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## The Legal Politics of Outsourcing and Its Implication for the Protection of Workers in Indonesia

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Article	Abstract
<p><b>Keywords:</b> Legal politics; Legal Protection; Outsourcing; Workers.</p> <p><b>Article History</b> Received: Mar 9, 2023; Reviewed: Jan 5, 2024; Accepted: Jan 30, 2024; Published: Jan 31, 2024.</p> <p><b>DOI:</b> 10.28946/slrev.Vol8.Iss1.2750.pp1-19</p>	<p>This research aimed to analyse to what extent the legal politics of outsourcing in Indonesia's legal system protect workers. The analysis specifically scrutinises the provisions in Book III of the Civil Code and enforcement of the Government Regulation in lieu of Law concerning Job Creation Law Number 6/2023, with its following implication to protect workers at the national level. This research employed doctrinal legal research on legal instruments related to outsourcing with statutory, conceptual, and historical approaches. The research showed that legal politics concerning outsourcing had experienced dynamic congruence with the political configuration when the legislative product on outsourcing was made. The differences emerge where outsourcing is not restricted to certain occupations in Book III of the Civil Code of Indonesia. However, Law Number 13/2003 restricted the definition of outsourcing to occupations not related to core businesses. Law Number 11/2020 and Government Regulation Number 35/2021 fit employers. Both laws govern the legal protection for outsourced employees with the transfer of undertaking to protect employment regarding changing vendors with the condition that the jobs are still available. Meanwhile, the type of work outsourced is unlimited, resulting in a deficit compared to the previous norm.</p>

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### INTRODUCTION

The workforce plays a vital role in promoting national productivity and social welfare. For the government, it is inevitable to prepare a skilful workforce to allow more job opportunities and attract investors as widely as possible. The government must ensure health, decent wages, and

social security for the elderly.<sup>1</sup> Indeed, job relations are established by employment contract between an employer and an employee,<sup>2</sup> which implies that the rights exist if both parties have agreed to the contract. Job relations should be flexible so workers' rights cover pension protection and pension money. Employers are higher in position than their employees, coupled with a high unemployment rate, especially following the outbreak affecting global industries.

In Indonesia, as of February 2021, employment reached 8.75 million workforces, which shows a declining trend with a higher unemployment rate due to the pandemic.<sup>3</sup> The poor economic performance experienced during the pandemic has forced the government and businesses to be more creative. The government wants to create a more vibrant business environment by attracting new investments.<sup>4</sup> On the other hand, hitherto, several companies have offered job positions with outsourcing schemes in which outsourced workers are considered to work in the companies with an outsourced contract.<sup>5</sup> In this process, outsourcing can involve three parties: outsourcing services, outsourced employees, and job supply or transferring some work to another party. As job relations between an outsourced employee and an outsourcing company are based on an employment contract, they are bound as partners. Meanwhile, outsourcing in Indonesia can be carried out with a temporary work agreement (PKWT) or permanent work agreement (PKWTT), in which the former is often referred to as workers under job contracts. Hence, outsourcing regulations are dynamic, and the model depends on the legal politics and where the law is heading, relying upon the time as the legislation is passed.

Legal instruments in Indonesia are driven by investment and business interests. The legislation is the main framework to be amended, resulting in the Job Creation Law, following the amendment to Law Number 13/2003 enacted into law by Law Number 6 of 2023. This

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<sup>1</sup> Siti Kunarti, Tedi Sudrajat, and Sri Wahyu Handayani, "Transformation of Social Security Administrative Body (BPJS) within Social Security Reform in Indonesia," *SHS Web of Conference* 54, no. 1 (2018): 1–6, <https://doi.org/10.1051/shsconf/20185403017>; Nur Putri Hidayah, "Comparative Study of Legal Protection for Migrant Workers in Participation of Social Security Programs in Indonesia and Singapore," *Legality Jurnal Ilmiah Hukum* 28, no. 1 (2020): 47–59; Choorikkad Veeramani and Purna Banerjee, "Exchange Rate Fluctuations, Labour Laws, and Gender Differences in Job Flows: Analysis of Manufacturing Industries across Indian States," *World Development* 152 (April 2022): 105802, <https://doi.org/10.1016/J.WORLDDEV.2021.105802>.

<sup>2</sup> Job relations, according to Law Number 13/2003 enacted into law by Law Number 6 of 2023 concerning Labor Article 1 paragraph (15) states, "Job relations involve an employer and a worker/labourer according to an employment contract and other aspects including employment, wages, and instructions". Nur Putri Hidayah, Quincy R Cloet, and David Pradhan, "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights," *Bestuur* 9, no. 1 (2021): 68–76, <https://doi.org/https://dx.doi.org/10.20961/bestuur.v9i1.49252>.

<sup>3</sup> Hidayah, Cloet, and Pradhan.

<sup>4</sup> Dolf Gielen et al., "The Role of Renewable Energy in the Global Energy Transformation," *Energy Strategy Reviews* 24 (April 2019): 38–50, <https://doi.org/10.1016/J.ESR.2019.01.006>; Katharine N. Farrell and D. Löw Beer, "Producing the Ecological Economy: A Study in Developing Fiduciary Principles Supporting the Application of Flow-Fund Consistent Investment Criteria for Sovereign Wealth Funds," *Ecological Economics* 165 (November 2019): 106391, <https://doi.org/10.1016/J.ECOLECON.2019.106391>.

<sup>5</sup> Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19," *SSRN Electronic Journal* 23 (January 2021): 1–23, <https://doi.org/10.2139/ssrn.3772526>; See to Hariyanto Hariyanto, "Risk-Based Business License and Problems Arising After The Job Creation ACT," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (August 2022): 354–66, <https://doi.org/10.29303/IUS.V10I2.1082>.

legislation is a new legal instrument that promotes the state economy, including labour provisions, considered a vital national issue.<sup>6</sup> As this framework is directed with a more economical approach to gain investors, it is to address the disharmony of the legislation and regulations, the critical factor that impedes investors' decision-making.<sup>7</sup> With the promulgation of the Job Creation Law, foreign and local investors are expected to invest their money in Indonesia, and more people will be employed.<sup>8</sup> However, the disagreements point to the human right to work in which the amendment to the Job Creation Law does not favour workers' rights, particularly those with outsourced schemes. In business, outsourcing practice is considered more beneficial for employers because of no requirement to provide social security.<sup>9</sup> It asserts that with these outsourced schemes, employees can be terminated at any time or when the contract ends without any pension.

