

# **Legal Protection Of The Employment Relationship Created By The Company Employers With Outsourcing Companies (Outsourcing) According To Government Regulation In Lieu Of Law Number 2 Of 2022 About Job Creation In Medan City**

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## **Abstract**

The problem raised in this paper is how the working relationship is made with the form of outsourcing (outsourcing) according to Perppu No. 2 of 2022 on job creation in Medan City, rights and obligations of outsourcing companies based on Perppu No. 2 of 2022 concerning job creation in Medan City, supervision by the Manpower office and sanctions for outsourcing companies that do not implement statutory provisions against workers. The method used in the discussion of the formulation of the problem is normative and empirical juridical law research by examining and analyzing using primary data and secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The working relationship between the outsourcing company and the workers/laborers employed is based on PKWT or PKWTT. This means that outsourced workers are linked to employment agreements made with employers based on provisions regarding PKWT or PKWTT. Rights and obligations describe a legal relationship between workers and the company, where both parties are equally bound by a mutually agreed labor agreement. Supervision of the implementation of this regulation is carried out by the Labor Inspectorate known as the Department of Labor. In addition, the Manpower office can also impose administrative sanctions for violations committed by outsourcing companies.

**Keywords:** Rights And Obligations, Labor, Outsourcing

## **1. INTRODUCTION**

The state of Indonesia protects every citizen to get a job in accordance with the provisions contained in the Constitution of the Unitary State of the Republic of Indonesia in 1945. In Article 27 paragraph (2) of the 1945 Constitution, it is affirmed that “every citizen has the right to work and a decent livelihood for humanity”. The existence of the government as the holder of authority in the administration of the state to regulate all aspects of life, should be the protection, guidance, supervision and investigation while ensuring the fulfillment of workers' rights through legislation that is pro-workers. But on the contrary, the presence of the state seemed to give

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flexibility to companies to take care of all labor issues. One example is the legalization of outsourcing practices by the state through Law Number 11 of 2020 on job creation.

Competition in the business world between companies makes companies have to concentrate on a series of processes or activities for the creation of products and services related to their main competencies. With the concentration on the company's main competencies, a number of products and services that have quality and competitiveness in the market will be produced, but on the other hand the company is difficult to make efficiency so that production costs remain high. To reduce risk, there is a thought among the business world to implement an outsourcing system. where with this system the company can save expenses in financing human resources (HR) working in the company concerned.

In Employment Development, the government is expected to develop and establish workforce planning. Workforce planning is intended to be used as a basis and reference in the preparation of policies, strategies and implementation of sustainable employment development programs. Labor drafting is prepared on the basis of employment information. Employment information that must be prepared minium include:

- a) Job opportunities;
- b) Job training;
- c) Labor productivity;
- d) Industrial relations;
- e) Wage and welfare workforce.

Employment information is obtained from all relevant parties, both from government agencies and private agencies. Procedures for obtaining labor information and the preparation and implementation of Labor planning are arranged in a scientific and objective manner. Most people in Indonesia realize that in the implementation of National Development, Labor has a very important role and position as actors in achieving development goals. Manpower development is directed to improve its quality and contribution in development and protect its rights and interests in accordance with human dignity. But in a company must have a way of working in using outsourcing services. Every company should provide legal protection to employees and can prosper outsourced employees.

Outsourcing (outsourcing) is one of the strategic options in supporting business processes in the company. In addition to efficiency, user companies are spoiled with several advantages/benefits of outsourcing activities. One of the most important of them is that user companies can focus more on corporate strategy, so that the process of achieving corporate goals can be controlled, measured and ultimately achieved. In outsourcing, especially labor outsourcing in Indonesia, in terms of regulation and its application has always been an interesting phenomenon. The issue of

outsourcing has always been hot, and even warmed up. This happens because the impact of Labor life is very dynamic. On the one hand, the company wants to empower resources from outside (Outsourcing), but on the other hand workers object and refuse, because the practice allegedly harms certain parties.

