



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 34, 2022

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Legal protection for outsourced workers/laborers due to termination of employment during the contract period

Chamdani, Krisnadi Nasution, Slamet Suhartono, Hufron

Faculty of Law, Universitas 17 Agustus 1945 Surabaya

hamdani.ms88@gmail.com, krisnadi@untag-sby.ac.id, slamet@untag-sby.ac.id,
hufron@untag-sby.ac.id

Abstract. The enactment of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 raises legal problems in the form of conflicts of norms and has not reflected legal protection in the theory of legal objectives that are fair, certain, and beneficial. In the event of termination of employment for outsourced workers / laborers with a certain time work agreement within the contract period, Article 62 of Law Number 13 of 2003 concerning Manpower expressly requires the party who terminates the employment relationship within the contract period to providing compensation in the amount of workers/ laborers' wages until the deadline for the expiration of the term of the employment agreement, while in Article 61A of Law Number 11 of 2020 concerning Job Creation requires employers to provide compensation money whose amount is calculated based on the period of a certain time work agreement that has been implemented by the Worker/Labor. The problem in this study is how legal protection for outsourced workers / laborers due to Termination of Employment in the contract period and what is the concept of legal protection for outsourced workers / laborers due to Termination of Employment in the contract period. This research is a normative juridical research, namely research that examines the study of documents, namely using various legal materials such as: legislation, legal theory, case studies, court decisions and in the form of opinions of scholars (doctrine). The problem approach used in this study, using a statutory approach (*Statute approach*), conceptual approach (*Conceptual approach*), philosophical approach (*Philosophical approach*) and comparative approach (*comparative approach*) in different countries. In this study, the theory of the welfare state and the theory of legal protection as an analysis knife against the formulation of the first problem, while the theory of legal objectives and the theory of agreements as an analysis knife against the formulation of the second problem. From the results of this study, it was concluded that the legal protection for outsourced workers / workers due to termination of work in the contract period is not optimal and conflicts with each other because in Article 62 of Law Number 13 of 2003 concerning Manpower only provides compensation money in the amount of workers / laborers' wages with a certain time work agreement until the deadline for the expiration of the term of the employment agreement (the remaining contract period), while in Article 61A of Law Number 11 of 2020 concerning Job Creation requires employers to provide compensation money whose amount is calculated based on the period of a certain time work agreement that has been implemented by the worker / laborer (the contract period that has been lived), s It does not cause legal uncertainty that leads to injustice for both outsourcing service providers and outsourced workers/laborers. In addition, normatively as stipulated in Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021. The concept of legal protection for outsourced workers/laborers due to termination of employment in the contract period , among others, can be implemented with an employment agreement between

workers/laborers and outsourcing companies on the basis of an indefinite time work agreement, but if the work agreement between the worker/laborer and the outsourcing company on the basis of an indefinite time work agreement then the principle of transfer of protection for workers / laborers must be applied in the event that the employer company appoints a new outsourcing company and the new outsourcing company is obliged to accept the transfer of workers/laborers from the old outsourcing company, whose object of work remains and the previously existing work agreement must be continued without changing the existing provisions in the agreement, unless changes are made to increase profits for their workers/laborers due to increased experience and length of service. Then it is necessary to form special institutions such as in the UK, ACAS (*Advisory, Concilitation and Arbitration Service*) who become supervisors in the field of labor so that when there is a violation committed by the company to outsourced workers / laborers, through the ACAS institution can provide fair protection to outsourced workers/laborers and in the event of termination of employment of outsourced workers / laborers, the Industrial Relations Court can decide as an unlawful act and the outsourcing company must find a job replacement for the outsourced workers/laborers who experience termination during the contract period and who are notable need to establish a special Law regulating outsourcing.

Keywords. Legal protection, outsourced workers/laborers, termination of employment

Introduction

The fulfillment of the right to work and a decent livelihood is in principle one of the important aspects in national development which is carried out in the framework of the development of the whole Indonesian people and the development of Indonesian society as a whole to realize a prosperous, just, prosperous, equitable society, both material and spiritual based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Taking into account the current condition of Indonesia which shows that the growth of the number of very high productive age is not balanced with an increase in the quality of human resources and the availability of jobs. As a result, many Indonesians do not have jobs, the low quality of human resources makes job seekers unable to compete in the formations needed by the world of work or companies. On the other hand, it must be admitted that the availability of jobs is very limited. Contrary to these conditions, the Government must make various strategic efforts in order to fulfill the rights to work and a decent livelihood as mandated in the 1945 Constitution of the Republic of Indonesia.

In its development, on November 2, 2020, Law Number 11 of 2020 concerning Job Creation was promulgated which in its explanation stated "Job creation is carried out through arrangements to increase the protection and welfare of workers at least containing arrangements regarding: protection of workers for workers with certain working time agreements, protection of labor relations for work based on outsourcing, protection of decent work needs through wages minimum, protection of workers experiencing termination, and ease of licensing for foreign workers who have certain skills that are still necessary for the production process of goods or services". There are two important things that need attention, namely the protection of workers for workers with a certain working time agreement and the protection of workers who experience termination of employment within the contract period.

Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Work Time and Rest Time, and Termination of Employment and Government Regulation Number 36 of 2021 concerning Wages and Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program serve as government instruments to intervene in controlling the relationship between workers and

companies and as a control of the relationship between the two however, it still does not provide proper and beneficial legal protection for outsourced workers/laborers.

In Article 18 paragraph (1) of Government Regulation No. 35 of 2021 states that the employment relationship between outsourcing companies and workers/laborers who are employed, is based on a Certain Time Work Agreement or An Indefinite Work Agreement. Furthermore, if there is a termination of employment to an outsourced worker/laborer, Article 17 of Government Regulation No. 35 of 2021 states that for one of the parties who terminates the employment relationship before the expiration of the period stipulated in the Specified Time Work Agreement, the Employer is obliged to provide compensation money as referred to in Article 15 paragraph (1) whose amount is calculated based on the period of time A Certain Time Work Agreement that has been implemented by the worker / laborer, as stated in Article 62 of Law Number 13 of 2003 concerning Manpower states that if one of the parties terminates the employment relationship before the expiration of the period stipulated in the Specified Time Work Agreement or the end of the employment relationship is not due to the provisions as referred to in Article 61 paragraph (1), the party who terminates the employment relationship are required to pay compensation to other parties in the amount of workers/laborers' wages until the deadline for the expiration of the term of the employment agreement. According to Article 61A paragraph (1) of Law Number 11 of 2020 concerning Job Creation, it is determined: "In the event that a certain time work agreement expires as referred to in Article 61 paragraph (1) point b and letter c, the employer is obliged to provide compensation money to the worker / laborer", and in paragraph (2) it is determined: "Compensation money as referred to in paragraph (1) is given to the worker / laborer in accordance with the working period of the worker / laborer in the company that concerned".

If you look carefully at the two regulations, both contained in Article 62 of Law Number 13 of 2003 concerning Manpower and Article 61A of Law Number 11 of 2020 concerning Job Creation, specifically related to the granting of rights to workers / workers due to termination of employment during the contract period there is a conflict of norms (*antinomy normen*), where Law Number 13 of 2003 concerning Manpower requires one of the parties who terminates the agreement, either employers or workers to pay compensation to other parties in the amount of workers / laborers' wages until the deadline for the expiration of the term of the employment agreement (the remaining contract period), while Law Number 11 of 2020 concerning Job Creation requires employers to provide compensation money to workers / laborers in accordance with the period of work of workers / laborers in the company concerned (the length of service that has been served). So that it is necessary to harmonize or harmonize between the provisions contained in the two Laws, including the rights of outsourced workers / workers with certain time work agreements that are terminated in the contract period.

Problem Formulation

Based on the background description, then the formulation of the problem is how legal protection for outsourced workers/laborers due to termination of employment within the contract period? And what is the concept of legal protection for outsourced workers/workers due to termination of employment within the contract period?

Method

This research is a normative juridical research, namely research that examines the study of documents, namely using various legal materials such as: Laws, legal theories, case studies, court decisions and in the form of opinions of scholars (doctrines).

Result and Discussion

The Role of Outsourced Workers/Workers in Industrial Relations

The role of outsourced workers/workers in today's era is very helpful for entrepreneurs to be able to face business competition and human resource competition, both at national and international levels. Competition in the business world between companies makes the company have to concentrate on a series of processes or activities for the creation of products and services related to its main competencies. With the concentration of the main competencies of the company, a number of products and services will be produced that have quality that has competitiveness in the market. In a climate of increasingly fierce business competition, companies strive to make production cost efficiencies (*cost of production*). One solution is with an outsourcing system, where with this system the company can save expenses in financing human resources (HR) working in the company concerned.

The implementation of outsourcing agreements has become so popular and tends to become more widespread especially since the late nineties or early 2000. In addition to being viewed as more efficient in the management system, outsourcing can be a solution to increase production cost efficiency (*cost of production*), especially in order to reduce the cost of workers / labor (*labor costs*). For the employer company, it will feel more efficient and less burdened if the type of work is handed over to other parties who have more expertise and experience in their fields, so that the company will remain focused on the type of work or main activities (*core business*)(Farida, n.d.)

Outsourcing is defined as the transfer or delegation of several business processes to a service provider body, where the service provider body carries out administrative and management processes based on definitions and criteria that have been agreed upon by the parties (Saija, 2019). A worker/labor service provider is a form of business that is legally incorporated and has a permit from the agency responsible for manpower. In the event that the above conditions are not met (except regarding welfare protection provisions), then for the sake of law the status of the employment relationship between the worker/laborer and the company providing worker/labor services switches to an employment relationship between the worker/laborer and the employer company.

The role of outsourced workers/laborers is needed not only by service providers, but also needed for the progress and development of the country. Outsourcing work agreements are not only considered as one of the solutions for business people in running their production wheels, but also often regarded as the only solution that exists. In the end, not only the business world, or workers / workers who need outsourced workers / laborers, but also the government, in the context of national development, improving the welfare of the people, expanding employment opportunities, creating social justice, and adjusting the needs to follow the development of the world (Farida, n.d.)

