing, meaning that it transfers part of the work for workers or workers who have been agreed by the company to service providers.

The view of outsourcing according to Maurice Greaver, outsourcing is seen as an act of diverting some activities within the company and its decision-making rights to other parties,

where these actions are bound in a cooperation contract. Meanwhile, according to Chandra Suwondo, outsourcing is the delegation of daily operations and management of a business process to outside parties (outsourcing service providers) through this delegation, so management is no longer carried out by companies that use outsourcing services.

In the field of employment, outsourcing is defined as the use of labor to produce or carry out a job by a company, through a labor provider/director company. This means there are companies that specifically train or prepare, provide workers for the benefit of other companies. This company has a direct working relationship with the employed worker/labor.

The regulation regarding outsourcing is contained in Article 66 of Law Number 11 of 2020 concerning Job Creation. Legal construction against outsourcing consists of three (3) parties, namely the owner of the outsourcing company, the company where he works, and another worker or laborer.

The arrangements for work that can be outsourcing are enshrined in Article 59 of Law Number 11 of 2020 concerning Job Creation which stipulates that:

- (1) A work agreement for a certain time can only be made for certain jobs which

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<sup>22</sup> Ibid, p. 20.

according to the type and nature or activities of the work will be completed within a certain time, namely as follows:

1. work that is once completed or temporary in nature;
2. work that is estimated to be completed in a not too long time;
3. seasonal work;
4. work related to new products, new activities, or additional products that are still under trial or exploration; or
5. work whose type and nature or activities are not permanent.

(2) A work agreement for a certain time cannot be made for permanent work.

(3) A work agreement for a certain time that does not meet the provisions as referred to in paragraph (1) and paragraph (2) by law becomes a work agreement for an indefinite time.

(4) Further provisions regarding the type and nature or activity of work, period of time, and time limit for extending a certain time work agreement shall be regulated in a Government Regulation.

The explanation of the regulation on outsourcing contained in the Article does not clearly state which areas or fields are included in the core business and which are not the core business. In decision making outsourcing is divided into 2, namely:

- a. The critical matrix is that if it is not carried out according to the SOP (Standard Operating Procedure), there will be several risks.
- b. Core matrix, namely the process of expertise is the key to our company's competitiveness with our competitors' companies.

Along with the times, the purpose of outsourcing is not only to share employment risks, but to become more complex. Outsourcing has become a management tool, and not only to solve problems, but to support and as a business goal. Based on the results of the outsourcing institute survey, there are several reasons why companies outsource. These reasons include.

1. Increase company focus.
2. Leverage world-class capabilities.
3. Accelerate profits from reengineering.
4. Share the risk.
5. Own resources can be used for other needs.
6. Allows the availability of capital funds.
7. Creating fresh funds.
8. Reduce and control operating costs.
9. Obtaining resources that are not owned alone;

10. Solve problems that are difficult to control or manage.<sup>23</sup>

The reasons for letters a to e above are long-term targets and are strategic in nature. While the reasons f to j are more tactical or affect the company's day-to-day operations and business.<sup>24</sup> Outsourcing itself is actually also a problem for the workforce because it is relatively vulnerable to arbitrary treatment by the company and is also a problem for the company if it is not managed properly. Basically, work providers must pay attention to how to regulate and manage outsourcing workers fairly without discrimination.

Outsourcing in the field of employment, is defined as the use of labor to produce or carry out a job by a company, through a company providing or deploying manpower. In the field of management, outsourcing is defined as the delegation of operations and daily management of a business process to an outside party/outsourcing<sup>25</sup> service provider company. It can also be said that outsourcing is the delivery of company activities either partially or wholly to other parties as stated in the contract agreement. Often outsourcing is equated with labor distribution services.

Actually outsourcing is the transfer of supervisory and management functions a business process to a service provider company. There are 3 important elements in outsourcing, namely:

1. Supervision function transfer.
2. Delegation of responsibilities or duties of a company.
3. Focuses on the results or outputs to be achieved by the company. So far, there are no laws and regulations that explicitly and in detail provide a definition of outsourcing.