Outsourcing is a worker who works under a certain time work Agreement (PKWT), which is a labor agreement between an employer and a worker to enter into an employment relationship within a certain time or for a certain job. the provisions of outsourcing contained in the labor law are intended to invite investors to invest, so as to create jobs, and reduce the number of unemployed who every year always experience an increase.

The daily practice of outsourcing / outsourcing is more profitable for the company but not so with workers/laborers, outsourcing/outsourcing contract workers feel that their welfare is not considered by the company, because the employment relationship is always in the form of a fixed or contract (PKWT), there is no job security and no guarantee of Career Development. So that in such circumstances the implementation of outsourcing or outsourcing will torment workers / laborers and make industrial relations blurry. need Social Security for outsourced workers so that there is an industrialist relationship established between the company and the workforce.

Many problems arise related to outsourcing such as the lack of protection for outsourced labor, the lack of protection against Health Social Security, unfair labor contracts, and outsourced labor that is paid below the minimum wage. Outsourced workers do not have job security, have minimal work benefits, do not get severance pay when laid off and can be dismissed more easily. The regulation on outsourcing has re-emerged since the ratification of Law Number 11 of 2020 on Job Creation, which removed several provisions in outsourcing, namely in Article 64 and Article 65 of Law Number 13 of 2003 on manpower, but still maintains Article 66 with several changes. The abolition of the article and the change in Article 66 emphasize that outsourcing is still allowed by law. This further opens up opportunities for this type of outsourced work relationship. The provisions in Law Number 11 of 2020 concerning job creation are considered to be increasingly legalizing outsourcing labor relations.

But in this case there are many parties who oppose or counter to Law Number 11 of 2022 concerning Job Creation, then the law is reviewed again and the government changes it with a government regulation in lieu of Law Number 2 of 2022. The new job creation law (Perpu) government regulation passed by President Joko Widodo at the end of last year revived the provisions for the use of outsourcing. This is like the reappearance of Article

64 in the regulation. Previously, in the job creation law which has been deemed unconstitutional Constitutional Court conditional has removed Article 64 as contained in Law No. 13 of 2003 on employment.

In Article 64 there are changes from Article 64 of the labor law. In Paragraph 1, it reads “ ” the company may assign part of the work to another company through an outsourcing agreement made in writing. Further provisions regarding the determination of part of the implementation of this outsourcing or outsourcing work will be regulated in the government regulation (PP)”. But there is no longer a sentence through the outsourcing workers ' chartering agreement. “The government sets part of the implementation of the work as referred to in Paragraph (1)”, Quoted from paragraph 2 of Article 64 of the regulation, as for Article 65, it is still deleted, while in Article 66 there are changes to the terms of the employment relationship between the outsourcing company and the workers it employs.

The rules in this article also address the protection of workers or laborers, wages and welfare, working conditions, and disputes that arise. The implementation is said to be at least in accordance with the provisions of laws and regulations and is the responsibility of the outsourcing company. In addition, if the outsourcing company employs workers under a contractual agreement, then the specific time agreement must require the transfer of protection of rights for workers in the event of a change of the outsourcing company and as long as the object of work remains.

The work agreement in outsourcing is carried out in two stages, namely, the agreement between the outsourcing service user Company and the outsourcing company as a provider of labor services, and the agreement between the outsourcing company and the worker/laborer. An employment agreement is an agreement between an employer or employer and an employee that contains the conditions of work, rights and obligations of the parties. An employment agreement creates an employment relationship. An employment relationship is a relationship between an employer and a worker based on an employment agreement, which has elements of work, wages and orders. There are several things that must be considered in an employment relationship, namely the rights of employers (employers have a higher position than workers), the obligations of employers (pay wages), and the object of the agreement (work).

The relationship between employees in an organization is an important aspect of meeting their non-material needs (spiritual obligations). If this spiritual need can be met, it will encourage and motivate employees to work more optimally. They do it all with sincerity and passion to help each other. Employee/laborer / worker is any person who works by receiving wages or rewards in other forms. What is meant by another form in this sentence is in the form of goods or objects whose value is determined on the basis of an agreement between the two parties, namely employers and

workers/laborers. In this case the employee is the spearhead of a company, no matter how good the management of a company but if it is not supported by good human resources then no matter how much capital the company has if not supported by good human resources, discipline and rich in improvement then all it will be wasted without giving the slightest benefit to the company.