Status of Outsourced Workers/Laborers In Employment Agreement

The legal relationship between the outsourcing company and the employer. Outsourced workers sign employment agreements with outsourcing companies as the basis of employment relations. In the employment agreement, it is stated that the worker / laborer is placed and works in the employer company. From this employment relationship arises a legal problem, outsourced workers / laborers in their placement at the employer company must comply with the Company Regulations or Collective Labor Agreement that applies to the employer company, while legally there is no employment relationship between the employer company

and the outsourced worker / laborer. The underlying reasons why outsourced workers/laborers should be subject to the employer's company regulations are:

1. The outsourcing worker/laborer works at the place/location of the employer's company;
2. Per the employment rules of the employer company must be implemented by all workers / laborers who work in the workplace of the Employer including workers / outsourced laborers;
3. Proof of submission of outsourced workers /laborers is stated in the cooperation agreement or memorandum of understanding between the company providing workers / outsourced laborers and the employer company

In the event of a violation committed by an outsourced worker/laborer, there is no authority from the employer company to terminate employment or resolve disputes, because between the employer company as *a user* of the worker's services (user) and the outsourced worker/laborer legally does not have an employment relationship, because the authority to terminate employment or resolve the dispute is the provider company outsourced workers / laborers even though the regulations violated are the regulations of companies that use the services of workers / outsourced laborers (*user*).

Workers/ Outsourced Workers' Rights A100 Termination of Employment Within the Contract Period

The enactment of Law Number 11 of 2020 concerning Job Creation causes changes to the provisions of Law Number 13 of 2003 concerning Manpower, the only thing about the term outsourcing. Law Number 11 of F2020 concerning Job Creation changes the term from handing over part of the implementation of work to other companies to outsourcing. In Law Number 11 of F2020 concerning Job Creation, there are no more restrictions on the types of work that can be done with an outsourcing system. So far, outsourcing in Law Number 13 of 2003 concerning Manpower is defined as the handover of part of the work to other companies through 2 (two) mechanisms, namely the agreement for contracting work or the provision of worker/ labor services (Thea DA, 2021).

Law Number 11 of 2020 concerning Job Creation amends the provisions of outsourcing and removes the provisions of Article 64, Article 65 and amends Article 66 of Law Number 13 of 2003 concerning Manpower. Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Work Time and Rest Time, and Termination of Employment as an implementing regulation of Law Number 11 of 2020 concerning Job Creation states, outsourcing companies are business entities in the form of legal entities that are qualified to carry out certain jobs based on agreements agreed with the employer company. The change in terms from the partial handover of work implementation to other companies to outsourcing, is inseparable from other changes, including the rights of workers / outsourced workers due to termination of employment within the contract period.

In Government Regulation No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, as well as Termination of Employment, in article 18 paragraph (1) of Government Regulation No. 35 of 2021 states that the employment relationship between outsourcing companies and employed workers/laborers, can be based on a specific time employment agreement or an indefinite time employment agreement. In the event of termination of employment to outsourced workers/workers, then in Article 17 of Government Regulation No. 35 of 2021 it is stipulated that "for one of the parties to terminate the employment relationship before the expiration of the period stipulated in the work agreement

for a certain time, the Employer is obliged to provide compensation money as referred to in Article 15 paragraph (1) whose amount is calculated based on the term the time of the work agreement for a certain time that has been implemented by the worker / laborer", while in article 62 of Law Number 13 of 2003 concerning Manpower it is stated that "if one of the parties terminates the employment relationship before the expiration of the period stipulated in the Specified Time Work Agreement, or the end of the employment relationship is not due to the provisions as referred to in Article 61 paragraph (1), the party terminating the employment relationship is required to pay compensation to the other party in the amount of the worker/laborer's wages until the deadline for the expiration of the term of the employment agreement".

Over time and opinions that oppose the existence of Law Number 11 of 2020 concerning Job Creation, have submitted a formal test at the Constitutional Court and have been decided by Decision Number 91 / PUU-XVIII / 2020 which basically contains, as follows:

1. Stating that the establishment of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted as "no improvement is made within 2 (two) years since the decision was pronounced";

2. Stating that Law Number 11 of 2020 concerning Job Creation remains in force until improvements are made to the formation in accordance with the grace period as specified in this decision;

3. Order the framers of the Law to make improvements within a period of no more than 2 (two) years since this decision is pronounced and if within that grace period no improvement is made, Law Number 11 of 2020 concerning Job Creation becomes permanently unconstitutional;

4. Stating that if within a grace period of 2 (two) years the framer of the law cannot complete the improvement of Law Number 11 of 2020 concerning Job Creation, the law or articles or material content of the law that has been repealed or amended by Law Number 11 of 2020 concerning Job Creation (declared in force again);

5. Stating to suspend all actions/policies that are strategic in nature and have a broad impact, and it is not allowed to issue new implementing regulations related to Law Number 11 of 2020 concerning Job Creation.

Referring to the Decision of the Constitutional Court, Law Number 11 of 2020 concerning Job Creation remains valid until improvements are made to the formation in accordance with the grace period as specified in Decision Number 91 / PUU-XVIII / 2020, which is 2 (two) years since this decision was pronounced. The decision was pronounced on November 25, 2021, until Law Number 11 of 2020 concerning Job Creation is valid until November 25, 2023, and if in the grace period no improvement is made, Law Number 11 of 2020 concerning Job Creation becomes permanently unconstitutional;

Based on the provisions of Article 62 of Law Number 13 of 2003 concerning Manpower states, if one party terminates the employment relationship before the expiration of the period stipulated in the work agreement for a certain time, the party who terminates the employment relationship (be it a worker or employer) is required to pay compensation to the other party in the amount of workers / laborers' wages until the deadline for the expiration of the term of the employment agreement, while the provisions of Article 61A of Law Number 11 of 2020 concerning Job Creation determine that in the event that a certain time work agreement expires as referred to in Article 61 paragraph (1) point b and letter c, the employer is required to provide compensation money to workers/laborers and compensation money as referred to in paragraph

(1) given to workers/laborers in accordance with the working period of the worker/laborer in the company concerned. If you look carefully at the two regulations, both contained in Article 62 of Law Number 13 of 2003 concerning Manpower and Article 61A of Law Number 11 of 2020 concerning Job Creation, specifically related to the granting of rights to workers / workers due to termination of employment during the contract period there is a conflict of norms (*antinomy normen*), where according to Article 62 Law Number 13 of 2003 concerning Manpower the party who terminates the employment relationship, be it a worker or an entrepreneur, is required to pay compensation to other parties in the amount of workers / laborers' wages until the deadline for the expiration of the term of the employment agreement (the remaining contract period), while according to the provisions of 61A Law Number 11 of 2020 concerning Job Creation the employer is obliged to provide compensation money to the worker / laborer and the compensation money is given in accordance with the period of work of the worker / laborer in the company concerned (the period of work that has been lived).

In relation to the existence of conflicts of norms, it can be resolved using the relevant principles of legal preferences as follows:

First, the principle of *lex specialis derogat lex generalis*, special legislation overrides special laws and regulations, if they regulate the same and conflict with each other. In the context of the above conflict, Law Number 13 of 2003 concerning Manpower is more of a *lex specialis*, because it specifically regulates labor aspects, while Law Number 11 of 2020 concerning Job Creation is more of a *lex generalis*, then what is enforced is *lex specialis* namely Article 62 of Law Number 13 of 2003 concerning Manpower.

Secondly, the principle *lex posteriori derogat lex apriori*, the new legislation overrides the enactment of the old legislation, if the two regulate the same and contradict each other. In the context of the conflict of norms above, then what is enforced is *lex posteriori* namely Article 61 A of Law Number 11 of 2020 concerning Job Creation.

In the Practical course, resolution of the existence of a conflict of norms between Article 62 of Law Number 13 of 2003 concerning Manpower and Article 61 A of Law Number 11 of 2020 concerning Job Creation, employers and workers can design an employment agreement by agreeing to choose to use Article 62 of Law Number 13 of 2003 concerning Manpower or Article 61A Law Number 11 of 2020 concerning Job Creation, if there is a termination of employment within the contract period. With the choice of legal provisions for the use of the Law used in a certain time employment agreement between employers and workers, including outsourced workers / laborers, if termination of employment is carried out within the contract period, in addition to fulfilling the principle of freedom of contract (*freedom of contract*), can also practically solve problems and confusion due to the conflict of norms mentioned above.

Regulation and Protection of Workers/Workers in Various Countries

(a) Regulation and Protection of Outsourced Workers in Germany

The fall of the communist regime and the process of global economic unity (economic globalization) affected all living conditions in Germany and the increasing graph of transactions across national borders made the allocation of funds for goods and factories better (Farida, 2017) Cross-border transactions that occur are not limited only to the allocation of funds (investments) as well as materials or goods necessary in production activities. The cross-border transaction has reached the distribution of human resources (HR), namely workers/laborers. The workers/laborers referred to in this case are outsourced workers/laborers as part of the development of labor law in Germany. The main feature of the globalization process is the increasing international outsourcing and foreign investment (Farida, 2017). Previously, the

international world considered outsourcing only for low-skilled workers/laborers (*unskilled labor*) coming from developing countries or countries that have poor economies. At this time outsourcing is not only aimed at *unskilled labor* but also for workers / laborers who have skills or expertise (*skilled labor*). Likewise, outsourcing in Germany is growing rapidly with the number of outsourced workers/laborers doubling since 2012(Kemper, 2015) By *Information Service Group* (ISG), Germany, Austria, and Switzerland are the largest European markets in terms of outsourcing use(Farida, n.d.) The financial services industry is the most important outsourcing field in Germany, followed by manufacturing.