Some experts and practitioners of outsourcing from Indonesia also provide a definition of outsourcing, among others, mentioning that outsourcing in Indonesian is referred to as outsourcing, is the delegation of daily operations and management of a business process to an outside party or service company. Outsourcing. Outsourcing theory According to Libertus Jehani that outsourcing is a form of handing over certain work of a company to a third party which is carried out with the aim of reducing the burden on the company.<sup>26</sup>

So outsourcing is a form of work agreement between the employer company (user) and the labor provider company (vendor), where the

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<sup>23</sup> Richardus Eko Indrajit and Richardus Djokopranoto, 2004, *Proses Bisnis Outsourcing*, Jakarta: PT. Gramedia, p. 4-5

<sup>24</sup> Ibid.

<sup>25</sup> Lalu Husni, 2009, *Pengantar Hukum Ketenagakerjaan*, Jakarta: Raja Grafindo Persada, p. 177-178.

<sup>26</sup> Libertus Jehani, 2008, *Hak - Hak Karyawan Kontrak*, Jakarta: Forum Sahabat, p. 1

employer asks the labor provider company to provide the workforce needed to work in the employer company.<sup>27</sup> The definition put forward by Libertus Jehani is more detailed when compared to the definition of other experts because it includes the parties, the work agreement and the purpose of outsourcing. So outsourcing is a form of work agreement between the employer and the outsourcing company, where the employer asks the outsourcing company to provide the workforce needed to work in the employer company accompanied by paying certain wages or salaries as agreed by the parties.

#### **Legal Protection for Outsourcing Workers Based on Law Number 11 of 2020 concerning Job Creation.**

The company's activities, known as outsourcing, mean that the company can hand over a part of the execution of the work to other companies through a written contract of work or the provision of workers/labor services. The implementation of Outsourcing is as follows:

1. Submission of part of the implementation of work to other companies is carried out through a written work chartering agreement.

2. Jobs that can be submitted to other companies must meet the following requirements:

- a. Conducted separately and main activities;
- b. It is carried out 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.<sup>28</sup>

Employment relationship is a relationship that regulates/contains rights and obligations between workers/laborers and employers whose doses must be balanced. Therefore. The essence of the rights of workers/laborers is the obligation of the entrepreneur, and conversely, the rights of the entrepreneur are the obligations of the workers/laborers. In "Human Relations Theory, it is necessary to have human relations in managing a company, and according to Elton Mayo, "Attention to employees will provide benefits." Every legal relationship certainly creates rights and obligations. In addition, each member of particular society has a relationship of interest that is different and opposite.

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<sup>27</sup> Iftida Yasar, 2008, Sukses Implementasi Outsourcing, Jakarta: PPM, p. 3.

<sup>28</sup> Results of an interview with the Head of the Surakarta City Manpower Office, Mrs. Widyastuti Prastiwiningsih on August 2, 2022.

In general, rights are divided into two groups, namely Absolute Rights or absolute rights (*absolute rechten, onpersoonlijke rechten*) and relative rights (*nisbi, relatively rechten, persoonlijke rechten*). Absolute Rights or Absolute Rights are every power given by law to legal subjects to do something or to act in paying attention to their interests, this right applies absolutely to other legal subjects and must be respected by every legal subject.

Absolute Rights or Absolute Rights consist of Human Rights, Absolute Public Rights and part of Private Rights. Meanwhile, relative rights (relative rights) are every power/authority that is given by law to other/certain legal subjects so that he does something, does not do something or gives something, this right arises as a result of an engagement. Relative rights (relative) consist of relative public rights, relative family rights and relative property rights.

Relative Property Rights are all property rights that are not material rights or goods created by humans, this right can only be exercised against certain people (*not droit de suite*) or also called debt (*verbintenis*) according to Hofman van Opstal as quoted by Chainur Arrasjid, the debt must be formulated as a relationship according to the law of wealth

between two parties that gives the power/authority of one party to charge the other party to do something, not to do something or to give something, while the other party is obliged to do and be responsible for what is billed to him <sup>29</sup>.