Every company wants its employees to have high productivity capabilities at work. This is an ideal desire for profit-oriented companies because how can a company make a profit if it is filled with unproductive people. However, sometimes companies are unable to distinguish which employees are productive and which are not productive. This is caused by companies lacking a sense of business that considers employees as an investment that will provide benefits. The company is more focused on achieving production targets and the desire to become a market leader. As a result, companies make employees like machines. Ironically again the machine is not maintained or treated properly. Companies forget that employees are an investment of profit itself that needs to be maintained in order to continue to produce well.

Some of the things that are considered detrimental to workers are suspected or related to outsourcing service providers who apply several things such as a number of pre-employment fee charges, salary deductions, unclear Social Security and income tax mechanisms, salary or overtime calculations that are not transparent, unclear employment relationship mechanisms, or other things that have the potential to harm or abuse the status of workers. Or at least weaken the position of workers in labor relations. These things are the basis for workers to dissolve or prohibit the practice of outsourcing in Indonesia.

If outsourcing is a business tool, of course, the tool must be useful, not present a disadvantage. Therefore, an outsourcing company must provide obligations and protection for outsourced employees and must be able to solve problems that occur in the company. So in this case, the outsourcing/outsourcing company is obliged to provide obligations to the workforce that it has channeled to other companies in need such as Social Security obligations, wages and so on in accordance with the provisions of applicable laws and regulations. In accordance with the 1945 Constitution Article 28 H the Third Point stated that: "everyone has the right to social security that allows the development of himself as a whole as a dignified human being", and Article 34 paragraph 2 (Fourth Amendment), that: "the state develops a social security system for all people and empowers people who are weak and incapable in accordance with human dignity". In addition, MPR Resolution No. X / MPR / 2001 on the report on the

implementation of the decision of the people's Consultative Assembly by higher state institutions at the annual session of the people's Consultative Assembly in 2001 also commissioned the president to establish a National Social Security System in order to provide a more comprehensive and integrated social protection.

Government regulation in lieu of law (Perppu) Number 2 of 2022 concerning job creation prohibits employers from paying workers wages below the minimum wage. It is listed in Article 88E on page 553 Perppu job creation. Article 88E paragraph (1) reads, "the minimum wage as referred to in Article 88C paragraph (1) and Paragraph (2) applies to workers/laborers with a working period of less than 1 year in the company concerned."Employers are prohibited from paying wages lower than the minimum wage," according to Article 88E paragraph 2 Perppu job creation. However, article 88F States, " in certain circumstances the government may establish a formula for calculating the minimum wage that is different from the formula for calculating the minimum wage as meant in Article 88D paragraph (2)."According to Article 185 of the Perppu on job creation, employers who pay workers wages below the minimum wage are subject to imprisonment for a minimum of 1 year and a maximum of 4 years and/or a fine of at least Rp100, 000, 000 and a maximum of Rp400, 000, 000.

In Law Number 11 of 2020, it has also been explained regarding wages in Chapter X of the second part of wages, wages that have been regulated from minimum wage to overtime pay. However, there are still many outsourcing/outsourcing companies that have not paid their employees according to the regional minimum wage (UMR) of each region, even UMR salaries are still being cut for Social Security. Whereas in the law of Job Creation Chapter X the third part of welfare has been mentioned in each article. That Social Security is regulated by itself without being mixed with wages, because it is to improve the welfare of workers. So there are still many phenomena in the field of wages that are not in accordance with UMR and there is no Social Security. In Government Regulation No. 36 of 2021 is explained specifically related to the wages received by workers, by adjusting the working hours obtained and companies must still comply with the law in hiring outsourcing/outsourcing workers, large and small must still be in accordance with the UMR set in each region, companies are prohibited from paying wages below the minimum wage in the context of outsourcing work. So in this case workers, both permanent workers and contract workers are entitled to guarantees both from the government and guarantees from outsourcing/outsourcing companies for the welfare of workers.