German national law does not specifically regulate outsourcing. In its implementation regarding outsourcing, it is bound to each rule in each industrial sector. There is no clear definition of outsourcing, but when viewed from the nature of the work, there are two types of outsourcing concepts in Germany, namely:

Labor Leasing (Arbeitnehmeruberlassung)

In chapter 1 *Arbeitnehmeruberlassungsgesetz* (AUG) *Germany Labor Leasing Act*, *labor leasing* defined as a condition where an agency company rents its workers / workers to a third party (*company user*)(Kirchner, Kremp, & Magotsch, 2017). Outsourcing through *labor leasing* can be implemented for all sectors for all sectors, except the construction sector(Hartmann, 2012) The ban on *labor leasing* in the construction industry has been in effect since 1982 because this industry is very prone to abuse.(R.Kremp, 2020). The period of *labor leasing* can only be done for a maximum of 18 months(Hartmann, 2012). Provisions regarding the outsourcing period have changed several times, namely 3 to 6 months in 1982, 9 months in 1994, 12 months in 1997, 24 months in 2002, and then abolished in 2003. Subsequently, the provision was corrected back to 18 months and came into force on April 1, 2017(Hartmann, 2012).

In Indonesia, the outsourcing work relationship in Germany has the characteristic of a three party (triangular) relationship, namely: outsourcing companies, workers/laborers, and user companies. The employment relationship is bound by two types of agreements, namely, an employment agreement (*employment contract*) between an outsourcing company and a worker / laborer and a job placement agreement (*employee placement contract*), between the outsourcing company and the *user company*. The legal relationship that occurs is that the outsourcing company places workers / laborers in the user company. The worker/laborer will receive wages in accordance with the work and wages agreed in the collective labor agreement. This employment relationship must fulfill the basic rights of workers / laborers such as pension funds, health, and accident insurance care(Farida, n.d.). The company *user* will pay per hour the work done to the outsourcing company in accordance with the work assigned by the user company (Spermann, 2011). Two types of agreements in the implementation of outsourcing are *outsourcing* agreements (cooperation agreements) between agency companies and user companies which are commonly referred to as *labor lease contracts* or *service contracts* (Baker & McKenzie, 2013) and employment agreement: which regulates the employment relationship between *the agency* company and the *outsourcing* worker(Baker & McKenzie, 2013)

Looking at the explanation, it is clear that the existing labor relationship is between the outsourced worker/laborer and the agency company, not the outsourced worker/laborer with *the user* company. Therefore, the responsibility in fulfilling the rights of outsourced workers / workers lies with the agency company, not the *user* company. In carrying out its activities, the outsourcing company must have a permit, where the permit is granted for a period of one year and can be extended as many as 3 (three) times in a row. Under Article 1 of

Arbeitnehmeruberlassungsgesetz, the absence of a permit in the practice of *labor leasing* will result in the activities carried out by the outsourcing company concerned being considered *illegal*. This condition causes the contract both between the *lessor* and the *client* (company *user*) and between the *lessor* and the worker / laborer to be invalid (invalid) (Baker & McKenzie, 2013) If this happens, then the worker / laborer can ask for compensation from the cancellation of the contract, provided that the worker / laborer does not know that the *agency* it does not have the company's license that caused the cancellation of the contract (Farida, n.d.) Article 12 of the AUG (*German Labor Leasing Act*) provides that the contract between the outsourcing company and the user company must be made in written form. *The lessor* must state in the contract whether he has the permission as stipulated in Article 1 of the AUG. *The Labor Lease Contract* referred to above must be made in writing and include detailed information, such as the number and qualifications of workers / laborers to be provided by the *agency* company (outsourcing company), the term of the agreement, *remuneration* (fees / administrative costs for outsourcing companies), and sometimes in the agreement it is also regulated regarding guarantees to the user company if the *agency* company does not have a license (Kirchner et al., 2017)

Related to the work agreement above, the employment agreement between *the agency* company and the outsourced worker / laborer is the legal basis for the outsourced worker / laborer in providing their services to the user company in accordance with the instructions of the user company. *Labor Leasing* in Germany is similar to a Worker Service Provider Company in Indonesia, where workers get instructions and orders from the user company. The user company determines what tasks and work must be done by outsourced workers / laborers (Kirchner et al., 2017)

Contracting Out (Auslagerung)

The practice of *contracting out* is similar to the outsourcing of work contracting in Indonesia. *Contracting out* is defined as the transfer of part of the contractor's work that can be handed back to another contractor (subcontracting). Outsourcing settings are spread across multiple rules. European Union (EU) law should take precedence over German national provisions and rules and should be considered in interpreting national law, particularly regarding restrictions. The rules that must be put first are the *Treaty on European Union* (TEU) and *the Treaty on the Functioning of the European Union* (TFEU) and the declaration of essential freedom. Furthermore, the secondary laws related and can be used in *contracting out* are guideline 2014/23/EU on the contract recognition judgment and guideline 2014/24/EU on public purchases and guideline 2014/25/EU on the implementation of purchases of the water, energy, transport and postal services sectors.

In national legislation, *contracting out* is regulated in *the German Civil Code* (*Burgerlicjhes Gesetzbuch*) (BGB), the Manpower Act, the Data Protection Regulation, and the specific rules depending on the relevant industry sector, namely:

1. Financial Services

Outsourcing arrangements in the financial services sector depend on the nature of the outsourcing services, which must meet the conditions stipulated in the applicable law also depends on the nature of the outsourced financial services, of which these provisions are as follows:

- a) *The German Banking Act* (*Kreditwesengesetz*) (KWG). KWG essentially set:

1. It is required that in financial institutions there is an intermediary as a broker or agent. (Article 25b KWG);

2. It is determined that there is a specific obligation to avoid additional risks in the event that the work that is outsourced is an "important" job. (Article 25e KWG);

3. The main obligations of management should not be outsourced and transferred to *suppliers*. (Article 25b II of the KWG);

4. Consumers as parties whom outsourced the permanent workers have an obligation to ensure compliance with the conditions specified in the law. (Article 25b II of the KWG);

5. Article 33 III of the KWG provides that a portfolio of management services aimed at private consumers conducted by contractors located outside the European Union must be notified to BaFin if there is no cooperation agreement between BaFin and the responsible supervisor of a non-EU member country;

b) *The German Securities Trading Act (Wertpapierhandelsgesetz) (WpHG)*

WpHG basically regulates the general obligations of financial institutions (Article 33 KWG) and obligations for institutions that carry out service activities "security investment" (Article 1 KWG).

c) *The German Investment Code (Kapitalanlagegesetzbuch) (KAGB).*

KAGB regulates obligations for institutions that carry out "capital investment" service activities. Article 36 VI of the KAGB provides that the contractor must first notify BaFin of any subcontracting plan (*under-outsourcing*) before the transfer of work to the subcontracting is carried out. Therefore, the consumer must agree in advance to the decision of "under-outsourcing" made by the contractor, and must meet all the conditions in article 36 No. 2-8 KAGB.(Farida, n.d.)

d) Administrative rules *The Federal Financial Services Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) (BaFin)* is a supervisor at a financial institution, one of its duties is to maintain order in supervising financial institutions and their directors, which aims to ensure the fairness and validity of the implementation (follow-up) of complaints against financial services (Article 6 III, KWG)(Farida, n.d.)

2. *Business Process*

There is no addition regarding outsourcing, in other words, the general rules apply.

3. *IT and Cloud Services, Telecommunications*

The law of IT and Cloud services is closely related to the rules regarding telecommunications.

4. *Public sector*

In the public sector there are special rules required for the purchase and *tender* procedure.

In addition to the rules outlined above, there are other related rules that regulate outsourcing, namely:

1. *Contract law and property:*

a) *German Civil Code (Bürgerliches Gesetzbuch) (BGB);*

b) *The German Land Register Code (Grundbuchordnung) (GBO)* regarding the transfer of work in *real estate*.

2. *Corporate and employment law:*

a) *German Civil Code (Bürgerliches Gesetzbuch) (BGB);*

b) *The German Transformation Act (Umwandlungsgesetz) (UmwG);*

c) *The German Works Constitutions Act (Betriebsverfassungsgesetz) (BetrVG).*

3. *Competition law, provided for in the Competition Restrictions Act (GWB).*

4. *Intellectual Property Law provided for in the Copyright Act (Urhebergesetz) (UrhG), in the event that there is an Intellectual Property Right of IP property transferred.*

5. Data Protection Law is regulated in:
 - a) The Data Protection Act (*Bundesdatenschutzgesetz*) (BDSG);
 - b) Telecommunications Act (*Telekommunikationsgesetz*) (TKG);
6. Tax Law, which is provided for in the Tax Resetting Act (*Umwandlungssteuergesetz*).

In Germany, there are several types of *contracting out* as a form of outsourcing, namely:

1. *Contracting out directly*

In *direct contracting out*, the user is directly included in the agreement with the contractor, and the contractor will carry out work with his own infrastructure and work in the form of monetary rewards from *the user*.

2. *Indirect contracting out*

In *an indirect contracting out*, *the user enters* into an agreement with the contractor and then the contractor hands over all or part of the work to another contractor or a third party. Personal information can be transferred to subcontractors, for which a data processing agreement is needed between the user and the subcontractor.

3. *Multi-sourcing*

In this type of contacting out, the user outsources the work to several contractors, where the user enters into an agreement with each contractor.

4. *Joint Venture*

5. *Captive Entity*

In this model some existing divisions within the company are transferred internally to build a specialized competency center or service network center.

6. *Build Operate Transfer*

In this type, the independent contractor builds a work (which is tangible), provided that the facility (the result of the work) will be transferred to the user.

The protection of outsourced workers/workers affected by diversion in Germany is similar to that applicable in Indonesia as stipulated in Article 32 paragraph (1) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012. *The Transfer of Undertaking of Protection of Employment* (TUPE) in Germany is regulated in Article 613a BgB and Directive 2001/23/EC on the protection of workers' rights at the transfer of business or part of a business (Farida, n.d.) The protection of the continuity of workers in Germany is almost the same as in Indonesia, namely through the transfer of TUPE workers. However, the TUPE provided for in Article 613a BgB only protects *contracting out* workers (contracting) (Farida, n.d.), provided that: *Contracting out* the first time, Contracting change; and the termination of *the contracting out*; if the outsourcing work is terminated and the work is carried out through insource, to the extent that the insource is a transfer of business.