Workers using their skills in a company have to abide by the company's regulations. In practice, outsourcing puts workers in a vulnerable position. For example, outsourced workers are required to comply with working hours, production targets, and other regulatory provisions set by companies.<sup>10</sup> Even though an outsourcing scheme facilitates companies' workforce and gives workers a chance to earn money, the future of outsourced workers is still being determined. These workers can be discharged from their jobs at any time they never know since they are hired based on a temporary contract. The Job Creation Law has revoked the requirements of outsourcing systems so that there are no longer specific provisions regarding outsourcing in Indonesia's legal system.

In recent decades, the landscape of employment relations has undergone a profound transformation, primarily driven by the surge in outsourcing practices adopted by various industries. However, the concept of employment relations within the outsourcing context still needs to be clarified and multifaceted. This uncertainty necessitates comprehensive research to unravel the intricacies and dynamics that underlie this contemporary employment phenomenon. Outsourcing, a prevalent practice across global industries, involves contracting external service providers or companies to perform tasks, functions, or services traditionally carried out in-house. This shift towards outsourcing has created complex employment relationships that often blur the lines between employers, employees, and service providers. Within this intricate web of contractual arrangements, the concept of employment relations

<sup>6</sup> Sudharto P. Hadi, Rizkiana S. Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law," *Heliyon* 9, no. 2 (February 2023): e13431, <https://doi.org/10.1016/J.HELIYON.2023.E13431>; Hidayah, Cloet, and Pradhan, "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights."

<sup>7</sup> M. Iqbal, M. Misbahul Mujib, and Yuliannova Lestari, "Does Omnibus Law Affect the Indonesian Investment Regulations towards Chinese Investors?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* V, no. 40 (2022): 179–97, <https://doi.org/10.24090/volksgeist.v5i2.6838>.

<sup>8</sup> Siti Kunarti, "Strengthening Migrant CARE: A Comprehensive Approach to Ensure Worker Protection and Safeguard the Rights of Indonesian Migrants, The Journal of Law and Sustainable Development, Vol. 11 No. 12 (2023): 8, DOI: <https://doi.org/10.55908/sdgs.v11i12.1454>.

<sup>9</sup> Hidayah, "Comparative Study of Legal Protection for Migrant Workers in Participation of Social Security Programs in Indonesia and Singapore."

<sup>10</sup> Wiwin Budi Pratiwi and Murti Ayu Hapsari, "Comparative Study of Outsourcing in Indonesia: What Can Indonesia Learn from Outsourcing in Japan," *Proceedings of the International Conference on Sustainable Innovation on Humanities, Education, and Social Sciences (ICOSI-HESS 2022)*, December 2022, 53–61, [https://doi.org/10.2991/978-2-494069-65-7\\_6](https://doi.org/10.2991/978-2-494069-65-7_6); Hidayah, Cloet, and Pradhan, "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights."

becomes increasingly elusive. Previous research shows that outsourcing has become a trend and a need in business industries.<sup>11</sup> In the normative aspect, outsourcing in Indonesia is not adequate<sup>12</sup>, while in the empirical aspect, several employment-related practices often harm outsourced workers. It is obvious in the ongoing practices of PKWT<sup>13</sup>, rising workloads without fair proportions of rewards<sup>14</sup>, unfair dismissal<sup>15</sup>, and a lack of proper law enforcement<sup>16</sup>. Thus, comprehensive protection for outsourced workers is required, and this protection should also consider economic, social, technical, and legal protection.<sup>17</sup> Regardless of the amendments, the outsourcing regulations should align with labour development.<sup>18</sup> Labour development must comply with *Pancasila* and the 1945 constitution. Article 4 of Law Number 13/2003 aims to empower and optimally and humanely use labourers to distribute equal opportunities and protection to improve the welfare of the workers and their families. Thus, further and in-depth research studying the dynamic of outsourcing regulations in Indonesia and the ideal regulations according to the perspective of labour development needs to be conducted. This research aims to discover the legal politics of outsourcing in Indonesia and its implications for protecting workers. Legal politics<sup>19</sup> intends to draft democratic legislation within technical scopes and should be backed up with the amalgamation of legal politics (*rechtspolitiek*) and legal sociology (*rechtssociologies*). This paper will also analyse the legal aspects that arise as a result of outsourcing arrangements in Indonesia.

## RESEARCH METHODS

This research used doctrinal legal research<sup>20</sup> based on the analysis of the legislation and legal principles. The research data involved secondary materials obtained from library research.

