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Legal Protection for Fixed-Term Employment Contract (PKWT) Workers in Outsourced Company Transfers Following the Enactment of Indonesian Law No. 6 of 2023

Liana^{1*}, Prof. Dr. Prasetijo Rijadi²

¹lianalmg38@gmail.com, ²pras@ubhara.ac.id

Universitas Bhayangkara Surabaya

*Corresponding Author: Liana

Email: lianalmg38@gmail.com

ABSTRACT

This research seeks to elucidate the Job Creation Regulation Number 6 of 2023, promulgated on December 30, 2022, by the President of the Republic of Indonesia, as a manifestation of the Government's commitment to ensuring legal protection for citizens' rights to employment and a dignified standard of living through job creation. Employment relationships may arise due to labor, directives, and remuneration. This research examines the two primary forms of employment relationships recognized under Indonesian labor law: Fixed-Term Employment Agreements and Indefinite-Term Employment Agreements. It employs a statutory and conceptual approach as the methodological foundation. The research relies on various legal materials, which are systematically collected and analyzed to address the legal problems under investigation. This research aims to provide a precise, clear, and accurate comparison of Law Number 13 of 2023 concerning Employment and Job Creation Regulations (RI Law Number 6 of 2023 regarding the Enactment of Perpu Number 2 of 2022 on Job Creation). This approach reveals that workers under a Fixed-Term Employment Agreements (PKWT) receive legal protection and compensation from the outsourcing company following the termination of their work agreement, including in cases of transfer of the outsourcing company, as stipulated in the aforementioned regulation.

Keywords: Order, Outsourcing, Wages

INTRODUCTION

The trajectory of global globalization was abruptly interrupted by the onset of the Covid-19 pandemic, which first appeared in Wuhan, China, and swiftly extended its reach to almost every region across the globe.¹ This unprecedented health crisis significantly altered global economic dynamics. No country remained unaffected by the pandemic, with each nation adopting various measures to protect its citizens. Some governments responded swiftly and effectively, while others struggled under the pressure, particularly as the number of fatalities increased. The pandemic not only overwhelmed healthcare systems but also triggered economic paralysis and a surge in unemployment worldwide.²³

Indonesia was no exception. In an effort to contain the rapid transmission of Covid-19, the Indonesian government enacted the Large-Scale Social Restrictions (Pembatasan Sosial Berskala Besar/PSBB) policy as a preventive public health measure.⁴ However, this measure inevitably hampered national economic growth, particularly in the areas of industrial production, labor, and market demand. The economic instability that emerged in 2020 due to the pandemic caused a significant slowdown in various sectors, compelling many businesses to adopt efficiency strategies—most notably through labor cost reductions.⁵ These efforts, aimed at minimizing financial losses, resulted in widespread layoffs and furloughs, contributing to rising unemployment and poverty levels. Beyond the reduction in workforce numbers, the pandemic also led to a substantial decline in wages and earnings across multiple employment sectors.

The formulation of the Job Creation Bill (*Rancangan Undang-Undang Cipta Kerja*) was intentionally structured with thorough detail, aiming to initiate substantial legal reform and lay the foundation for a renewed regulatory framework. Within this framework, the government introduced the Omnibus Law on Job Creation as a strategic instrument to advance structural transformation of the

¹ Pascal L. Ghazalian, "Globalization and the Fallout of the COVID-19 Pandemic," *World* 6, no. 1 (January 1, 2025): 4, <https://www.mdpi.com/2673-4060/6/1/4>.

² Qiyuan Li, "Analysis of the Effect of COVID-19 Pandemic to US Unemployment Rate," *Advances in Economics, Management and Political Sciences* 48, no. 1 (December 1, 2023): 172–178, <https://www.ewadirect.com/proceedings/aemps/article/view/7005>.

³ Alan D. Kaye et al., "Economic Impact of COVID-19 Pandemic on Healthcare Facilities and Systems: International Perspectives," *Best Practice & Research Clinical Anaesthesiology* 35, no. 3 (October 1, 2021): 293–306, accessed July 28, 2025, <https://www.sciencedirect.com/science/article/pii/S1521689620301142?via%3Dihub>.