In the event of a *first-time contracting out*, contractor change, or termination of *the contracting out*, the worker agreement will be transferred to the new employer, including the mutual agreement associated with the worker's employment agreement. Things that must be considered in the implementation of TUPE in Germany are:

1. Regarding employment relations

- a) If the worker/laborer is transferred in a legal act of transfer as a business, the new entrepreneur replaces the rights and obligations of the old entrepreneur. Transferred workers/laborers include blue-collar workers, white-collar workers, executives, interns, and PKWT workers, or workers who are being suspended who are part of a portion of the transferred business, but do not include members of management, entrepreneurs, and private aides/services.

b) The new employer will take away all rights and obligations from the active workers/laborers.

c) The new employer will take over all the benefits on the worker/labor agreement that is part of the transferred business.

2. Regarding pension rights

Retired workers/laborers and former workers/laborers from the transferred business are inactive workers/laborers, so they do not have pension rights to new employers.

3. Regarding the payment of fired workers (*Redundacy Pay*)(Garner, 2019)

No rule requires payment against this. However, such rights are exercised voluntarily and determined through negotiations and depend on the legal responsibilities of the entrepreneur. In practice, the amount of payment for termination is about 50% to 150% 1 month's salary per number of years of work, or it can be higher.

4. Regarding the adjustment of workers transferred to a new place(Farida, n.d.)

The new employer is possible to have a discrepancy regarding the terms and conditions with the transferred worker from the old employer. Therefore, it is necessary to adjust the will of the new employer and the transferred worker made in writing into the rules / mutual consent agreement which will later become part of the employment contract between the new employer and the old employer. This is different if there has been a previously binding agreement with the old entrepreneur regarding doing what the new entrepreneur wants.

5. Regarding information, notices and consulting obligations

In the transfer process, the old entrepreneur must notify the new entrepreneur /other party about all information related to the transfer process.

6. Regarding information and consultation to relevant institutions(Farida, n.d.)

Economic institutions in Germany must have information about the transfer process agreement.

Legal provisions in Germany dictate that economic institutions must provide comprehensive information because their main task is to notify the relevant labor institutions. After obtaining information from economic institutions, employment agencies have the right to conduct consultations with new and old employers to assess the transfer process. If in this case the old employer is unable to provide information to the economic institution, then the employment institution can directly represent the economic institution to make a decision to determine the time limit for the old employer to provide information. In the event that the old employer is unable to fulfill his obligations then a fine of € 250, 000 will be imposed.

Looking at the general outsourcing arrangements in Germany, especially related to protection for workers/laborers, there is a special rule of legislation that regulates the protection of workers/laborers at the time of transfer of work. This protection arrangement is quite relevant if it is associated with the transfer of work that can occur at any time and be carried out by an outsourcing company by handing over the work to another company. The interesting thing about the TUPE arrangement in Germany is that in Indonesia it is only intended for workers from Service Provider Company, while in Germany it is only intended for workers/laborers in job contracting companies. With this arrangement, the problems that occur in Germany, especially regarding the protection of TUPE, do not include other parties involved in outsourcing practices. As happened to workers in PPJP in Germany who did not get TUPE protection. Likewise with workers/laborers in job contracting companies in Indonesia. This is certainly not fair enough in formulating TUPE protection arrangements because business transfers can occur in Service Provider Company or job contracting companies.

Some things that can be underlined from the rules in Germany that provide legal certainty and the fulfillment of the principle of justice for the perpetrators are:

1. There is TUPE protection for PKWT workers / workers contracting work;
2. The types of work that can be outsourced by PPJP have a very wide scope of work;
3. The existence of strict sanctions for those who violate the terms and conditions of outsourcing up to a higher level of corporate compliance;
4. Although there is no specific law governing outsourcing, Germany has many labor-related laws and regulations so that the protection of workers/laborers is sufficiently guaranteed;
5. *The principle of freedom of contract* is so consistently upheld that any agreement made by the parties is a mirror that the agreement is an agreement that is not forced. In addition, Germany also has an excellent supervision system, BaFin in addition to being a supervisory body in financial institutions in general, also has the authority to supervise and provide opinions on the observance of rules in the implementation of outsourcing.

Regulation and Protection of Outsourced Workers in United Kingdom

In the UK *outsourcing* is defined as the activity of handing over part of the implementation of work to another company which is carried out through a work contract agreement or an agreement for the provision of workers' services (Farida, n.d.). There are two types of *outsourcing* concepts in the UK, namely, the first, *the Agency Worker* (almost the same as the Worker Service Provider) which is regulated in *statutory instruments 2010 No. 93 concerning terms and conditions of employment-The Agency Worker Regulations 2010 (The Agency Worker Regulations 2010)*, the second, *Contracting Out* (almost the same as contracting jobs in Indonesia) which is regulated in *Statutory Instruments 2006 No. 246 concerning Terms and Conditions of Employment – The Transfer of Undertaking (Protection of Employment Regulation 2006)* (Farida, n.d.)

Agency Worker (Penyedia Jasa Pekerja)

Article 3 of the *Agency Worker Regulations 2010* provides that the definition of *agency worker* is as follows:

Agency worker means individual who (a) is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and (b) has a contract with the temporary work agency which is a contract of employment with the agency, or any other contract to perform work and services personally for the agency.

It can be concluded that an *Agency Worker* is a worker provided by the *Agency (Temporary Work Agency)* to work temporarily under the supervision and orders of service users (*Hirers* or *Users*). The employment relationship between *the Agency Worker* and the *Temporary Work Agency* is agreed upon in an employment contract. There are three parties in the employment relationship as stipulated in *The Agency Worker 2010*, namely *Agency Workers* (workers), *Hirers* (Employment Companies), and *Temporary Work Agencies* (Worker Service Provider Companies). In addition to the definition of *Agency Worker* that has been described above, *The Agency Regulations 2010* in chapter I number 2 also explains clearly about the definition of *Hirers* and *Temporary Work Agencies*, namely as follows:

“Hirers means a person engaged in economic activity, public or private, whether or not operating or profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of the person, Temporary Work Agency means a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of (a) supplying individuals to work

temporarily for and under the supervision and direction of hirers, or (b) paying for, receiving or forwarding payment for, the services or individuals who are supplied to work temporarily for and under the supervision and direction hirers.”

The relationship between *Agency Workers, Temporary Work Agencies, and Hirers* can be explained by a triangular relationship. Where the *Agency Worker* is placed by the *Temporary Work Agency* at the hirers's place (who use the services) temporarily, in exchange for wages (*fees*). Of these fees are used by the *Temporary Work Agency* for the payment of workers' wages(*Agency Worker*)(Farida, n.d.)

Contracting Out

Contracting out is transferring all or part of a business activity to another party (*contractor*), as stipulated in Article 38 paragraph (1) letter a of the *Protection of Employment Regulation 2006* which states:

“These regulation apply to: (a) Transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity.”

There are three forms of transfer of work that are commonly applicable in Indonesia, namely the transfer of work from the client to another party (*contractor*) to perform work on behalf of the *client*, where the *employee* of the *contractor* does work on behalf of the *client*, the transfer of work from the *Contractor* who is given work for and on behalf of the *client* to other parties (*subsequent contractor*) or known as *re-tendering*), where the *employee* of the *subsequent contractor* performs work on behalf of the *client* and transfers work from the *contractor* or *subsequent contractor* for and on behalf of the *client* to the *client* return. The three forms of transfer of employment are regulated in Number 3 paragraph (1) letter b of the *Statutory Instrument 2006 No. 246* concerning the terms and conditions of employment transfer (labor protection), which essentially states:

A service provision change, that is a situation in which:

1. *Activities cease to be carried out by a person (“a client”) on his own behalf and are carried out instead by another person on the client’s behalf (“a contractor”);*
2. *Activities cease to be carried out by a contractor on a client’s behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person (“a subsequent contractor”) on the client’s behalf;*
3. *Activities cease to be carried out by a contractor or a subsequent contractor on a client’s behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf, and in which the condition set out in paragraph (3) are satisfied.*

Furthermore, Article 6 paragraph (1) of the *Agency Workers Regulation* states that for *agency worker* agreements held between *agency workers* and *temporary work agencies* must at least include: a) payment, b) duration of work, c) *night work*, d) *rest periods*, e) *breaks*, and f) leave (Farida, n.d.) Article 7 paragraph (1) explains that the position between the *agency worker* and the company worker who uses the services of a *temporary work agent* is the same, where every worker / laborer works under the *basic working and employment conditions*, namely the *agency worker* has the right to do work and get facilities, payment of bonuses, commissions, along with all the benefits stated in the contract that are the same as workers from the hirers company after going through the *Qualifying Period*. To obtain their rights in terms of *basic working and employment conditions*, an *agency worker* must work for the hirer for a period of 12 consecutive calendar weeks with the same role or job (Forde, Slater, & Great

Britain. Advisory and Arbitration Service, 2014) The measurement is used in terms of assessing the role of *agency workers* in working on more than one job assigned by a *hirer*. After *the qualifying period with the hirer ends, the agency worker* is not entitled to the same wage payment as the worker recruited directly by the company. However, *agency workers* are still entitled to leave after *the qualifying period* (Forde et al., 2014) Meanwhile, *contracting out* contracts are not regulated in detail, but the provisions on employment contracts in general as outlined above apply. Furthermore, in the UK TUPE is regulated in *The Transfer of Undertaking Regulations 2006*. The TUPE stipulated in the regulation is addressed to workers affected by:

1) *Business transfer*, is a worker/laborer affected by the transfer of business to a new entrepreneur. Against this provision, the identity of the entrepreneur must change, so that against the change of shareholders does not apply the provisions of TUPE.

2) *Service provision changes*, It is the worker/laborer who is subject to the transfer of work to the contractor, where the work at the new employer is the same. *Service provision changes* include work previously performed by the company handed over to the contractor (*outsourcing* or *contracting out*), the appointment of a new contractor or the appointment of a subcontractor (*re-tendering*) and the contract with the worker expires and is required as "in house" (*insourcing* or *contracting in*).

TUPE can only be applied if the work on the new entrepreneur is essentially the same. However, there are some practices that are not protected by TUPE (Farida, n.d.), that is:

1) *Re-tendering* practice, that is, the contractor appointed by *the user* divides the work into two or three parts to be handed over to the subcontractor. Such a practice is not protected by TUPE because Article 3 of *the Statutory Instrument 2006 No. 246 jo. 2014 No. 16*, mandates the same work. Therefore, the breakdown of work for forwarded subcontractors does not fall into the *Service Provisions Changes* category.