This right is inherent in workers/laborers and entrepreneurs in an employment relationship, where both parties are bound to do something, not to do something and to give something in accordance with the Work Agreement. Legal protection has the meaning as protection by using legal means or protection provided by law, aimed at the protection of certain interests, namely by making the interests that need to be protected into legal rights.

In legal science, "Rights" are also called subjective law. Subjective law is an active aspect of legal relations provided by objective law (norms, rules, *recht*). Violation of the rights of outsourcing workers is a violation of law or a crime by corporations as introduced by Edwin H. Sutherland, Henderson, Edward Alswort Ross, and other experts.<sup>30</sup>

Legal protection is always related to the role and function of law as a regulator and protector of the public interest, Bronislaw Malinowski in

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<sup>29</sup> Chainur Arrasjid, 2006, Dasar-Dasar Ilmu Hukum, Cet. IV, Jakarta; Grafika, p. 79.

<sup>30</sup> Chatryen M. Dju Bire, August 2018, Perlindungan Hukum Terhadap Pekerja Outsourcing Atas Kesehatan

Dan Keselamatan Kerja (K3), Jurnal Hukum Bisnis Bonum Commune, Vol. I, No. 1, p. 2.

his book entitled. *Crime and Customs in Savage*, says that, "law does not only play a role in situations of violence and opposition, but that law also plays a role in everyday activities."

The law determines the interests of the community that can be increased into legal rights that can be enforced. Rights are given to rights advocates who are often known as legal entities (*rechtspersoon*) which can be natural individuals (*naturlijke*) and can also be non-natural legal entities, namely legal entities based on legal inventions. Humans gather in an organization to get things that they cannot do alone, but in achieving organizational goals they must satisfy their personal needs also that, companies can work efficiently and survive only if the goals of the organization and the goals and needs of individuals who work on it. The organization is kept in balance.

In several theories of Company Organizational Structure and Behavior and Management theory, actually experts have given a clear picture that fulfilling the needs of workers/labor is an essential thing. It means. All things must be done by the entrepreneur to increase the motivation of workers/laborers by ensuring safety, and regulating working conditions properly. If the laws and regulations in the field of labor that require or force

employers to act as in the legislation are actually implemented by all parties, then legal protection from the employer's power will be carried out because the validity of the law cannot be measured juridically, but can be measured sociologically and philosophical.<sup>31</sup>

Legal certainty is a value that in principle provides legal protection for every citizen from arbitrary actions by the state or parties other than the state, so that the law gives responsibility to the state and every person or party to carry it out. The principle of legal certainty in the regulation of the legal protection of outsourcing workers can be studied or examined through aspects including: employment relationship, the type of work outsourcing, the form of the outsourcing company's business entity, the rights of outsourcing workers in maintaining their normative rights, in the event of a dispute with entrepreneurs.

The purpose of providing protection for outsourcing workers is intended to guarantee their rights and ensure equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to the development of the progress of the business

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<sup>31</sup> Mifta Thoha, 2000, *Perilaku Organisasi, Konsep Dasar Aplikasinya*. Jakarta: Raja Grafindo Persada, p. 93.

world.<sup>32</sup> Implementation of a Specific Time Work Agreement for outsourcing workers Before the Manpower Act was enacted as a positive law, the labor law did not regulate the outsourcing system. The regulation on outsourcing and a Specific Time Work Agreement was first regulated in the Regulation of the Minister of Manpower No. 5 of 1995 and the Regulation of the Minister of Manpower No. 2 of 1993, the last of which was regulated in Government Regulation No. 35 of 2021 concerning Employment Agreements, Specific Time, Outsourcing, Working Time and Rest Time, and Termination Of Work.

In its development, the unions filed a resistance against the legalization of the outsourcing by submitting a judicial review to the Constitutional Court. Against Article 59, Article 64, Article 65 and Article 66 of Law No. 13 of 2013 concerning Manpower. The result of the judicial review is that the Constitutional Court partially granted the union's application and rejected the application for Article 59 and Article 64 of Law No. 13 of 2013 concerning Manpower. Then related to the Outsourcing system, it is regulated in Law Number 11 of 2020 concerning Job Creation in conjunction with Government Regulation Number 35 of 2021

concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment.