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- <sup>11</sup> Rajiv Sabherwal, "Synthesis: Outsourcing of Information Services: Where Are We?," *Progress in IS*, 2020, 469–81, [https://doi.org/10.1007/978-3-030-45819-5\\_19](https://doi.org/10.1007/978-3-030-45819-5_19).
- <sup>12</sup> Abhijit Banerjee et al., "Private Outsourcing and Competition: Subsidized Food Distribution in Indonesia," *Https://Doi.Org/10.1086/700734* 127, no. 1 (February 2019): 101–37, <https://doi.org/10.1086/700734>.
- <sup>13</sup> Sri Retno Widyorini and Aniek Tyaswati WL, "Work Agreement on Outsourcing System and Legal Protection for Workers," *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 484–99, <https://doi.org/10.51601/ijersc.v3i1.300>.
- <sup>14</sup> Ajeng Irma Setiawan and Ayuningtyas Yuli Hapsari, "The Relationship Between The Work Environment and Work Motivation at PT. X (An Outsourcing Company) In Bandung, Indonesia," *Kontigensi : Jurnal Ilmiah Manajemen* 10, no. 1 (June 2022): 140–48, <https://doi.org/10.56457/JIMK.V10I1.266>.
- <sup>15</sup> Kurniawati Linna et al., "THE COMPARISON OF OUTSOURCING SYSTEM ARRANGEMENTS BETWEEN INDONESIA AND SINGAPORE Kurniawati," *RJOAS: Russian Journal of Agricultural and Socio-Economic Sciences* 1184, no. 2 (2016): 1–23, <https://doi.org/10.18551/rjoas.2023-02.01>.
- <sup>16</sup> Saritua Silitonga et al., "LEGAL OBLIGATION OF OUTSOURCING BUSINESS ACTIVITIES BASED ON CREATION OF EMPLOYMENT LAW," *INFOKUM* 10, no. 5 (December 2022): 564–72; Ashadi Diab L et al., "Safeguarding Consumers: The Role of Industry and Trade Office in Countering Monopolistic Practices and Ensuring Business Protection," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (December 2023): 299–312, <https://doi.org/10.24090/VOLKSGEIST.V6I2.9065>.
- <sup>17</sup> Niru Anita Sinaga, "Perlindungan Hukum Bagi Pekerja / Buruh Dan Pengusaha Dalam Pelaksanaan," *Jurnal Ilmiah Hukum Dirgantara* 5, no. 2 (2015): 1–18.
- <sup>18</sup> Hidayah, Cloet, and Pradhan, "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights."
- <sup>19</sup> Hasse Jubba et al., "Changes in the Political Behavior of Towani Tolotang as a Minority Religious Group: Fiqh Al-'Aqaliyyāt Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 2023): 392–419, <https://doi.org/10.19105/AL-LHKAM.V18I2.10184>.
- <sup>20</sup> Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219, no. 1 (May 2016): 201–7, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

Statutory, conceptual, and historical approaches were also employed,<sup>21</sup> while the research materials consisted of legal and non-legal data with a case study. The primary materials referred to the legislation related to outsourcing, especially the provisions in the Civil Code and Law Number 11/2020 on the Job Creation. The secondary materials were obtained from books, journal articles, and other related library resources. The non-legal materials were sourced from scientific research on social and economic issues of outsourced workers and politics.

## ANALYSIS AND DISCUSSION

### The Legal Politics of the Legislation

Law results in the competition of political powers shaped into legislative products.<sup>22</sup> Legal politics refers to the activities of forming legislation, including its objectives and substantial matters of law to realize the objectives of the state<sup>23</sup>. The fundamental policy determining the law's direction, form, and substance refers to the definition of legal politics, as introduced by Padmo Wahyono. Furthermore, Padmo argues that legal politics involves the formation, implementation, and enforcement of the law,<sup>24</sup> while Satjipto Rahardjo defines legal politics as activities to select particular social objectives. Politics is a field where social objectives and laws meet obligations to decide what methods to use when laws and regulations need to be amended to achieve social objectives.<sup>25</sup>

Moh. Mahfud MD defines legal politics into three scopes: the state's policy about the law that is to be enforced or not to reach the objectives of the state, political, economic, social, and cultural backgrounds regarding the birth of legislative or regulatory products in real life.<sup>26</sup> Daniel S Lev argues that the conception and structure of political powers significantly determine the legal process.<sup>27</sup> Legal politics in Indonesia these days still reflects the system of the new order regime. Although the democratic system has changed, this change only touched the structure, while, in reality, the legal products implemented still tend to be dominant with the political configuration that is authoritarian, resulting in a more conservative legal product. Several issues representing disappointment with law enforcement and regulations are often caused by the condition where there is a shift in an understanding of the law and the law-making process and judicial decisions that are not democratic.<sup>28</sup>

<sup>21</sup> Christoph Conrad, "Social History," *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, March 2015, 307–12, <https://doi.org/10.1016/B978-0-08-097086-8.62127-X>; Tunggul Ansari and Setia Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/ACLJ.V4I1.24855>.

<sup>22</sup> Ahmad Siboy et al., "The Effectiveness of Administrative Efforts in Reducing State Administration Disputes," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 14–30, <https://doi.org/10.53955/jhcls.v2i1.23>.

<sup>23</sup> Armenia Androniceanu, "Transparency in Public Administration as a Challenge for a Good Democratic Governance," *Administratie Si Management Public* 2021, no. 36 (2021): 149–64, <https://doi.org/10.24818/AMP/2021.36-09>.

<sup>24</sup> Wahjono Padmo, "Indonesia Negara Berdasarkan Atas Hukum," *Jakarta: Ghalia Indonesia*, 1986.

<sup>25</sup> Rahardjo Satjipto, "Ilmu Hukum" (Cetakan ke-IV, PT. Citra Aditya Bakti, Bandung, 2006).

<sup>26</sup> Moh Mahfud, *Politik Hukum Di Indonesia* (Lp3s, 1998).

<sup>27</sup> Daniel S Lev, "Hukum Dan Politik Di Indonesia (Kesinambungan Dan Perubahan)," 1990.

<sup>28</sup> Abdus Salam, "Pengaruh Politik Dalam Pembentukan Hukum Di Indonesia," *Mazahib*, 2015.

A responsive law that accepts social changes for justice and public emancipation is the law that facilitates the responses to social provisions and public aspiration.<sup>29</sup> What often happens in law-making processes is that political power determines law formation. Executive and legislative bodies serve as the two powers in forming law. These two bodies are within a political institution, while the power of the public results from the legislative or regulatory products within the political institution per se.<sup>30</sup> Thus, those holding power in the law-making processes have a higher social level than the public.<sup>31</sup>

The direction of the legal politics in law-making in Indonesia is governed by Law Number 12/2011, last amended to Law Number 5/2019, and this amendment impacts essential matters that affect the legal politics of the law:<sup>32</sup>

1. Carry-over implies that draft law already at the phase of the discussion on the Problem Inventory List but not promulgated yet should be reported to the House of Representatives (DPR) in the following period and be registered back to the program of medium-term national legislation and/or national legislation program relevant to the national needs;
2. Supervision and Review of the Law are intended to find out the ideas and the benefits of a law and whether a law has been achieved; and
3. The formation of the legislation within the governmental purview should be organized by the ministry and the Head of an institution responsible for governmental affairs in legislation-making.