2) Work by a team, that is, the *user* appoints a contractor to carry out an activity, where the work is carried out alternately by workers in the group This also cannot be categorized as *Service Provisions Changes*, because the worker is not hired specifically for a particular client, so it cannot be determined which worker / laborer is transferred in the event of a change in contractor.

3) *Users* use the services of a contractor for one job only (not continuously) in one project and one event only, where the work is carried out in a short time.

4) In the case of an employment agreement between *the user* and the contractor to carry out the supply of goods for the client to manage itself. For example, contractors supply food and beverages to the user's canteen every day to be sold to their workers. In another case, if the contract appoints a contractor to manage the canteen, then TUPE will apply to its workers/laborers.

5) In the case of the transition of workers / laborers if the user is a public legal entity, then TUPE does not apply to these workers.

6) In the event that workers (*Service Provisions Changes*) work abroad.

TUPE protection for outsourced workers/workers in the UK is actually almost similar to TUPE implemented in Indonesia, which equally guarantees the continuity of work of workers/laborers by transferring work (forwarding work agreements) to work at contractors who get jobs at *user* companies.

Towards *dismissal* and unjust dismissal (*redundancy*) are applied in circumstances where the transfer occurs or are in the planning to lay off workers/ laborers. The provision aims to protect workers/laborers from termination of employment and dismissal carried out unfairly

and to ensure that employers apply fairly and consistently in carrying out procedures for dismissing workers. One of the views in protecting workers/workers from the impact of termination and dismissal in the UK is the ACAS *code* (*Advisory, Conciliation, and Arbitration Service*). The ACAS *code* is a practice of discipline and complaints in establishing principles on what employers and workers/laborers should do regarding termination and dismissal. ACAS itself is a forum that provides free and balanced information (impartial) and provides advice and input for employers and workers / laborers in all aspects of labor relations and labor law (Farida, n.d.) If the ACAS *code* is not observed and is not carried out by employers and workers/laborers, then the industrial relations court has the authority to make a fair decision in the matter of termination and dismissal. Workers/laborers are guaranteed and protected from unfair termination by employers with conditions if the termination is due to the transfer of *undertaking* itself or reasons related to transfers that are not reasons: 1) economic; 2) technical, or 3) *Economic Technical Organization* (ETO) organizations involving changes in the Labor Force. For this reason, the court in deciding a termination due to ETO reasons, must be able to resolve each dispute based on three categories of ETO. In addition, the court must consider the number of workers/laborers recruited or changes in function in employment (Farida, n.d.) If in the process of termination of employment is not accompanied by any reason, then automatically the dismissal made by the employer becomes invalid. The dismissal made by the employer must be carried out fairly by the decision of the industrial relations court which decides that the employer has acted appropriately because there are sufficient reasons to carry out the termination of employment fairly and the termination of employment is required /ordered by law.

Based on the elaboration of outsourcing regulations in the uk employment system, especially in the labor protection section, several conclusions and assessments can be drawn about the concept of TUPE protection for outsourced workers/workers in the UK. Uk worker/labour protection rules provide protection in the event of a transfer of work to a new employer and the replacement of a new vendor/contractor. However, the protection arrangements provided apply in the event that the principal work transferred is still the same as the work done before. This is almost the same as the implementation of TUPE in Indonesia which requires the object of work to still exist. Meanwhile, the rules in Germany emphasize that if the object of their work is no longer there and replaces with another object, the worker / laborer still gets TUPE protection while still doing the same work on the object of the work that has changed. In addition, protection rules in the UK also include a wide space for workers/laborers to object to the transfer of work, there is an obligation of the old company to provide information about the rights of workers/laborers to the new company, and there is a worker/labor representative. Furthermore, in relation to the issue of labor relations in the UK, there is an ACAS institution that specifically builds the principle of fairness for the parties by providing *advice* on problems that occur between workers/workers and companies. It can be said that the TUPE protection arrangements in the UK are fair enough to regulate in detail the rights of workers / workers that should be fulfilled due to the transfer of work, of course, also considering from the company side (Farida, n.d.)

(b) Regulation and Protection of Outsourced Workers in the United States

The concept of outsourcing in America was influenced by the idea of the first comparative advantage put forward by Adam Smith in his book "*The Wealth of Nation*". Smith suggested that individuals, companies, and countries are better off producing goods and services. Thus it must concentrate on subsequent production and focus non-core work on other

parties(Prahalad & Hamel, 1990) In American labor law, there is no specific arrangement regarding the provisions governing employment agreements. When viewed from the employment contract system, it generally adheres to the principle of "at will". The principle of *at will* is the principle by which the employer terminates the employment relationship or employment contract at any time, either in the presence of a reason or in the absence of a clear reason(Farida, n.d.) Only a small percentage of the workforce has contracts, especially regarding arrangements regarding the expiration of relationships about the basis of *at will*. There are no general restrictions on certain conditions in the contract. Using the concept of *at will*, the employer can recruit all types of jobs he chooses. The dominant job using this *concept of at will* is a part-time job where the worker/laborer only works for 20 hours per week. This is applied by the employer/employer to prevent its obligation to provide benefits or bonuses and continue to hire workers below the limit of working hours(Farida, n.d.) This can be interpreted to mean that based on the principle of *at will* the employer has full power in termination of employment if it is necessary. The employment contract between the employer and the worker /labor party, can be made in written or unwritten (oral) form. The agreement that has been binding between the workers/laborers and the employer must be complied with all provisions related to the terms and conditions stipulated in the contract. If in the employment contract it is stated unequivocally and clearly that the worker / laborer can only be terminated from his employment relationship with previously notified in writing with clear reasons, then legally the employer must comply with the provisions as stated in the employment agreement(C Kohler, 2014)

In America, outsourcing has a variety of types. Here are some types of outsourcing in the United States:

Subcontracting Arrangements

Over 60 years of united states employment law governing the minimum wage and overtime hours there were thousands of immigrants who exceeded the minimum wage and hours worked by the laws of their respective countries. The party directly employs the immigrants, but they enter into a subcontract agreement with the contracting company(Farida, n.d.) The practice is also known as the practice of *subcontracting arrangements*.

In *subcontracting arrangements* in practice, there is often abuse by the user company, or from an independent labor provider. On the one hand, the user states that he is not responsible for the workers / laborers who work in his company and on the other hand the *contractor* is not also responsible for the worker / laborer under the pretext that all workers / laborers are "*independent contractors*", because the workers / laborers sell their services privately and are personally responsible for all services they do. In general, outsourcing in the form of *subcontracting arrangements* is not specifically regulated in the United States legal system, but not all forms of outsourcing are allowed to be carried out in the United States as is "*offshoring*".

In essence, there are indeed pros and cons in *implementing subcontracting arrangements* in the form of *offshoring*. According to Amar Gupta, offshoring is essentially "*business practice that involves shifting the production of goods and services abroad in order to increase efficiency in labor, energy, and other resources of firm*".(Gupta, Gantz, Sreecharana, & Kreyling, 2014) In the regulations related to *subcontracting arrangements*, there are several arrangements related to anti-offshoring. These regulations prohibit the practice of *subcontracting arrangements* between countries, in other words, outsourcing practices are allowed as long as outsourcing service providers and outsourced service users are in one country. In the event that the service provider or outsourced service user violates the regulations as referred to above in the clauses of the agreement, the legal consequences that will occur are

that the agreement is null and void(Farida, n.d.) Although there are no specific rules prohibiting the practice of *subcontracting arrangements* in America, it does not cause the practice of *subcontracting arrangements* to have no limitation in its implementation. In general, outsourcing service providers engaged in certain fields must comply with regulations related to services that are the object of outsourcing. In the United States, most outsourcing practices are carried out without having to transfer workers/laborers from one company to another. This outsourcing concept is almost the same concept as *service contracts / service arrangements (subcontracting arrangements)*, where service providers perform the work requested from users with infrastructure and resources from service provider companies(Farida, n.d.)

Subcontracting arrangements in the United States are basically just service provider agreements to perform certain jobs/services, so what needs to be considered and fulfilled is the standard rules related to outsourcing employment to be applied in outsourcing agreements. In order to prevent ambiguity in the implementation of outsourcing, the parties who will implement the agreement must include specific articles which, among other things, consist of:(W.Bertrand & K.Seifert, 2014): The title and name of the agreement clearly describe the nature of the agreement, Description of the type of outsourcing services provided and operational standards of implementation, Rights and obligations of the parties, Procedures for payment and fees, Procedures for contract switching, Term of agreement, renewal and termination of the agreement, Arrangements regarding the appointment of other parties by the contractor through *assignment, delegation, or subcontracting* to carry out the work of the user and affirmations related to the ability to exercise control over *outsourced* workers to avoid ambiguity in the determination of responsibilities according to the concept of *joint* employers as known in the outsourcing legal system in the United States.

Temporary Work (Temp Work)

In general, *temp work* in America is defined as a practice in which workers are hired by agents (labor service providers) to work in one or more workplaces in order to carry out the work of users for a certain period of time. In general, *the temp worker agent asks* for payment from the client / user for his services in the amount of twice the hourly wage for his work, assigning the worker to work at the place of the service user, but juridically the worker / laborer works for the agent. Therefore, the authority to carry out recruitment, assess, terminate the employment of these workers is the service provider company. Generally, these workers get 25% less wages than permanent workers(Farida, n.d.) *Temporary work* is basically very detrimental to workers, because even though workers work *full-time working* but do not get benefits such as, sick leave or pensions. In comparison, 53% of regular workers get pension benefits, while only 9% of *temporary work* workers get pension benefits(Farida, n.d.)

Wage inequality that occurs between workers at *temporary work* and permanent workers is inevitable because in labor law in the United States it provides flexibility for employers to carry out employment relations (the principle of *at will*). If the worker/laborer refuses the wages offered by the employer, the employer can terminate or terminate the employment relationship at any time with the worker/laborer. This principle of *at will* can be said to be a provision that protects the employer from claims for default on the employment agreement with the worker. Furthermore, in the United States, the protection of basic rights of workers in the labor law system is in the following provisions, including:

1. *The National Labor Relations Act (NLRA)* protects the right of workers to organize and bargain collectively.