But in reality, welfare or social security for outsourced/outsourced workers is still a dream for some people. Because not all outsourced/outsourced workers get Social Security or welfare guarantees. Most outsourcing/outsourcing companies still limit who can receive welfare

guarantees. Thus, ensuring the welfare of outsourced/outsourced workers is very important for the welfare of the workforce so that they do not feel ignored by the government or the outsourcing/outsourcing company that employs them.

## **2. RESEARCH METHOD**

The type of research chosen is normative legal research that is research establish the law as a system of norms. The system of norms in question is about the principles, norms, rules and regulations. Peter Mahmud Marzuki that: 'normative legal research is a process of finding a rule of law, principles of law, as well as legal doctrines to answer legal problems faced. Normative legal research conducted to produce argumentation, theory or a new concept as a prescription in solving the problem at hand. research normative law is also called doctrinal legal research, namely research aimed at to provide a detailed systematic explanation of the rule of law governing the field of specific legal rules, analyze the relationship between the rules of law one denhan the other, explaining the elusive parts of a rule of law and it also includes predictions of the future development of a particular rule of law. Doctrinal legal research is library-based research whose focus is analysis of primary legal materials. This type of research is based on the thought that this study to analyze a system of norms or rules.

## **3. RESULT AND ANALYSIS**

### **3.1. Legal protection of the employment relationship made by the employer company with the outsourcing company according to Law No. 13 of 2003 on manpower**

The outsourcing system was previously regulated in Law Number 13 of 2003 concerning manpower which was later amended in Law Number 11 of 2020 concerning job creation. Indonesia does not yet have a separate law that regulates outsourcing, however, the rules regarding outsourcing are regulated in articles 64 to 66 of Law Number 13 of 2003 concerning manpower, stating that “companies can hand over part of the implementation of work to other companies through job chartering agreements or the provision of workers/labor services made in writing.

Law No. 13 of 2003 on manpower does not expressly regulate the criteria and limitations of supporting work in chartering jobs. Article 65 paragraph (2) provides that the nature of the work that can be submitted to the company chartering the work is: a. performed separately from the main activity; b. carried out by direct or indirect order of the employer; c. is a supporting activity of the company as a whole; and d. does not hinder the production process directly.

These requirements are cumulative requirements that must be met as a whole. Non-fulfillment of one of the conditions resulting in work that is outsourced can not be handed over to another company. This results in flexibility for the employer in handing over part of the work to the chartering recipient company in his company. If the company has determined the type of supporting work, then the employer company only needs to report and ask for approval from the local manpower Office.

Labor relations have the meaning of a relationship between a worker / worker with an employer based on the elements of command, wages and work. This describes the issuance of labor rights and obligations to the employer and vice versa. In outsourcing, workers only have a working relationship with the recipient company chartering work (outsourcing company) not with the employer company (user company).

Provisions in Article 65 paragraph (2) letter B which regulates that work that can be submitted to other companies can be done by direct or indirect orders from employers can cause criticism, namely how it is possible that companies that have submitted the implementation of work to others still have the authority to give orders either directly or indirectly to work that has been submitted to other companies.

The provisions of Article 65 paragraph (6) of Law No. 13 of 2003 on employment states that the employment relationship through a contract of employment is regulated in a written agreement between the company receiving the contract of employment (outsourcing company) and the workers employed. This article indicates that the employment relationship does not occur between the worker and the employer company, but with the company receiving the chartering work. The employment relationship can be transferred to the employer company if there is a violation as mentioned in Article 65 paragraph (8) of Law Number 13 of 2003 concerning employment.