Legal politics plans to make democratic legislation not only in terms of a technical aspect but should also be supported by the combination of legal politics (*rechtspolitik*) and legal sociology (*rechtssociologie*).<sup>33</sup> Legal politics also involves the enforcement of the law; that is, a good legal product should be equal to appropriate law enforcement. It should be achieved by paying attention to the people's aspiration to form a legal product.<sup>34</sup> Good legal politics will help realize the vision of the public as expected in the legal product made, and it holds for the dynamic of outsourcing regulations.

### Outsourcing Concept in Indonesia

Outsourcing is a new term, while outsourcing is not mentioned in the labour law. Outsourcing is derived from two words, 'out' and 'source,' which literally means 'coming from the outside'. The term outsourcing can also refer to the recruitment of an employee outside the company who hires the employee assigned to a job in the company.

Currently, outsourcing is often preferred by most companies. Many private organizations have assigned outsourcing companies to care for food catering, cleaning, maintenance, and

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<sup>29</sup> Yoan Nursari Simanjuntak, "Hukum Responsif: Interrelasi Hukum Dan Dunia Sosial," *Jurnal Yustika* 8, no. 1 (2005): 39–45.

<sup>30</sup> Puji Kurniawan, "Pengaruh Politik Terhadap Hukum," *Jurnal Al-Maqasid: Jurnal Ilmu Kesyarifan Dan Keperdataan* 4, no. 1 (2018): 29–42.

<sup>31</sup> Kurniawan.

<sup>32</sup> Sopiani Sopiani and Zainal Mubaraq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (June 2020): 146, <https://doi.org/10.54629/jli.v17i2.623>.

<sup>33</sup> Isharyanto, *Politik Hukum*, viii (CV KEKATA GROUP, 2016).

<sup>34</sup> Saiful Risky, Sholahuddin Al-Fatih, and Mabarroh Azizah, "Political Configuration of Electoral System Law in Indonesia from State Administration Perspective," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023), <https://doi.org/https://doi.org/10.24090/volksgeist.v6i1.7940>.

security services.<sup>35</sup> The term outsourcing is not directly defined in Labor Law. However, Article 64 only states that a company can delegate its tasks to another company under a written job or service supply *contract*. Chandra Suwondo explains that outsourcing is to delegate daily operations and management of a business process to a company providing outsourcing services.<sup>36</sup> With this delegation, the company is no longer responsible for management but is delegated to an outsourcing company.<sup>37</sup> Outsourcing can also be defined as an action to gain semi-finished products from another company. Products can also be defined as services.<sup>38</sup> In the UK, outsourcing is commonly referred to as transfer in public and non-profit sectors/public sector transfer that is not 'profit-oriented' and transfer within public administration.<sup>39</sup>

Article 64 of Law Number 13/2003 concerning labour for the first time mentions outsourcing in Indonesia, defined as a condition where a company transfers part of the tasks to another company under a job supply contract or service supply contract regarding the provision of employees/labourers and this contract should be given in the written form. This regulatory provision was revoked by Law Number 11/2020 concerning Job Creation in conjunction with Government Regulation Number 35/2021 concerning the Temporary Work Agreement, Outsourcing, Working Hours and Recess, and dismissal (Gov. Reg. 35/2021), mentioning that outsourcing is a transfer of a certain occupation under a contract agreed upon by an outsourcing company and a hiring company.

The legal aspects of labour relations between workers/labourers and an outsourcing company are governed in Article 66 paragraph (1) of Law 13/2003 concerning Labor in conjunction with Law 11/2020 concerning Job Creation, implying that work relations between an outsourcing company and workers/labourers hired refer to an employment contract in written form. It applies to both temporary work agreements and permanent work agreements. Furthermore, Article 18 and Article 19 of Government Regulation Number 35 /2021 govern the provision regarding employment contracts between a worker and an outsourcing company as follows:

1. The protection for workers/labourers, wages, welfare, work requirements, and frictions should be exercised according to the legislation, and they are the responsibility of outsourcing companies and are regulated in an employment contract, corporate regulations, and collective labour agreement.
2. In terms of outsourcing companies hiring workers/labourers, according to the temporary work agreement, this work agreement must state the transfer of right protection for workers/labourers in case of the transfer of responsibility to another outsourcing company while the work remains active. This requirement assures the

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<sup>35</sup> W Bailey, R Masson, and R Raeside, "Outsourcing in Edinburgh and the Lothians," *European Journal of Purchasing & Supply Management* 8, no. 2 (June 2002): 83–95, [https://doi.org/10.1016/S0969-7012\(01\)00008-9](https://doi.org/10.1016/S0969-7012(01)00008-9).

<sup>36</sup> Chandra Suwondo, "Outsourcing Implementasi Di Indonesia," *Jakarta: PT. Elex Media Computindo*, 2004.

<sup>37</sup> Siti Kunarti, "Perjanjian Pemborongan Pekerjaan (Outsourcing) Dalam Hukum Ketenagakerjaan," *Jurnal Dinamika Hukum* 9, no. 1 (2009): 67–75.

<sup>38</sup> Alexandre Dolgui and Jean-Marie Proth, "Outsourcing: Definitions and Analysis," *International Journal of Production Research* 51, no. 23–24 (November 2013): 6769–77, <https://doi.org/10.1080/00207543.2013.855338>.

<sup>39</sup> J. McMullen, "An Analysis of the Transfer of Undertakings (Protection of Employment) Regulations 2006," *Industrial Law Journal* 35, no. 2 (June 2006): 113–39, <https://doi.org/10.1093/indlaw/dwl010>.

sustainability of the work performed by workers/labourers whose labour relations are based on PKWT in an outsourcing company.

3. An outsourcing company must be a juridical person and comply with all business permits, norms, standards, procedures, and permit criteria the Central Government sets.

The working system of an outsourcing company should be under the control of a juridical person who meets the requirements to perform specific occupations with a contract also agreed upon by the hiring company. Regardless of whether they are working for the hiring company, outsourced workers are not entitled to an employment contract directly related to the hiring company. That is, an outsourced company is responsible for outsourced workers.