2. *Title VII of The Civil Rights Act of 1964*, which prohibits companies or workers/laborers from discriminating on the basis of gender, race, color, religion or national origin in all areas of labor relations. The purpose of *Title VII of the Civil Rights Act of 1964* is to ensure that employment decisions are made on the basis of individual one's qualifications rather than personal decisions. The rules guarantee worker/labor protection against black treatment into management, refuse to hire women as construction workers and conduct recruitment processes in a discriminatory manner against blacks.

3. *Occupational Safety and Health Act (OSHA)*, which is a law that applies minimum standards for health and workers' safety guarantees. *The Occupational Safety and Health Act* requires companies to provide safe working conditions.

4. *The American with Disabilities Act (ADA)*, which is a law prohibiting employers from discriminating against persons with disabilities.

5. *The Age Discrimination in Employment Act (ADEA)*, is a law that prohibits employers from doing workers/laborers improperly/inappropriately prohibits discrimination against workers/laborers who are 40 years of age or older. This rule only applies to employers who have twenty or more workers/laborers to work each day.

6. *Social Security* or social security, which sets benefits for workers / workers when they can no longer afford to work.

7. *The Fair Labor Standards Act (FLSA)*, is useful for protecting workers by setting wage and hour standards that employers must adhere to such as paying the minimum hourly wage and paying overtime.

8. *Unemployment Insurance*, is an insurance that stipulates payments to protect workers / laborers who will be unemployed or stop working.

a) *Federally Mandated Benefits*, is another regulation on worker/labor benefits regulated in United States federal law(Farida, n.d.)

Looking at outsourcing arrangements in the United States in general, it can be seen that all rules regarding employment are subject to one basic law, namely the *National Labor Relations Act (NLRA)*. The NLRA rules become a legal umbrella for the protection of all workers/laborers in the United States, including outsourced workers/laborers. The regulation of outsourced legal protection in the United States is a general protection that is applied to all workers/laborers, both certain time work agreements and indefinite time work agreements. Reflecting on the legal protections for workers/laborers in the United States, there is no known protection like TUPE. This situation is inseparable from the existence of the principle of *at will* in the United States. This principle is a general principle adopted in the world of employment in the United States. The principle of *at will* emphasizes the freedom of will for employers in carrying out labor relations with workers /laborers. With this principle, companies can recruit all types of work using outsourced workers/laborers.

As described above, it can be concluded that the United States does not know TUPE, and the existence of the principle of *at will* and *temporary work* has impressed the company an has a higher position in the employment relationship, so as to unilaterally terminate the employment relationship. However, it should be noted that companies cannot terminate without proper reason, because the NLRA and other rules have guaranteed the protection of rights for workers/laborers. Therefore, outsourcing practices do not harm workers/laborers, but on the contrary also benefit workers and employers.

(c) Regulation and Protection of Outsourced Workers/Laborers in Japan

In the case of dismissal of workers / laborers on the basis of termination of the delivery contract, it is possible that the worker/laborer can sue the delivery company and the user on the basis of violation of the obligation of the principle of good faith for the worker / laborer. The court ruled that the execution of the delivery stop during the term of the contract was considered an unlawful act. In its decision, the court judged that the responsibility for the lawsuit lies with the delivery company if it had not previously made its best efforts in finding other *user* companies. The decision covers the responsibility of the shipping company and the user as well as the breach to enter into a delivery contract under a lawsuit in this case. Subcontracting or better known as *outsourcing* has been used in all industries in Japan in the past 30 years (Innocenti & Labory, 2004) The use of *the outsourcing* system in labor relations is driven by several factors, including the sending of Japanese workers abroad, local workers working in Japanese companies that are abroad, the existence of foreign companies in Japan and foreign workers working in Japan.

If you look at the factors above, it shows that Japan's outsourcing is very modern, because the mention of *dispatch* workers/laborers is not always identified with *low-skill* jobs. For types of outsourcing work, it is not limited except in certain types of work. A worker/laborer who is sent out of the company even though it is from the same parent company can also be said to be outsourcing, namely *quasi-outsourcing*. For companies that adopt *quasi-outsourcing*, lowering *assets* that are specific to information system activities can increase incentives to shift to *outsourcing*. Reviewed from the provision of equality in the opportunity to obtain a job and freedom in choosing a job, Japan as one of the industrialized countries has a good employment system. Freedom and opportunity are reflected by the number of regulated employment agreements, including: employment agreements for a certain time and indefinite time work agreements divided into *contractual fixed terms* and *part timers*. In addition, there is also an indirect employment agreement. In Indonesia, such agreements can be equated with outsourcing work agreements. Although outsourcing in Indonesia and Japan has something in common, namely that it can be carried out through a work contract agreement (*gyoome ukeoi*) or the provision of workers' services (*roodosha kyookyuu*), the employment relationship in the agreement is regulated more clearly so that the boundaries of rights and obligations that will be borne by each party can be drawn, for example the three parties (workers, user companies, companies *vendors*) have related legal relationships including: (Innocenti & Labory, 2004) *Dispatching relation*, *Dispatching employment contract* and *Instruction relation*. The first and second relationships are the same as the legal relationships in outsourcing in Indonesia, namely employment agreements and outsourcing agreements. Meanwhile, the third relationship states that employers and workers / laborers have a relationship with orders. The order must not exceed the conditions agreed in the outsourcing agreement between *the user* and the *vendor*. In order to protect workers / laborers, workers / laborers can see outsourcing agreements between *vendors* and *users* so that workers / laborers can understand the working conditions that will be faced later. Related to the continuity of work of the worker / laborer, if the outsourcing agreement ends or the termination of the outsourcing agreement comes from the *user*, then the right of continuity of work of the worker is charged to the *user*. *The user* has the responsibility to find a job at another company or take other steps necessary to obtain employment opportunities for workers / laborers.

The provisions stipulated in the *Labor Dispatching Law* (LDL), have placed a burden of obligations on user companies in a balanced manner. This is because the user company has no obligation to maintain the placement of workers / workers in their company and transfer it

to the new outsourcing company. The concept of outsourcing in Japan is clear, that is, it can only be done until a certain period of time, which is one year and can be extended for a maximum of three years. Unlike in Indonesia, one outsourced worker/laborer can be placed in a *user* company as an outsourced worker/laborer while the work is still there, so there is no time limit. If indeed the *user* company wants outsourced workers / laborers to continue working in their company even though the outsourcing agreement between the *user* company and the *vendor* company has expired, then the *user* can offer the worker / laborer to become a permanent worker/laborer at his company. If the *user* company does not retain outsourced workers/laborers for one year, the government will provide recommendations for these workers/laborers to be accepted as permanent workers/laborers at the user's company. Related to wage protection, if the worker/laborer is no longer actively placed in the user company because of the expiration of the agreement, then the worker is given non-operational benefits by the *vendor* company. Both companies, both *user* companies and *vendor* companies, are charged with the responsibility to protect workers/ laborers in a balanced manner, including responsibility on both parties such as non-discriminatory treatment, prohibition of forced labor, prevention of sexual harassment, etc., responsibility of the user company such as restrictions on working hours, restrictions for pregnant women, safety of the workplace and the environment and responsibilities of *vendor* companies such as wage/salary obligations, compensation for accidents, and others.

Based on the above review, it can be concluded that Japan is one of the countries that has its own laws regarding outsourcing. The main feature of outsourcing in Japan is the variety of types of *dispatching* (*Roodoosha Kyookyuu*) in labor practice, which proves the flexibility of outsourcing labor relations in Japan. In addition, the absence of restrictions in the field of *job undertaking* (*gyoome ukeoi*) has a positive impact on the development of outsourcing companies that do not lagsung which means opening up jobs. Japan with some of its rules in the *Employment Security Act*, *Labor Standards Law*, and other laws has guaranteed protection of workers' rights. The success of the outsourcing system in Japan is also inseparable from the existence of strict sanctions and integrated supervision, so that justice can be reflected in the relationship between outsourced actors.

The Concept of Legal Protection of Outsourced Workers/Laborers for the Future

Looking at outsourcing practices that exist in developed countries such as Germany, the United States of America, and Japan gives rise to views and images of how outsourcing practices are applied in the world of employment in these countries. The outsourcing practices carried out are inseparable from the factors that affect the field of employment of a country, oleh therefore, employment cannot be separated from other fields such as social, political, economic, security, and cultural (Triyono, 2016). Economic factors are the main factors for outsourcing practices. For the United States and Japan, outsourcing practices are very helpful for the growth and development of the economies in these two countries. This is because in Japan and the United States, workers /laborers get high wages and get ease in getting work (Triyono, 2016) This situation is very helpful for the government, especially in creating employment opportunities for its citizens. Companies in Germany, the United Kingdom of the United States, and Japan can also feel the impact of outsourcing by being able to carry out production cost efficiencies and from the human resources sector. Germany does not have specific laws governing outsourcing, but it has many labor-related laws and regulations so that the protection of workers/laborers is quite guaranteed.

Outsourcing arrangements in the UK are particularly concerned with the protection of workers, there is a concept of TUPE protection for outsourced workers/labourers in the UK. UK worker/labour protection rules provide protection in the event of a transfer of work to a new employer and the replacement of a new vendor/contractor. However, the protection arrangements provided apply in the event that the principal work transferred is still the same as the work done before. This is almost the same as the implementation of TUPE in Indonesia which requires the object of work to still exist. Meanwhile, the rules in Germany emphasize that if the object of the work no longer exists and is replaced with another object, the worker / laborer still gets TUPE protection while still doing the same work on the object of the work that has changed. In addition, protection rules in the UK also include a wide space for workers/laborers to object to the transfer of work, there is an obligation of the old company to provide information about the rights of workers/laborers to the new company, and there is a worker/labor representative. Furthermore, in relation to the issue of labor relations in the UK, there is an ACAS institution that specifically builds the principle of fairness for the parties by providing *advice* on problems that occur between workers/workers and companies. It can be said that the TUPE protection arrangements in the UK are fair enough to regulate in detail the rights of workers / workers that should be fulfilled due to the transfer of work, of course, also considering from the company side(Farida, n.d.). The UK is one of the countries that has its own laws that provide for the protection of continuation of work (TUPE) in a complete and detailed manner. The implementation of TUPE itself still pays attention to the will for the perpetrators, so that TUPE remains in line with the principle of *freedom of contract and freedom of choice*.