In the event that the provisions as meant in Article 65 paragraph (2) and Paragraph (3) are not fulfilled, for the sake of the legal status of the employment relationship, the worker with the receiving company of the work chartering (outsourcing company) turns into an employment relationship with the employer company. This means that: a. if the work performed is not support work or work that may be done by outsourcing and b. if the job chartering company is not a legal entity, then the employment relationship between the worker and the job chartering company will automatically turn into a PKWTT worker at the employer company. The employer company is obliged to recruit him as a permanent employee. This provision is considered burdensome for the employer company.

The employment relationship between the worker and the company receiving the chartering work can be based on PKWT if it meets the requirements set forth in Article 59 of Law Number 13 of 2003 concerning manpower. The provision indicates that the type of work at the recipient



company chartering the work provided for in the PKWT must be temporary. Law No. 13 of 2003 on Labor does not regulate in detail the protection of the rights of employed workers. Protection of workers is regulated in Article 65 paragraph (4) that the protection of work and conditions of work of outsourced workers must be the same as the protection of work and conditions of work at the employer company or in accordance with applicable laws and regulations. Kepmenakertrans number 220 of 2004 regulates the protection of the rights of outsourced workers with work conditions agreed in the employment agreement must not be lower than the provisions in applicable laws and regulations. In Article 5 Kepmenakertrans number 220 of 2004 regulates that every contract of employment shall ensure the fulfillment of the rights of workers/laborers in labor relations as stipulated in the legislation.

Ms. Zairiani stated that there is a lack of clarity in the norms of outsourcing arrangements that create a multi-interpretation space that is vulnerable to impact on the disharmony of labor relations between workers and companies in the outsourcing system. The ambiguity of the regulation in question is related to the legal certainty of the employment relationship in Law No. 13 of 2003 concerning employment, which can be with the employment relationship of PKWT and/or PKWTT, as stipulated in Article 65 paragraph (6) and paragraph (7) and Article 66 paragraph (2) B and D together with Article 59 in Law No. 13 of 2003 concerning employment.

Based on these provisions, the employment relationship that occurs in the outsourcing agreement is between the worker or outsourced worker and the outsourcing company (recipient of the job). If a number of requirements specified in the law are not met, then by law, the status of the employment relationship between the worker or laborer and the company providing the services of the worker or laborer (outsourcing company) switches to the employment relationship between the worker or laborer and the employer company. Practices in outsourcing work agreements tend to be used PKWT/contract, making it easy for companies to lay off if the company does not need more.

An indication of the weak regulation of legal protection for labor with an outsourcing system is the number of irregularities and violations that occur and harm workers. Over time, the practice of outsourcing is not in accordance with the prevailing laws and regulations, especially in the field of remuneration and discrimination in the treatment of permanent workers and outsourced workers, therefore the non-governmental organization Alliance of Indonesian electricity Meter readers (AP2ML) submitted a request for a material test to the Constitutional Court (MK) on Article 59, 64, 65 and 66. On January 5, 2012 the Constitutional Court decided to issue Decision

No. 27 / PUU-IX/2011 and read at the plenary session of the Constitutional Court open to the public on January 17, 2012.

### **3.2. Legal protection of the employment relationship made by the employer company with the outsourcing company according to the post-decision of the Constitutional Court No. 27 / PUU-IX/2011**

The Constitutional Court argued that outsourcing activities through a contract of employment or through a written agreement is a fair business policy, but the Constitutional Court needs to examine the constitutional aspects of the rights of outsourced workers. Companies should also pay attention to the terms and principles of outsourcing. Violation of workers' rights can result in the loss of fair legal guarantees for workers and the loss of everyone's right to work with benefits and fair and decent treatment in the employment relationship.

Legal protection for outsourced workers after the issuance of the Constitutional Court Decision No. 27 / PUU-IX/2011 the government issued several regulations including:

- a) Circular Letter (SE) number B.31 / PHIJSK/I / 2012 on the implementation of the decision of the Constitutional Court No. 27/PUU-IX/2011
- b) Permenakertrans number 19 of 2012 on the terms of delivery of part of the work to other companies
- c) The Old Letter No. SE 04 / MEN / VII/2013 concerning guidelines for the implementation of the regulation of the Minister of manpower and Transmigration of the Republic of Indonesia number 19 of 2012 concerning the terms of delivery of part of the work to other companies
- d) Permenakertrans No. 27 of 2014 on amendments to the regulation of the Minister of manpower and Transmigration No. 19 of 2012 on the terms of delivery of part of the work to other companies
- e) Permenakertrans number 11 of 2019 concerning the Second Amendment to the regulation of the Minister of manpower and Transmigration number 19 of 2012 concerning the conditions for handing over part of the work implementation to other companies.