Article 20 of Government Regulation 35/2021 mentions at least two requirements met to find an outsourcing company: 1) an outsourcing company must be recognized as a juridical person, and 2) an outsourcing company is required to hold business permits, standards, procedures, and the criteria of business permits governed by the Central Government. Furthermore, since this matter is not governed in law Number 11/2020 in conjunction with Government Regulation 35/2021, the former provision concerning the requirements of an outsourcing company remains effective, as governed in the Regulation of the Minister of Labour Number 11/2019 concerning Requirements of Transfer of Part of Tasks to Another Company: 1) An outsourcing service business permits apply across Indonesia and remain effective as long as the outsourcing company keeps operating; 2) The outsourcing and hiring companies' agreements should be registered with the Labour Agency of the Regency/Municipality where the occupation takes place; 2) An outsourcing company must implement an employment contract (PKWTT or PKWT), and the occupation and employment contract must be registered to the Labour Agency of the Regency/Municipality where an occupation occurs.

Following the promulgation of Law Number 11/2020 in conjunction with Government Regulation Number 35/2021, outsourcing is no longer differentiated based on whether it is job supply or labour supply, and it is no longer restricted to non-core businesses. That is, all types of work can be outsourced. However, the types of work that can be outsourced will depend on sectoral needs. This regulation is different from what is outlined in Law Number 13/2003 in conjunction with the Regulation of Labour Minister Number 19/2012 in conjunction with the Regulation of Labour Minister Number 11/2019, restricting the agreement of service supply, the types of work (non-core businesses) such as cleaning service, food catering, security, supplementary tasks in mining and oil companies, and the provision of means of transporting vehicles for workers.

The expansion of the outsourcing system has been opposed by labourers, considering that, before the implementation of omnibus law, the system of work applies to all types of occupations (both core businesses and non-core businesses) due to the lack of optimal supervision over labour, and this expansion has been legalized under omnibus law.

Labour relations between an outsourcing company and outsourced workers can be based on PKWT and PKWTT. Individuals who delegate tasks to external parties can do so by utilizing either a Fixed-Term Employment Contract (PKWT) or a non-permanent Employment Contract (PKWTT). The right of outsourced workers entails the transfer of their



employment contract, ensuring that they will remain employed by the outsourcing company as long as the job is still accessible. This provision is different from Law 13/2003, mentioning that the work agreement only refers to PKWT. However, it was then revoked by the Constitutional Court Decision Number 27/PUU-IX/2011 on 17 January 2012. The issuance of the Regulation of Labour Minister Number 19/2012 in conjunction with the Regulation of Labour Minister Number 11/2019 followed. This regulation aims to revise the regulation concerning outsourcing according to the Constitutional Court Decision.

Outsourcing companies are responsible for fulfilling the rights of the workers. Worker protection, wages, welfare, work requirements, and frictions are provided according to the provisions of legislation and have been the responsibility of outsourcing companies. This matter can be regulated under employment contracts, corporate regulations, or collective labour agreements in outsourcing companies (Article 66 of Law Number 13/2003 and Article 18 of Government Regulation Number 35/2021).

Article 66 paragraph (4) of Labour Law Number 13/2003 asserts that if employment contracts, wages and welfare protection, work requirements, and frictions emerging as the responsibility of outsourcing companies fail to be facilitated, the labour relations between outsourced workers and the outsourcing company will turn into the relations between the workers and the hiring company. In other words, the outsourced workers whose rights are not fulfilled by the outsourcing company, according to law, the outsourced workers should have the rights and facilities equal to the permanent workers of the hiring company. However, this provision was revoked by Job Creation Law. The protection of workers/labourers, wages and welfare, and the requirements that outsourced workers have to meet will be fully the responsibility of the outsourcing company. When this responsibility falls on the outsourcing company, matters like bonuses and allowances should be provided by the outsourcing company, which is regulated under an employment contract between the outsourced workers and the outsourcing company and based on the corporate regulations and/or a collaborative labour agreement made by the outsourcing company.

The protection of outsourced workers has been improved. If outsourced workers work under PKWT, the employment contract must set the transfer of right protection for outsourced workers as the requirement. Article 66 paragraph (3) of law 13/2003 and Article 19 paragraph (1) of Government Regulation 35/2021 imply that if outsourced workers work under PKWT, the employment contract must set the transfer of right protection for workers/labourers as the requirement in case of the condition where the outsourced company is replaced by another outsourced company and as long as the occupation remains available in the same hiring company. The transfer of the protection of rights of the workers/labourers means that the new outsourcing company protects the rights of the workers/labourers in the same portion as that given by the former outsourced company. The requirements of transferring this right protection represent a guarantee for sustainable occupation for workers/labourers under PKWT in the outsourced company concerned. That is, the legal politics of outsourcing protects the regulation concerning the legal protection for workers through the Transfer of Undertakings (Protection of Employment) (TUPE), and this scheme serves as a reference in

the European continent.<sup>40</sup> In European courts, the matters regarding workers' rights in the changing outsourcing companies have been considered in court decisions because of difficult claims in terms of the transfer guarantee from one company to another new outsourcing company.<sup>41</sup>

Employment contracts between outsourced workers and an outsourcing company can be based on PKWT or PKWTT. Therefore, regarding dismissal, outsourced workers working under PKWT for at least a month are entitled to compensation (Article 61 A of Law 13/2003 in conjunction with Article 15 of Government Regulation 35/2021). Similarly, outsourced workers working under PKWTT are also entitled to compensation given following dismissal as governed in Government Regulation 35/2021 regarding rights following the dismissal (Articles 40 to 59).