In the United States, there is no known protection like TUPE. This situation is inseparable from the existence of the principle of *at will* in the United States. This principle is a general principle adopted in the world of employment in the United States. The principle of *at will* emphasizes the freedom of will for employers in carrying out labor relations with workers / laborers. With this principle, companies can recruit all types of work using outsourced workers/ laborers. Outsourcing arrangements in the United States tend to leave it entirely to the free will (*at will principle*) of outsourced actors. There is no rule of law that specifically regulates the rights of outsourced workers/laborers. There are only rules in federal law that generally govern workers' rights, *namely the National Labor Act, the Fair Labor Standards Act (NLRA)*. Furthermore, the concept of outsourcing in Japan is very clear, that is, it can only be done until a certain period of time, which is one year and can be extended for a maximum of (3) three years. If *the user* company does not retain outsourced workers/laborers for one year, the government will provide recommendations for these workers/laborers to be accepted as permanent workers/laborers at the user's company . Related to wage protection, if the worker / laborer is no longer actively placed in the user company because of the expiration of the agreement, then the worker is given non-operational benefits by the *vendor* company. Both companies, both *user* companies and *vendor* companies , are charged with the responsibility to protect workers /laborers in a balanced manner, including: (a) Responsibilities are on both sides such as non-discriminatory treatment, prohibition of forced labor, prevention of sexual harassment, and others; (b) Corporate responsibilities such as restrictions on working hours, restrictions for pregnant women, safety of workplaces and the environment; and (c) Corporate responsibilities of *vendors* such as wage/salary obligations, compensation for accidents, etc.

Japan is one of the countries that has its own laws regarding outsourcing. The main feature of outsourcing in Japan is the variety of *types of dispatching (Roodoosha Kyookyuu)* in labor practice, which proves the flexibility of outsourcing labor relations in Japan. In addition,

the absence of restrictions in the field of *job undertaking (gyoome ukeoi)* has a positive impact on the development of outsourcing companies that do not directly which means opening up jobs. Japan with some of its rules in the *Employment Security Act, Labor Standards Law*, and other laws has guaranteed protection of workers' rights. The success of the outsourcing system in Japan is also inseparable from the existence of strict sanctions and integrated supervision, so that justice can be reflected in the relationship between outsourced actors.

Juridically, normative regulations regarding outsourcing companies are regulated in Article 66 of Law Number 13 of 2003 concerning Manpower as amended by Article 81 number 20 of Law Number 11 of 2020 concerning Job Creation, namely:

Article 66

1. The employment relationship between the outsourcing company and the workers / laborers it employs is based on an employment agreement made in writing, both a certain time work agreement and an indefinite time work agreement.

2. Protection of workers/laborers, wages and welfare, work conditions, and disputes that arise are carried out at least in accordance with the provisions of laws and regulations and are the responsibility of outsourcing companies.

3. In the event that an outsourcing company employs workers/laborers based on a certain time work agreement as referred to in paragraph (1), the employment agreement must require the transfer of protection of rights for workers/laborers in the event of a change of outsourcing company and as long as the object of work remains.

Further regarding outsourcing companies is regulated in Article 18 and Article 19 of Government Regulation No. 35 Of 2021 Concerning Certain Time Work Agreements, Outsourcing, Working Time And Rest Time, And Termination Of Employment, states:

Article 18

1. The Employment Relationship between Outsourcing Companies and Workers/Workers employed, is based on PKWT or PKWTT.

2. PKWT or PKWTT as referred to in paragraph (1) must be made in writing.

3. Protection of Workers / Labor, Wages, welfare, work conditions, and disputes that arise are carried out in accordance with the provisions of laws and regulations and are the responsibility of the Outsourcing Company.

4. Worker/Labor Protection, Wages, welfare, terms of work, and disputes arising as referred to in paragraph (3) are regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.

and

Article 19

1. In the event that an Outsourcing Company employs Workers/Workers based on the PKWT, the Employment Agreement must require the transfer of protection of rights for Workers/Workers in the event of a change of Outsourcing Company and as long as the object of work remains.

2. The requirement for the transfer of rights protection as referred to in paragraph (1) is a guarantee of the continuity of work for Workers / Workers whose employment relationship is based on PKWT in outsourcing companies.

3. In the event that the Worker/Labor does not obtain a guarantee for the continuity of work as referred to in paragraph (2), the Outsourcing Company is responsible for the fulfillment of the rights of the Worker/Labor.

In addition, based on the decision of the Constitutional Court Number 27 / PUU-IX / 2011 dated January 17, 2012 states the phrase "employment agreement for a certain time" in Article 65 paragraph (7), and in Article 66 paragraph (2) letter b of Law Number 13 of 2003 concerning Manpower is contrary to the 1945 Constitution of the Republic of Indonesia, as long as the agreement does not require a transfer of rights protection for workers / laborers whose object of work remains even though there is a change of company that carries out the contraction of work or a company providing workers' services, it can be explained *that the ratio decidendi* of the panel of judges is the worker / outsourcing worker in the delivery of part of the implementation of the work to another company through the agreement for the provision of workers' services or The employment contract agreement faces uncertainty about the sustainability of work if the employment relationship with the company is carried out based on an employment agreement for a certain time (*fixed term contract*) and if the delivery of part of the work implementation to another company ends, then the employment relationship between outsourced workers also ends with a worker service provider company or a job contracting company. Outsourced workers/laborers bear the risk of losing their jobs and losing their income when the worker service provider company or contracting company no longer gets a job handover from the employer company. In addition to uncertainty about job sustainability, outsourced workers / laborers also experience losses in the form of not being taken into account for the length of work caused by the alternation of *temporary work agency* companies or *sub-contractor companies*, although there are provisions on guarantees for obtaining equality in legal protection and terms of employment, but if the employment relationship is based on an employment agreement for a certain time then there is no certainty for the worker to get a decent job and income . In its legal considerations, the Panel of judges Constitutional Court stated "that the delivery of part of the implementation of work to another company through a work contract agreement or through a workers' service provision agreement is a reasonable business policy of a company in the context of business efficiency as long as it is carried out in accordance with applicable laws and regulations", n thus, in practice it can lead to a loss of guarantees of certainty to continue working and obtain a decent wage protected by the constitution. Therefore, the panel of judges must ensure that the outsourcing work system continues to guarantee the protection of workers' rights and to avoid the exploitation of workers/ laborers. Ada 2 (two) models of protection of the rights of outsourced workers / laborers. First, by determining the employment agreement between the worker / outsourcing worker and the contracting company or the company providing worker services not in the form of an employment agreement for a certain time but in the form of an employment agreement for an indefinite period. Second, apply the principle of transfer of legal protection or *transfer of undertaking protection* for workers whose object of work remains even though there is a change of company that carries out the contraction of work or a company providing worker services. Furthermore, as a law that has been successfully changed, the law that regulates outsourced workers / workers should be able to reflect the community's need for the fulfillment of human rights, justice and legal certainty. Thus, the Constitutional Court Decision No. 27/PUU-IX/2011 has also provided peace, order, justice and legal certainty as legal purposes, because outsourcing is carried out by guaranteeing: (1) The continuity of workers' work, (2) Continuing existing employment agreements, (3) Calculating the period of service, and (4) Equal rights between workers/workers. In terms of legal protection of workers/outsourced workers in terms of court decisions, the decisions that are in line with the theory of legal objectives and the theory of agreements are the decisions of the industrial relations court at the Gresik District Court No. 37/Pdt.Sus-PHI/2017/PN. Gsk and Constitutional Court Decision No. 27/PUU-IX/2011 because the decision is in accordance with

the purpose of the law which is directed to the basic values of law, namely certainty, expediency, and justice. Legal certainty aims to maintain peace, order and legal certainty, in addition to providing protection of rights, and / or interests justified by law. The expediency of directing the law must be able to contribute, as well as usefulness to the interests of society, nation and state. Justice is the essence of the law. Thus, the judgment contained in case No. 37/Rev.Sus-PHI/2017/PN. Gsk.

Based on the theory of legal objectives, Gustav Radbruch divided that the purpose of law must be directed to the basic values of law, namely certainty, expediency, and justice. (Rahardjo, 2000) Legal certainty aims to maintain peace, order and legal certainty, in addition to providing protection of rights, and / or interests justified by law. The expediency of directing the law must be able to contribute, as well as usefulness to the interests of society, nation and state. Justice is the essence of the law. Law must have the quality of justice, although the benchmarks for justice at the implementation level are still varied (relative / subjective). Furthermore, if it is related to the theory of agreements, the nature of legal protection for outsourced workers / laborers is internal legal protection, basically the legal protection in question is made by the parties themselves at the time of making the agreement, where at the time of drafting the clauses of the contract, both parties want their interests to be accommodated on the basis of the word agreement. Likewise, any type of risk attempted can be counteracted through filing through clauses packaged on an agreed basis as well, so that with that clause the parties will get balanced legal protection upon their mutual consent.

Such internal legal protection can only be realized by the parties, when the legal position of the parties is relatively equal in the sense that the parties have a relatively balanced *bargaining power* (bargaining position), so that on the basis of the principle of freedom of contract each party to the agreement has the flexibility to express the will in its interests. However, if it is related to the theory of legal purpose by prioritizing justice as a legal ideal, then the state, in this case the Government must be present in order to protect outsourced workers / laborers from pre-employment, when doing work until after work. This can be realized as in developed countries such as the UK, where every outsourcing agreement made by outsourcing actors must be sent to the ACAS (*Advisory, Concilitation and Arbitration Service*) institution which is the supervisor in the field of labor so that when there is a violation committed by the company to outsourced workers / workers, the presence of the state through the ACAS institution (*Advisory, Concilitation and Arbitration Service*) can provide equitable protection. In addition, when referring to other developed countries, namely Japan, outsourcing practices in Japan are very advanced because every time there is a termination or termination of outsourced workers/laborers, the Court will decide that the implementation of termination and termination of employment during the contract period is an Unlawful Act. In addition, the company must immediately find a job replacement for outsourced workers / laborers who are terminated or terminated during the contract period.