### **3.3. Legal protection of employment relationships made by employer companies with outsourcing companies according to law number 11 of 2020 on job creation**

Law Number 11 of 2020 concerning job creation there are several provisions regarding outsourcing that have been removed, including Article 64 and Article 65 of Law Number 13 of 2003 concerning employment. Article 66 of Law Number 11 of 2020 contains:

- a) The employment relationship between the outsourcing company and the workers / laborers it employs is based on a certain time work agreement (pkwt) or indefinite time work agreement (pkwtt)
- b) worker/labor protection, wages and welfare, working conditions and disputes arising are the responsibility of the outsourcing company.
- c) The outsourcing company as referred to in paragraph (2) is a legal entity and is obliged to fulfill the business license.
- d) Further provisions regarding the protection of workers as meant in paragraph (2) and business licensing as meant in paragraph (3) shall be regulated by a government regulation.

The provisions in Article 66 of Law Number 11 of 2020 concerning job creation are no longer listed regarding the limitations of jobs that are prohibited from being carried out by workers with an outsourcing system. This revision of the outsourcing system regulation opens up the possibility for Worker service provider companies to hire workers for various tasks that are not regulated in Law Number 11 of 2020 concerning job creation. Whereas in Article 65 paragraph (2) of Law No. 13 of 2003 on Labor previously regulated the work that can be handed over to other companies that must meet the requirements that are carried out separately from the main activity; carried out by direct or indirect orders from employers; is a supporting activity of the company as a whole; and does not hinder the production process directly.

This provision also allows no time limit for outsourced workers can even be for life. This provision of course can make companies to be able to hire workers with outsourcing systems in all lines of work. This will have an impact on the use of free outsourcing labor if there are no rules or regulations derived from Law Number 11 of 2020 concerning job creation. Outsourcing labor can also be used to carry out basic activities or activities related to the production process, which means that in all types of work can use Perusahaan workers Service Provider (PJP). Protection for workers with an outsourcing system, in Law Number 11 of 2020 on job creation, the protection of rights for outsourced workers remains where regulated in Article 66 paragraph (5) of Law Number 11 of 2020 on Job Creation where related to wages and welfare, work conditions and disputes arising are the responsibility of outsourcing companies (PJP companies).

The provisions of Law No. 11 of 2020 on job creation that delete articles 64 and 65 of Law No. 13 of 2003 on manpower and still maintain Article 66 indicate that outsourcing provisions are still allowed by law. The provisions result in increasingly opening up opportunities for the proliferation of types of outsourcing labor relations, even though it has been

proven that the form of a triangular relationship like outsourcing is very unfavorable for workers.

- a) In law number 11 of 2020 on job creation, the relationship between outsourcing companies and workers/laborers is based on a certain time work agreement (pkwt) or indefinite time work agreement (pkwtt). Meanwhile, if you look at the provisions regarding pkwt in law number 11 of 2020 concerning job creation, it is regulated in article 56 which states: the employment agreement is made for a certain time or for an indefinite period
- b) The specific time work agreement is based on the duration or completion of a particular job.
- c) The period of time or completion of a certain work as meant in paragraph (2) is determined based on the agreement of the parties.
- d) Further provisions regarding specific time work agreements based on the duration or completion of a work are regulated with the government of the government.