The idea of the growing trend of outsourcing works as a solution to business risks related to employment problems.<sup>42</sup> Outsourcing practices in Indonesia have existed since the Dutch colonial era, marked by the regulations governing job supply outlined in Article 1601 of the Civil Code. Companies dealing with employment are the Indonesian Recruitment Agency (PJTKI) and the Outsourced Worker/Labourer Provider (PPJP/B). PJTKI sends workers abroad under employment contracts directly signed by the workers concerned, while PPJP/B distributes workers domestically, and the hiring company signs the employment contracts and the outsourcing company. Before the promulgation of Law Number 13/2003, the activities regarding PPJP/B were banned because employing outsourced workers was deemed the strategy done by most companies to avoid the obligation of paying Eid allowance and pension for terminated workers.<sup>43</sup>

The main reason for using outsourcing companies is to cut costs since workers can be obtained without spending more money on a lengthy recruitment process. Through the outsourcing system, employers have access to workers' skills.<sup>44</sup> Monica Belcourt<sup>45</sup> argues that the main reasons for using outsourced workers are to:

1. Save cost since outsourcing is deemed to be efficient, and it helps reduce the cost spent on training so that the remaining budget can be allocated to human resource development;
2. Focus on strategy because every company knows that not all excellence can be achieved in all fields. Thus, focusing on core businesses will directly contribute to the

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<sup>40</sup> Ronald M. Beltzer, "The Transfer of Undertakings and the Importance of Taking Over Personnel – A Vicious Circle," *International Journal of Comparative Labour Law and Industrial Relations* 23, no. Issue 1 (March 2007): 139–55, <https://doi.org/10.54648/IJCL2007007>; Julian Titze, "Service Provision Changes – Lessons for the Continent?," *European Labour Law Journal* 6, no. 3 (September 2015): 239–58, <https://doi.org/10.1177/201395251500600304>.

<sup>41</sup> John McMullen, "Transfer of Undertakings: The Purposive Approach," *Industrial Law Journal* 48, no. 2 (July 2019): 317–35, <https://doi.org/10.1093/indlaw/dwz004>.

<sup>42</sup> Sehat Damanik, "Outsourcing Dan Perjanjian Kerja," *Jakarta: DSS Publishing*, 2007.

<sup>43</sup> Damanik.

<sup>44</sup> Elisabet Siahaan, "Investigating the Source of Employees' Intention to Leave: A Case on Outsourced Employees," in *Proceedings of the 1st Economics and Business International Conference 2017 (EBIC 2017)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/ebic-17.2018.67>.

<sup>45</sup> Monica Belcourt, "Outsourcing — The Benefits and the Risks," *Human Resource Management Review* 16, no. 2 (June 2006): 269–79, <https://doi.org/10.1016/j.hrmr.2006.03.011>.

profits received by companies. By transferring non-core businesses, companies can focus more on the tasks that give added value;

3. Gain access to state-of-the-art technology; many tasks have been taken by outsourcing companies simply because the hiring companies wish to improve technical services that allow companies to increase efficiency;
4. Enhance services; the standards written in the qualification are often stricter with good track records;
5. Teach workers particular skills; outsourced workers are often trained according to their skill domains.

Besides cutting costs, outsourcing is also intended to focus on 'core' activities.<sup>46</sup> Skinner identifies the benefit of concentrating on a few manageable tasks to perform good operations.<sup>47</sup> However, there are some advantages and drawbacks to using outsourced workers. On the one hand, outsourcing is described as the main contributing factor to responsive chain supply,<sup>48</sup> offering access to cutting-edge technology and utilization of great performance.<sup>49</sup> Outsourcing can also enhance flexibility<sup>50</sup> and outsourcing companies can serve as the best source of skills and encourage novel creativity among workers.<sup>51</sup> On the other hand, outsourcing can also lead to the following problems: 1) weak protection of workers, considering that the employment agreement between the hiring company and the workers has a time limit of a year or even months, threatens the workers' sustainability; 2) the wage earned by workers is often lower than that received by employers; 3) the likelihood of career development could be higher since outsourced workers are often assigned to particular and repetitive tasks due to limited work specifications needed by hiring companies. These specifications are intended to produce products with economic value.

Charles D. Drake in Faisal Salam argues that frictions between workers and employers often result from violating regulations or other reasons.<sup>52</sup> However, frictions in a company are dynamic and can be settled by involving bipartite negotiation, mediation, conciliation, arbitration, and industrial relations court. Mediation is deemed to be the most appropriate solution to the issues, where deliberation involving the two parties concerned is paramount,<sup>53</sup>

<sup>46</sup> Gary Hamel and Coimbatore K Prahalad, "The Core Competence of the Corporation," *Harvard Business Review* 68, no. 3 (1990): 79–91.

<sup>47</sup> Wickham Skinner, "Manufacturing-Missing Link in Corporate Strategy," 1969.

<sup>48</sup> Angappa Gunasekaran and Bulent Kobu, "Performance Measures and Metrics in Logistics and Supply Chain Management: A Review of Recent Literature (1995–2004) for Research and Applications," *International Journal of Production Research* 45, no. 12 (June 2007): 2819–40, <https://doi.org/10.1080/00207540600806513>.

<sup>49</sup> Sharon Novak and Scott Stern, "How Does Outsourcing Affect Performance Dynamics? Evidence from the Automobile Industry," *Management Science* 54, no. 12 (December 2008): 1963–79, <https://doi.org/10.1287/mnsc.1080.0922>.

<sup>50</sup> Kwok Hung Lau and Jianmei Zhang, "Drivers and Obstacles of Outsourcing Practices in China," *International Journal of Physical Distribution & Logistics Management* 36, no. 10 (December 2006): 776–92, <https://doi.org/10.1108/09600030610714599>.

<sup>51</sup> Louise Knight and Christine Harland, "Outsourcing: A National and Sector Level Perspective on Policy and Practice," in *Best Practice Procurement* (Gower, 2001), 55–62.

<sup>52</sup> Faisal Salam, "Penyelesaian Perselisihan Perburuhan Industrial Di Indonesia," *Bandung: Mandar Maju*, 2009.

<sup>53</sup> Siti Kunarti, "The Power of Mediator Suggestions in Mediating the Settlement of Pancasila Industrial Relations Disputes Outside the Court," *Jurnal Dinamika Hukum* 19, no. 3 (October 2020): 795, <https://doi.org/10.20884/1.jdh.2019.19.3.1881>.

but certainly, mediation is not without problems. Due to this uncertainty, litigation remains preferable in settling disputes in this context.<sup>54</sup> Considering that the period of using outsourcing services is not short, relevant business climates are needed, and the application of the justice principle involved is expected to bring positive impacts and harmony for the sake of industrial sustainability.