⁴ Edward UP Nainggolan, "Kebijakan Fiskal Dan Moneter Menghadapi Dampak Covid-19," *Kementerian Keuangan*, last modified 2020, accessed July 24, 2025, <https://www.djkn.kemenkeu.go.id/artikel/baca/13017/Kebijakan-Fiskal-dan-Moneter-Mengadapi-Dampak-Covid-19.html>.

⁵ Raj Chetty et al., "The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data," *The Quarterly Journal of Economics* 139, no. 2 (March 30, 2024): 829–889, <https://academic.oup.com/qje/article/139/2/829/7289247>.

national economy.⁶ This transformation is intended to stimulate activity across various sectors, thereby supporting higher levels of economic growth. Without the prompt implementation of the Job Creation Law, Indonesia risked losing employment opportunities to other countries with more competitive and investor-friendly labor markets. The absence of such legal reform could have led to a steady rise in unemployment and the entrapment of Indonesia within a low-income per capita economy.⁷

In response to these concerns, the government pursued the enactment of new legislation aimed at accelerating economic recovery. Nonetheless, amidst the Covid-19 pandemic, the Indonesian public was caught off guard by the government's decision to employ the Omnibus Law approach in the legislative process of the Job Creation Bill. This legislative approach provoked widespread public dissent, as several provisions and/or regulatory contents were perceived as generating tensions—particularly between labor forces, outsourced corporate employees, and the general public. The formulation of draft legislation (*Rancangan Undang-Undang*, RUU) through the Omnibus Law method targets three major legislative frameworks:

1. The Job Creation Law;
2. The Law on Empowerment of Micro, Small, and Medium Enterprises (MSMEs), addressed through the Draft Law on Financial Sector Development and Strengthening; and
3. The Taxation Law, addressed through the Draft Law on Tax Provisions and Facilities for Economic Recovery.

Among these, the Draft Job Creation Law (*RUU Cipta Kerja*) has drawn the most significant attention from the Indonesian public, primarily due to its direct impact on workers and the general population. The government introduced this bill as part of a broader strategy to revitalize and optimize Indonesia's economic performance, aiming to increase the country's attractiveness to domestic and foreign investors.⁸ However, one of the most contentious elements within the draft concerns the labor provisions, particularly those affecting outsourced workers and

⁶ Raynaldo Sembiring, Isna Fatimah, and Grita Anindarini Widyarningsih, "Indonesia's Omnibus Bill on Job Creation: A Setback for Environmental Law?," *Chinese Journal of Environmental Law* 4, no. 1 (June 3, 2020): 97–109, https://brill.com/view/journals/cjel/4/1/article-p97_5.xml.

⁷ Rouli Anita Velentina and Ninin Ernawati, "Simplification Analysis of Labour Policy and Regulation as an Effort to Increase Micro and Small Enterprises' Growth in Indonesia," *Journal of Infrastructure, Policy and Development* 8, no. 9 (September 2, 2024): 6464, <https://systems.enpress-publisher.com/index.php/jipd/article/view/6464>.

⁸ Joko T. Suroso, Dani Durahman, and Indra Budi, "The Simplification of Licensing Procedure in Job Creation Law: The Effectiveness to Attract Foreign Investor," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), <https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2414509>.

contractual employment arrangements.⁹ These aspects have triggered intense public scrutiny due to their potential implications for workers' rights and job security.

Legal rules and regulations continuously evolve in response to societal and temporal developments. The struggle to claim and protect labor rights has consistently posed serious challenges for outsourced workers in Indonesia, beginning from the New Order era and continuing throughout the *Reformasi* period.¹⁰ A key factor underlying these challenges is the limited awareness among workers of their legal entitlements—an issue that has been further exacerbated by the implementation of the Job Creation Law (*Undang-Undang Cipta Kerja*) through the Omnibus Law mechanism. This law repealed and revised key provisions—namely Articles 64 and 65, along with significant amendments to Article 66—of the Manpower Law, which had previously imposed limitations on the types of work permitted under outsourcing arrangements.¹¹

The Job Creation Law, in essence, remains a source of contention among outsourced laborers, who perceive its regulatory provisions as exploitative and dehumanizing. Critics argue that it marginalizes the humanitarian dimensions of outsourced labor, offering insufficient legal clarity regarding the identification and enforcement of workers' rights.¹² Moreover, the regulation permits unilateral actions against outsourced employees, who are often deployed to user companies without a direct employment contract with those companies. Instead, these workers are contractually bound to third-party outsourcing agencies, which maintain formal agreements with the principal companies where the workers are placed.¹³

The transfer of a company where employees—particularly outsourced workers—are placed raises critical legal questions regarding the continuity of employment contracts. Specifically, it remains unclear whether employment agreements signed prior to the transfer remain valid or must be renewed.¹⁴ This uncertainty is especially significant in light of legal protections concerning

⁹ Munandhil Abdul Muqith, "UU Omnibus Law Yang Kontroversial," *ADALAH: Buletin Hukum & Keadilan* 4, no. 3 (2020).