Based on the provisions in Article 56 of Law Number 11 of 2020 concerning job creation, outsourcing in its implementation is based on a certain period of time or the completion of certain work that is agreed upon. Related to outsourcing work, the period of execution of the work is not limited in time and is an agreement between the parties. Especially for outsourcing based on a specific time work Agreement (PKWT) regulated in Article 57 of Law Number 11 of 2020 concerning Job Creation which states that: (1) the employment agreement for a certain time is made in writing and must use Indonesian and latin letters. (2) in the case of a fixed-term employment agreement made in Indonesian and a foreign language, if there is then a difference in interpretation between the two, then the prevailing fixed-term employment agreement made in Indonesian.

Still related to the provisions in PKWT, Article 58 of Law Number 11 of 2020 concerning job creation States: (1) an employment agreement for a certain time cannot require a probationary period of employment. (2) in the event that the probationary period of work as meant in Paragraph (1) is required, the probationary period of work required is null and void and the fixed period of work is calculated.

Based on the provisions on PKWT in articles 57 and 58 of Law Number 11 of 2020 concerning job creation related to outsourcing activities, in the implementation of the outsourcing agreement, it is made in writing between the outsourcing company and the worker and is made using Indonesian and latin letters. Outsourcing work agreement made in two languages, namely Indonesian and English if in the future there are

differences in interpretation, the applicable agreement is an agreement that is made in Indonesian.

Based on the provisions in the PKWT that cannot require a trial period, then in the outsourcing agreement there is no requirement for a trial period in carrying out the work. If any outsourcing company requires a trial period of work on outsourced labor, the trial period of work is declared null and void and the fixed period of work is calculated. The provisions in Law Number 11 of 2020 concerning job creation still allow arrangements regarding outsourcing.

The existing provisions open up great opportunities for the practice of outsourcing labor relations. The outsourcing work relationship is not limited by time and is not limited to the type of work that can be outsourced. The practice of work with an outsourcing system is more beneficial for the company because the employment relationship is only limited to a contract, the wages obtained are also lower. The implementation of this outsourcing system is considered to be widely done because it reduces the cost of workers' wages with minimal protection for workers.

Especially with Law Number 11 of 2020 on Job Creation, this increasingly legalizes the existence of outsourcing and types of work that are not restricted. Further provisions governing outsourcing are regulated in Government of the Republic of Indonesia Regulation Number 35 of 2021 concerning specific time work agreements, outsourcing, working and rest periods and termination of employment. The government regulation stipulates that the employment relationship between the outsourcing company and the workers/laborers employed is based on PKWT or PKWTT.

Employee/labor protection, wages, welfare, working conditions and disputes arising are carried out in accordance with the provisions of legal regulations and are the responsibility of the outsourcing company. Article 19 of government regulation of the Republic of Indonesia number 35 of 2021 concerning certain time work agreements, outsourcing, Working Time and rest periods and termination of employment States:

- a) In the event that the outsourcing company employs workers/laborers based on pkwt, the employment agreement shall require the transfer of rights protection for workers/laborers in the event of a change of outsourcing company and as long as the object of work remains.
- b) The requirement of transfer of rights protection as meant in paragraph
- c) Is a guarantee of continuity of work for workers whose working relationship is based on pkwt in the outsourcing company.

- d) In the event that workers/laborers do not obtain guarantees for the continuity of work as meant in paragraph (2), the outsourcing company is responsible for the fulfillment of workers/labor rights.

Based on the Government of the Republic of Indonesia Regulation Number 35 of 2021 concerning certain time work agreements, outsourcing, Working Time and rest time and termination of employment related to outsourcing, it can be known that the employment relationship between outsourcing companies and workers/workers employed is based on PKWT or PKWTT. This means that outsourced workers are linked to employment agreements made with employers based on provisions regarding PKWT or PKWTT.

Based on the regulations governing outsourcing in Indonesia which the author has described above, it can be seen that outsourcing is important for legal protection. Since the promulgation of Law No. 13 of 2003 on manpower until the promulgation of Law No. 11 of 2020 on job creation, there are different rules related to outsourcing arrangements. Sudikno Mertokusomo stated that: “the legislation or legal regulations are changing all the time, and it is impossible not to, because they are incomplete and cannot be complete. As is known, legal regulations that aim to protect human interests are of countless types and numbers. In addition, it also develops according to time and place, so it is not possible to regulate completely and clearly those interests in a single law or legal regulation. Because human interests change all the time, then each law or legal regulation at any time must be changed, improved to suit the development of time”.