From the explanation above, based on the method of approaching comparison of cases, court decisions, and theoretical reviews, Indonesia can adopt a system of merging Between Britain and Japan for outsourced workers/laborers. So, if the outsourced worker/laborer is going to carry out the employment agreement, then the state must provide a special institution to supervise the implementation of outsourcing starting from the pre-employment process until the contract of the outsourced worker/laborer expires, then if in the middle of the work period of the outsourced worker/laborer turns out to be a termination of employment, the Court as a means of seeking justice for the outsourced worker/laborer can decide the act as a Counter-Act The law has implications for compensation and orders the company to find a replacement job

for the outsourced worker/laborer. In addition, companies that employ outsourced workers/laborers must guarantee the continuity of work of outsourced workers/laborers, continue existing work agreements, calculate the length of service, and guarantee equal rights between workers/laborers.

By paying attention to and examining laws and regulations related to outsourcing, the results of studies with a comparative approach with Germany, the United Kingdom, the United States, and Japan, and the Constitutional Court Decision No. 27 / PUU-IX / 2011 and the results of theoretical analysis as mentioned above, the concept of legal protection of outsourced workers / workers for the future is as follows:

1. Employment agreement between the worker/laborer and the outsourcing company on the basis of the Indefinite Time Work Agreement (PKWTT);
2. If the employment agreement between the worker/laborer and the outsourcing company is based on the PKWT, the principle of transfer of protection for workers/laborers must be applied in the event that the employer company appoints a new outsourcing company, and the new outsourcing company is obliged to accept the transfer of workers/laborers from the old outsourcing company, whose work object remains;
3. Pre-existing employment agreements must be continued without changing the existing provisions in the agreement, unless changes are made to increase profits for their workers/laborers due to increased experience and length of service.
4. The period of work that has been passed by these outsourced workers / laborers is still considered to exist and be taken into account, so that outsourced workers / laborers can enjoy the rights as workers / laborers in a decent and proportional manner.
5. The employer company must arrange for outsourced workers/laborers who perform the exact same work as the workers/laborers at the employer's company to receive the same treatment, without discrimination.
6. It is necessary to establish a special institution such as in the UK, ACAS (*Advisory, Concilitation and Arbitration Service*) which is a supervisor in the field of labor so that when there are violations committed by the company to outsourced workers / workers, through the ACAS institution can provide equitable protection.
7. The need for such an arrangement in Japan, every time there is a termination or termination of an outsourced worker/laborer, the Court will decide that the implementation of the termination and termination of employment during the contract period is an Unlawful Act. In addition, the company must immediately find a job replacement for outsourced workers / laborers who are terminated or terminated during the contract period. The existence of strict sanctions for those who violate the terms and conditions of outsourcing up to a higher level of corporate compliance;
8. It is necessary to establish a Special Law on Outsourcing in Indonesia which contains material regarding: (a). General Provisions (definition of outsourcing, employer companies, labor service providers, employment contracting, outsourcing workers, employment relations, employment agreements, TUPE, employment period, etc.) , (b) Principles of Protection in the Outsourcing Law (Principles of Reciprocity, Trust, Proactive Actions, Based on Values and Social Norms), (c) TUPE Implementation Guidelines, (d) Types of Outsourcing Agreements (Workers' Service Providers and Employment Contractors), (e) Norms, Standards, Procedures, and Criteria for Licensing outsourcing companies, (f) Guidance and Supervision, (g) Special Institutions for Outsourcing Supervision, and (h) Sanctions Provisions (Administrative Sanctions, civil sanctions and criminal sanctions).

Conclusion

Legal protection for outsourced workers /workers due to termination of work within the contract period based on Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation has not been optimal and conflicts with each other. For workers / laborers with an employment agreement for a certain time who experienced termination of employment within the contract period, Article 62 of Law Number 13 of 2003 concerning Manpower only provides compensation in the amount of wages of workers / laborers with an employment agreement for a certain time until the deadline for the expiration of the term of the employment agreement (the remaining period of the contract), while in Article 61 A Law Number 11 of 2020 concerning Job Creation requires employers to provide compensation money whose amount is calculated based on the term of the work agreement that has been implemented by the worker / laborer (contract period that has been lived). Thus causing legal uncertainty which leads to injustice for both outsourcing service provider entrepreneurs and outsourced workers/ laborers. In addition, normatively Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 as a form of legal protection for outsourced workers / workers do not get guarantees for the continuity of work which should be the responsibility of outsourcing companies.

1. The concept of legal protection for outsourced workers /laborers due to termination of employment within the contract period is as follows:

a) Employment agreement between the worker/laborer and the outsourcing company on the basis of the Indefinite Time Work Agreement (PKWTT);

b) If the employment agreement between the worker/laborer and the outsourcing company is based on the PKWT, the principle of transfer of protection for workers/laborers must be applied in the event that the employer company appoints a new outsourcing company, and the new outsourcing company is obliged to accept the transfer of workers/laborers from the old outsourcing company, whose work object remains;

c) Pre-existing employment agreements must be continued without changing the existing provisions in the agreement, unless changes are made to increase profits for their workers/laborers due to increased experience and length of service.

d) The period of work that has been passed by these outsourced workers / laborers is still considered to exist and be taken into account, so that outsourced workers / laborers can enjoy the rights as workers / laborers in a decent and proportional manner.

e) The employer company must arrange for outsourced workers/laborers who perform the exact same work as the workers/laborers at the employer's company to receive the same treatment, without discrimination.

f) It is necessary to establish a special institution such as in the UK, ACAS (*Advisory, Conciliation and Arbitration Service*) which is a supervisor in the field of labor so that when there are violations committed by the company to outsourced workers / laborers, through the ACAS institution can provide equitable protection to outsourced workers / workers.

g) The need for such an arrangement in Japan, every time there is a termination or termination of an outsourced worker/laborer, the Court will decide that the implementation of the termination and termination of employment during the contract period is an Unlawful Act. In addition, the company must immediately find a job replacement for outsourced workers / laborers who are terminated or terminated during the contract period.

Recommendations

The legislature needs to establish a Special Regulation on outsourcing as mandated by the Constitutional Court Decision No. 91/PUU-XVIII/2021, which guarantees: (1) The continuity of workers' work, (2) Continuing existing employment agreements, (3) Calculating the period of service, and (4) Equal rights between workers/outsourced workers.

The Content of the Special Law on outsourcing includes: (a). General Provisions (definition of outsourcing, employer company, labor service provider company, employment contracting, outsourcing workers, employment relationship, employment agreement, TUPE, length of service) , (b) Principles of Protection in outsourcing Laws (Principle of Reciprocity, Trust, Proactive Action, Based on Values and Social Norms), (c) TUPE Implementation Guidelines, (d) Types of Outsourcing Agreements (Workers' Service Providers and Employment Contractors), (e) Norms, Standards, Procedures, and Criteria for Licensing of Outsourcing Companies, (f) Guidance and Supervision, (g) Special Institutions for Outsourcing Supervision, and (h) Sanctions Provisions (Administrative Sanctions, civil sanctions and criminal sanctions).

References

- Baker, & McKenzie. (2013). A Global Flexible Workforce - Temporary and Other Contingent Workers. In Patrick J O'Brien & Jeffrey H.Kessler (Eds.), *Cornell University Library*. Chicago: the Global Employment Practice Group.
- C Kohler, Thomas. (2014). Comparative Labor Law Dossier. Temporary Employment Contracts In The United States. *Iuslabor*.
- Djulaeka, & Rahayu, Devi. (2020). *Buku Ajar: Metode Penelitian Hukum*. Surabaya: Scopindo Media Pustaka.
- Farida, I. (n.d.). *Perjanjian Perburuhan: Perjanjian Kerja Waktu Tertentu dan Outsourcing*. Jakarta: Sinar Grafika.
- Farida, I. (2017). *Hukum kerja outsourcing di Indonesia*. Jakarta: Penerbit Universitas Indonesia.
- Forde, C., Slater, G., & Great Britain. Advisory and Arbitration Service, Conciliation. (2014). *The Effects of Agency Workers Regulations on Agency and Employer Practice*. ACAS.
- Garner, B. A. (2019). *Black's Law Dictionary*. Thomson Reuters.
- Gupta, A., Gantz, D. A., Sreecharana, D., & Kreyling, J. (2014). *Evolving Relationship between Law, Offshoring of Professional Services, Intellectual Property, and International Organizations*. SSRN.
- Hartmann, Thomas. (2012). *Temporary Agency Work in Germany and the Netherlands*. Tilburg University.
- Innocenti, Alessandro, & Labory, Sandrine. (2004). Outsourcing and Information Management. *European Journal of Comparative Economics, Cattaneo University (LIUC)*, 1(1), 107–125.
- Kemper, Gustav. (2015). German union IG Metall holds one-day protests against short-term contracts.
- Kirchner, J., Kremp, P. R., & Magotsch, M. (2017). *Key Aspects of German Employment and Labour Law*. Berlin: Springer Berlin Heidelberg.
- Prahalad, C. K., & Hamel, G. (1990). *The Core Competence of Corporation*. Cambridge: Harvard Business School Reprint.
- R.Kremp, Pascal. (2020). Employment and employee benefits in Germany: overview.
- Rahardjo, Satjipto. (2000). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Saija, M. M. R. (2019). *Rekonstruksi Kontrak Kerja Outsourcing Di Perusahaan*. Yogyakarta:

Deepublish.

Spermann, Alexander. (2011). *The New Role of Temporary Agency Work in Germany* (No. 6180). Eschborn.

Thea DA, Ady. (2021). Ini Bedanya Outsourcing di UU Ketenagakerjaan dan UU Cipta Kerja.

Triyono, N. F. N. (2016). Outsourcing Dalam Perspektif Pekerja Dan Pengusaha. *Jurnal Kependudukan Indonesia*, 6(1), 45–62.

W.Bertrand, Raymond, & K.Seifert, Brit. (2014). Best Practices in Outsourcing Arrangements. *CA Labor & Employment Bulletin*, 2014 No.2.