Protection of workers/laborers can be carried out either by providing guidance, compensation, or by increasing the recognition of human rights, physical and socio-economic protection through the prevailing norms in the company. This outsourcing system work agreement is stated in a Specific Time Work Agreement. Article 1 of Law Number 13 of 2003 concerning Manpower states that an agreement regarding labor requirements between a labor union and an employer is an agreement entered into by a labor union that has been registered with the ministry of labor with an employer who is a legal entity which generally or solely contains requirements The conditions that must be considered in the work agreement include five areas, including:

1. Field of deployment or work placement;
2. Field of working relations;
3. Occupational Health Sector;
4. Work Security Sector;
5. Labor Guarantee Sector.

The position of workers in essence can be viewed from two aspects, namely from a juridical point of view and from a socio-

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<sup>32</sup> The results of an interview with the Head of the Surakarta City Manpower Office, Mrs. Widyastuti Pratiwiningsih on August 2, 2020.

economic point of view. From a socio-economic perspective, workers need legal protection from the state against the possibility of arbitrary actions from employers. The form of protection provided by the government is to make regulations that bind workers/laborers and employers, provide guidance, and carry out industrial relations processes.

Industrial relations is basically a process of establishing communication, consultation, deliberation and negotiation and is supported by the ability and high commitment of all elements within the company. Juridically, based on Article 27 of the 1945 Constitution, the position of the worker/laborer is the same as that of the employer/employer, but socially and economically the position of the two is not the same, where the position of the employer is higher than that of the worker/labourer. This high and low position in the work relationship results in an exaggerated relationship, thus creating a tendency for employers/employers to act arbitrarily to their workers/laborers.

In contrast to other civil law relationships, in a working relationship the positions of the parties are not equal, the workers/laborers are not free to determine their will in the agreement. This unequal position is given that workers only rely on energy to carry out their work, while employers/entrepreneurs are parties who are socially and economically more

capable so that any activity depends on their will.

Protection of workers/ laborers is intended to ensure the fulfillment of basic rights of workers and guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/ laborers and their families while taking into account the progress of the business world.

The operationalization of the objectives of manpower development are; First, protecting the rights of citizens to obtain work, protecting workers from work risks in carrying out work such as work accidents, occupational diseases, death, loss/reduction of income, protecting workers from other forms of bad, inappropriate and inhumane treatment. , discrimination and exploitation both physically, mentally, morally and socially, as well as protecting all labor rights arising from engagements and from legislation.

Second, educate and improve the skills and skills of the workforce so that they can meet the demands of the labor market, improve their bargaining position, and increase their income. Third, prosper and ensure the fulfillment of the needs of the workforce for a decent life, including: level of income/wages, welfare and social security for themselves and their families.

Legal protection for workers is the protection provided by law to workers for the actions of employers before work (pre-



employment), during work (during employment) and post-employment. Protection of the rights of workers/laborers is carried out by providing remedies (law) to those whose rights have been violated so that they can be restored and/or fulfilled. Harjono said "the law distinguishes legal efforts to protect a person's rights in several ways; civil legal remedies, criminal legal remedies, administrative legal remedies, and constitutional legal remedies, even legal remedies provided cross-country"<sup>33</sup> so there are legal remedies that are private and there are also public legal remedies.

Protection of interests by granting rights will be stronger if the subject to whom the rights are granted is also equipped with legal remedies to defend their rights.<sup>34</sup> This means that the law gives legal entities the right to control the implementation of obligations by other parties to fulfill their rights. In this legal protection effort, "Government intervention is realized through labor policies and laws contained in various laws and regulations".<sup>35</sup> Then, through this legislation, a series of rights, obligations and responsibilities are laid down for each party, some of which are even accompanied by criminal sanctions and fines.