#### **3.4. Legal protection of employment relationships made by employer companies with outsourcing companies according to government regulations in lieu of Law Number 2 of 2022 on job creation**

The government has issued a government regulation replacing law (Perpu) Number 2 of 2022 concerning job creation. In the context of employment, this regulation is proof of the government's commitment to provide labor protection and business continuity to address the challenges of the development of labor dynamics. The labor substance regulated in the Perpu is basically a refinement of the previous regulation, namely Law Number 11 of 2020 concerning job creation. "The improvement of the labor substance contained in Regulation Number 2 of 2022 is actually the government's effort to provide adaptive protection for workers/laborers in facing increasingly dynamic labor challenges”.

The substance of employment enhanced in this regulation, among others:

- a) Terms of outsourcing (outsourcing). In the job creation law, there is no restriction on the type of work that can be outsourced, while in this regulation, the type of outsourcing work is limited. “With this

arrangement, not all types of work can be handed over to outsourcing companies. Later, the types or forms of work that can be outsourced will be regulated through government regulations”.

- b) Improvement and adjustment of the calculation of the minimum wage. The minimum wage is calculated taking into account economic growth, inflation and certain indices. The Formula for calculating the minimum wage including certain indices will be regulated in government regulations (PP). In this regulation, it is emphasized that the governor is obliged to set the provincial minimum wage (UMP) and can set the minimum wage for MSEs if the results of calculating MSEs are higher than the UMP. "The word 'can' referred to in the regulation must be interpreted that the governor has the authority to determine the UMK if the value of the calculation results is higher than the UMP," said the Minister.
- c) Affirmation of the obligation to apply the structure and scale of wages by employers for workers/laborers who have a period of one year or more.
- d) Related to the use of disability terminology adapted to Law Number 8 of 2016 concerning persons with disabilities.
- e) Correction of references in the article that regulates the use of the right to rest time whose wages remain fully paid, as well as related to the benefits of the job loss Guarantee Program.

As the reappearance of Article 64 in Perpu Number 2 of 2022. Previously, in the job creation law, which has been deemed unconstitutional, the Constitutional Court has conditionally removed Article 64 as contained in the labor law. As for the sound of Article 64, there are changes from Article 64 of the labor law. In Paragraph 1, the company may assign part of the work to another company through an outsourcing agreement made in writing.

As for Article 65, it is still deleted, while in Article 66 there are changes to the terms of the employment relationship between the outsourcing company and the workers it employs as written in Paragraph 1 based on a certain time work Agreement and an indefinite time work agreement. Further provisions regarding the determination of the partial implementation of this outsourcing or outsourcing work will be regulated in a government regulation (PP). But there is no longer a sentence through the outsourcing workers ' chartering agreement.

#### **4. CONCLUSION**

The employment relationship created by the form of outsourcing (outsourcing) according to government regulation in lieu of Law Number 2 of 2022 concerning job creation in Medan City is like the reappearance of

Article 64 in Regulation Number 2 of 2022. Previously, in the job creation law, which has been deemed unconstitutional, the Constitutional Court has conditionally removed Article 64 as contained in the labor law. As for the sound of Article 64, there are changes from Article 64 of the labor law. In Paragraph 1 it reads, the company can hand over part of the work to other companies through an outsourcing agreement made in writing. Then the working relationship between the outsourcing company and the workers/workers employed is based on PKWT or PKWTT. This means that the outsourced worker is related to the employment agreement made with the employer based on the provisions regarding the PKWT or PKWTT. Or the existing legal relationship is between the Outsourcing company (outsourcing) with the service user company, in the form of a worker provision agreement. Companies that use workers ' services and employees do not have a direct employment relationship, either in the form of a certain time work agreement or an indefinite time work agreement.

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