Outsourcing was first known as a business strategy in 1989 and has been an integral part of the economy and business since the 1990s. The working strategies of outsourcing develop every year, and it is believed to keep the free-market economy stable globally. Economists also believe that outsourcing systems can create incentives for businesses and allow businesses to allocate workforce in areas they think fit.

In other words, outsourcing can be understood as a system where the workforce is working in a company or institution but under the control of another company.

**Table 1. *The Dynamic of Outsourcing Regulations in Indonesia***

<b>Legislation</b>	<b>Provision</b>	<b>Analysis</b>
Civil Code	Article: 1601, 1601b, 1601c, 1604-1615	The principle that applies is that when an agreement takes place, and the tasks have been performed, they cannot be undone unless the job supplier is willing to provide redress; the workers executing the tasks of others have the right to hold the tasks until the total wage is paid; the job supplier is responsible for the action taken by its workers and the cessation of the tasks if a worker passed away. The provision in the Civil Code is only effective after the promulgation of Law Number 13 of 2003.
Law Number 13 of 2003 concerning Labour	Article: 64, 65, 66.	The differences in the provisions of job supply in the Civil Code and Labour Law lie in the restriction of which occupations can be supplied, and it is only restricted to the products not related to a company's core businesses. The job has to be done separately from the core businesses, and this job must be supplementary to the company and should not directly hamper production. Supervision and fulfilment are challenging to perform, giving low protection to workers. The two types of outsourcing, as intended in Article 64, are performed under a written job supply agreement. In this case, the outsourcing company refers to the temporary work agreement, giving the workers no guarantee of job security. This situation can cause dismissal at any time and lead to job loss. This practice contravenes Article 27, paragraph (2) of the 1945 Constitution, but it also increases companies' efficiency.
The Decree of the Minister of Labour and Transmigration Number Kep-220/Men/X/2004 concerning Requirements of Transfer of Part of Execution of Tasks to Another Company.	Regulated in 8 Articles	As a delegated regulation to Law Number 13/2003, the regulation of the provision concerning outsourcing companies in this decree is relevant to the law. This ministerial decree does not govern a provision requiring an outsourcing company to be a juridical person.

<sup>54</sup> Nur Febya Adhawiyah and Imam Budi Santoso, "Penyelesaian Perselisihan Hubungan Industrial Dalam Pemenuhan Hak Pekerja Yang Diputus Hubungan Kerja," *The Juris* 6, no. 2 (December 2022): 502–10, <https://doi.org/10.56301/juris.v6i2.623>.

<p>The Decree of Minister of Labour and Transmigration Number Kep-101/Men/VI/2004 concerning Business Permit Issuance Procedures for Labourer/Worker Providers</p>	<p>Regulated in 18 Articles</p>	<p>This ministerial decree governs the procedures of permit issuance for service providers. With this decree, there have been guidelines for the execution and supervision of violations.</p>
<p>The Regulation of Labour Minister Number 19 of 2012 concerning Requirements of Transfer of Part of Execution of Tasks to Another Company.</p>	<p>Regulated in 36 Articles</p>	<p>This ministerial regulation explains that the transfer of part of tasks to another company is performed under a job supply or service supply contract, so there are two mechanisms involving job supply and service supply. However, these two types of supplies cannot be differentiated since they both share the same substantive matters involving a party providing occupations and workers available for a hiring company.</p>
<p>Regulation of Labour Minister Number 27 of 2014 concerning the Amendment to the Regulation of the Minister of Labour and Transmigration Number 19 of 2012 concerning Requirements of Transfer of Part of Execution of Tasks to Another Company</p>	<p>5a, 25a added</p>	<p>This ministerial regulation exists because there should be harmony between this regulation and the Regulation of Labour and Transmigration Number 19 of 2012. Generally, this harmony represents the effort made by the government to create proper industrial relations, allowing the transfer of tasks and workers/labourers to service providers to give advantages in legal order.</p>
<p>Regulation of Labour Minister Number 11 of 2019 concerning the Second Amendment to the Regulation of Labour Minister Number 19 of 2012 concerning Requirements of Transfer of Part of Execution of Tasks to Another Company.</p>	<p>1, 20, 21, 23, 24, 25 amended point d added in Article 19, three Articles added as Article 23, 24, 33a. Article 25A, 26 revoked.</p>	<p>The promulgation of Ministerial Regulation Number 11 of 2019 is to provide an easier process of permit issuance and to replace regulatory provisions that are no longer relevant to the current social conditions. It highlights the guarantee of the fulfilment of rights. It strictly implies that outsourcing companies failing to comply with existing regulations are subject to sanctions, permit issuance processes are made more time-efficient, permit issuance can also be done online, and outsourcing companies can be the juridical persons other than limited liability companies, such as cooperatives and foundations.</p>
<p>Law Number 11 of 2020 concerning Job Creation</p>	<p>Article 64, 65 revoked Articles: 66</p>	<p>Articles 64 and 65 were revoked from Job Creation Law, and Article 66 was amended. It principally implies that an employment contract between an outsourcing company and outsourced workers must require the transfer of the protection of rights of workers/labourers in case of the replacement of an outsourcing company by another new company and as long as the occupation remains existent.</p>
<p>Government Regulation Number 35 of 2021 concerning Temporary Work Agreement and Recess Time and Dismissal.</p>	<p>Article 1 (14), 18-20 amended</p>	<p>The labour relations between an outsourcing company and the labourers must be based on PKWT or PKWTT. Employment contracts, either PKWT or PKWTT must be made in writing, and the protection of labourers and any conflict arising will be the responsibility of the outsourcing company concerned. In terms of the labourers employed under an outsourcing company, according to PKWT, the employment contract should set</p>