Legal protection for workers/laborers is carried out so that the rights of workers/laborers are not violated by employers, considering that in a working relationship the positions/positions of the parties are not equal, where workers/ laborers are in a weak position both from an economic and social perspective, so that with their position the weak are not infrequently violations of their rights. Providing legal protection for workers/laborers is the mandate and purpose of labor law, as said by Senjun H. Manulang, that the purpose of labor law is to achieve or implement social justice in the field of employment and protect workers against unlimited power from employers. Zainal Asikin as quoted by Asri Wijayanti also said "legal protection from the power of the employer is carried out if the laws and regulations in the field of labor that require or force the employer to act as in the legislation are actually implemented by all parties because the validity of the law cannot be measured juridically alone, but measured socially and philosophically".<sup>36</sup>

Legal protection efforts against outsourcing workers/labor must be carried out maximally and more specifically, considering that in the

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<sup>33</sup> Harjono, 2008, *Konstitusi Sebagai Rumah Bangsa*, Penerbit: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, p. 386.

<sup>34</sup> *Ibid.*, p. 384.

<sup>35</sup> Rachmad Syafa'at, 2008, *Gerakan Buruh Dan Pemenuhan Hak Dasarnya, Strategi Buruh Dalam Melakukan Advokasi*. Malang: In-Trans Publishing, p.11.

<sup>36</sup> Asri Wijayanti, 2009, *Hukum Ketenagakerjaan Pasca Reformasi*, Jakarta: Sinar Grafika, p. 10.

practice of outsourcing there is a triangular working relationship involving the employer (principal), the employer (vendor) and the worker/labourer. Under these conditions, outsourcing workers/laborers are very vulnerable to exploitation and inhumane acts, either because of their status as non-permanent (contracted) workers/laborers or because of the treatment of entrepreneurs who tend to act like capitalists who seek profit from their hard work.<sup>37</sup>

The vendor's business is to employ workers/laborers for the benefit of the principal, while the vendors themselves benefit from the difference between the wages/services provided by the principal to the vendor and the wages paid by the vendor to the workers/laborers. This practice was analyzed by Marx, who said that workers are alienated (exiled) from work, because once the worker/laborer is in an outsourcing atmosphere, then he/she will work based on the purpose of the vendor who pays and pays wages, and they (the worker/labor) it will be exploited for the benefit of the vendor and principal.

Citing what Chainur Arrasjid has said that law is a human will and creation in the form of

norms that contain behavioral instructions, about what can be done and about what should not be done. Therefore the law must have sanctions and contain the values of justice, usefulness, and the value of certainty in the society where the law was created.<sup>38</sup>

Regarding legal remedies to protect outsourcing workers, the Surakarta City Government, in this case the Surakarta City Manpower Office, is basically authorized to take steps such as:

1. Intervening in employment relations in order to minimize industrial relations disputes.
2. Outsourcing workers/laborers.
3. Supervise the application of work norms and K3 norms in outsourcing practices, so that there is a guarantee from employers to always provide work protection and working conditions for workers/laborers.
4. Creating order in the outsourcing business, by forcing entrepreneurs to comply with the terms and conditions of outsourcing as regulated in Article 65 paragraph (2), paragraph (3), paragraph (4), paragraph (6) and paragraph (7) of Law Number 13 of 2003 concerning Manpower.<sup>39</sup>

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<sup>37</sup> The results of an interview with the head of the Surakarta City Manpower Office, Mrs. Widyastuti pratiwiningsih on August 2, 2022.

<sup>38</sup> Chainur Arrasjid, Op. Cit. p.112.

<sup>39</sup> Results of an interview with the Head of the Manpower Office of the City of Surakarta, Mrs. Widyastuti Pratiwiningsih, on August 2, 2022.

## **CLOSING.**

Regarding the protection of outsourcing workers, the Manpower Office of Surakarta City is basically authorized to take steps such as:

1. Intervening in employment relations in order to minimize industrial relations disputes.
2. Supervise and take firm action against all forms of exploitation of outsourcing workers/laborers.
3. Supervise the application of work norms and K3 norms in outsourcing practices, so that there is a guarantee from employers to always provide work protection and working conditions for workers/laborers.
4. Creating order in the outsourcing business, by forcing entrepreneurs to comply with the terms and conditions of outsourcing as regulated in Law Number 11 of 2020 concerning Job Creation.

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