<p>Regulation of Labour Minister Number 23 of 2021 concerning Revocation of Regulation of Labour Minister following the Promulgation of law Number 11 of 2020 concerning Job Creation along with its delegated regulations</p>	<p>forth the requirements of transfer of the protection of rights of labourers in case of replacement of the outsourcing company by another new company and as long as the occupation remains existent.</p>
<p>Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation</p>	<p>The promulgation of Law Number 11 of 2020 concerning Job Creation and its delegated regulations lead to a new regulation or the need to revoke the old regulation. Therefore, it is necessary to set the Regulation of the Labour Minister concerning the Revocation of the Regulation of the Labour Minister that is no longer relevant.</p> <p>The provision of Article 64 was amended, and it states that the company concerned can transfer part of the tasks to another company under an outsourcing contract made in writing. The government refers to the part of the execution of tasks. Government Regulation governs further provisions concerning the part of the tasks of the occupation (Article 64 of Law 13/2003 revoked from Job Creation Law but amended in the Government Regulation in Lieu of Law). The amendment to Article 66 remains the same as in Article 66 in Job Creation Law.</p>
<p>Law Number 6 of 2023 concerning Job Creation</p>	<p>Article 64, 66 amended Article 65 revoked</p> <p>This law ratifies the provisions of Government Regulation in Lieu of Law Number 2 of 2022. The outsourcing provisions regulated in this law are the same as the government regulations in lieu of the passed law.</p>

Table 1 indicates that there has been a dynamic in government policy and legislation. The initial idea of developing outsourcing services was to distribute business risks, including labour-related issues. Outsourcing is about more than getting prepared to do what they can; it is more about what cannot be done internally will be taken care of by outsourcing companies.

In Indonesia, outsourcing practices have been around since the Dutch colonial era, governed by Articles 1601 to 1617 of the Civil Code. This Civil Code serves as a starting milestone in the regulation concerning job or service supply, but its progress has been interrupted by a lack of support for regulations. After the promulgation of law Number 13/2003 concerning Labour that governs occupations possible for outsourcing, especially those not related to core businesses, are governed in Articles 64, 65, and 66. The provision regarding job supply is different from that of Law Number 13/2003; the Civil Code does not restrict the fields that can be considered for outsourcing, while Law Number 13/2003 governs the transfer of part of tasks to another party in the form of the provision of workers to be hired. This transfer is only restricted to the jobs not related to core businesses in a company, but the jobs available for outsourcing are those that are supplementary. Supplementary jobs involve cleaning service, food catering, security, and other supplementary occupations in mining and oil companies and staff transport service

provision. The output given by outsourcing companies is often related to services, not goods. Moreover, job supply is a supplementary activity where goods are the output. The jobs supplied must be those other than core businesses (supplementary jobs). Companies must perform business processes, and proof of report to the Labour Agency is essential. This report shows what processes are involved in non-core businesses and which tasks should not be supplied.

The new norms of outsourcing in Job Creation Law and Government Regulation 35/2021 new Article 66 of Job Creation Law consist of the following: 1) Labour relations under written PKWT or PKWTT (Article 18 (2) PP 35/2021); 2) The protection of workers/labourers is the responsibility of outsourcing companies (not *users'/ clients'/ principals'*) (Article 18 (3) Government Regulation 35/2021). 3) TUPE (*Transfer of Undertakings (Protection of Employment)*): (Article 19 (1) Government Regulation 35/2021). 4) OS Companies in the form of legal persons and the fulfilment of requirements of business permits issued by the Central Government (Job Creation Law).

Government Regulation 35/2021 concerning PKWT, outsourcing, working hours, and recess and dismissal governs the norms as those governed in Job Creation Law. Outsourcing regulations other than labour are no longer included in Law 13/2003. Matters related to business relations between a hiring company and a vendor (B2B) are governed by the Civil Code. In Job Creation Law, outsourcing is governed in terms of the following provisions: 1) Labour relations between workers and vendors: PKWT/PKWTT. 2) For PKWT, there must be the transfer of the protection of the rights of workers in case of the replacement of a vendor by another party and as long as the tasks remain existent. 3) An outsourcing company must be in the form of a juridical person and hold a business permit. 4) The protection of wages and welfare, working requirements, and conflict that may arise are the responsibility of an outsourcing company in line with the legislation.

Considering the amendments to Government Regulation 35/2021, the guarantee of the legal protection of outsourced workers is more prioritized with TUPE, after the issuance of the Constitutional Court Decision. The Government Regulation concerning Job Creation in lieu of Law Number 2/2022 was enforced, and this regulation amended Article 64 to say that a company can transfer part of tasks to another company in writing under an outsourcing contract. It indicates that outsourcing contracts must be written to provide legal certainty for outsourced workers.

## CONCLUSION

At the outset, outsourcing is a breakthrough aimed at sharing business risks and labour problems. While many companies have prepared for particular tasks in their business, some other problems that cannot be handled rely upon outsourcing companies. This trend has grown into a business strategy in business competition. The dynamic of legal politics is apparent in the matters and objectives of the law, shifting from the configuration of the formulation of legislative products. Civil Code as a substantive law was the first law to regulate outsourcing, as in Article 1601-1607 of the Civil Code. It governs labour contracts and job supplies, requirements, and the provisions of the agreement between the two parties, and it does not restrict the types of tasks transferred. The promulgation of Law Number

13/2003 concerning Labor, especially in Articles 64-66, specifies outsourcing into two: job supply and service supply. The law only allows certain job fields to be transferred as long as they are not categorized as core businesses. That is, outsourcing only involves supplementary tasks. The direction of the legal politics has changed in the labour cluster as implied in Omnibus Law, leading to the promulgation of Law Number 11/2020 and Government Regulation Number 35/2021 that erase job supply into the part not included as labour but businesses as governed in the Civil Code. Outsourcing that is more focused on providing services is guaranteed and protected under Transfer of Undertakings (Protection of Employment) (TUPE). Constitutional Court Decision Number 91/PUU-XVIII/2020 encourages the formation of law and the law's improvement to occur within at least two years from the day the decision was declared. If, within the period given, no improvement has been made, the Job Creation Law will be declared permanently unconstitutional. The government responded to this likelihood by issuing Government Regulation in Lieu of Law Number 2/2022, and this regulation did not make significant amendments regarding outsourcing. However, the amendment is only apparent in Article 64, stating that outsourcing must be based on a written contract.

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