¹⁰ Theresia Tri Widyarningsih, Didik Suahriyanto, and Ismail, "Application Of The Law To Outsourced Workers The Impact Of The Main Types Of Work (Core Business) To Establish Protection Laws Against Workers/Laborers," *Jurnal Inovasi Global* 3, no. 3 (March 24, 2025): 524–539, <https://jig.rivierapublishing.id/index.php/rv/article/view/300>.

¹¹ "UU No. 13 Tahun 2003," accessed July 24, 2025, <https://peraturan.bpk.go.id/Details/43013>.

¹² Saru Arifin, "Human Rights and Business: Human Rights Violations in the Outsourcing Industry in Modern Business Indonesia," *Journal of Indonesian Legal Studies* 6, no. 1 (May 31, 2021): 35–52, <https://journal.unnes.ac.id/sju/index.php/jils/article/view/45841>.

¹³ Pandhu Maruli Yoso and Suraji Suraji, "PERLINDUNGAN HUKUM TERHADAP PEKERJA KONTRAK DALAM PERJANJIAN KERJA DENGAN SISTEM OUTSOURCING DI INDONESIA," *Jurnal Privat Law* 11, no. 2 (November 24, 2023): 201, <https://jurnal.uns.ac.id/privatlaw/article/view/48652>.

¹⁴ Rr. Winarti Pudji Lestari, Imam Budi Santoso, and Tri Setiady, "LEGAL PROTECTION OF OUTSOURCING WORKERS AGAINST EMPLOYERS' ARBITRARY ACTIONS IN TERMINATION OF EMPLOYMENT RELATIONSHIPS IN INDONESIA BASED ON THE JOB CREATION LAW," *JURNAL ILMIAH ADVOKASI* 13, no. 1 (March 28, 2025): 152–172, <https://jurnal.ulb.ac.id/index.php/advokasi/article/view/6078>.

workers' rights, wages, welfare, and employment conditions. In the event of future disputes, it becomes ambiguous whether legal responsibility lies with the user company or the outsourcing agency. Such arrangements often result in precarious employment, leaving workers vulnerable to insecure, unstable, and unprotected working conditions.

In light of the above context, this article seeks to examine the legal protection afforded to workers employed under Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu*, or PKWT) in the event of a company transfer involving outsourcing, particularly following the enactment of Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation.¹⁵

RESEARCH METHODOLOGY

This research adopts a normative legal research method, focusing on the analysis of the application of legal norms and principles within positive law. Specifically, it examines the legal doctrines and statutory provisions governing the protection of outsourced workers and those employed under fixed-term employment agreements (PKWT), in alignment with the prevailing legal framework. The research employs a descriptive-analytical approach, aiming to present a detailed depiction of the phenomena under investigation while critically analyzing relevant legal norms as the conceptual basis for understanding the protection of outsourced workers and the legal issues they face.¹⁶

In a broader sense, this study seeks to explore the framework of the Omnibus Law on Job Creation through the lens of labor law. It focuses on public resistance and the ongoing struggle to uphold the rights and legal protections of outsourced workers, while also examining the government's role in responding to widespread opposition to the Job Creation Law from both the labor sector and the general public.

This study applies several legal theories, including the theory of justice, the theory of the rule of law, and the theory of legal responsibility. It adopts a normative juridical approach, utilizing both primary and secondary legal materials. Primary data consist of information derived from the experiences, perceptions, understandings, opinions, and expectations of research subjects, including key informants, resource persons, and respondents. Secondary data are obtained from scholarly books and legal writings authored by experts whose works are pertinent to the issues addressed in this research.

The legal materials are gathered using a combination of approaches, including the statutory approach, the conceptual approach, and internet-based

¹⁵ "PERPU No. 2 Tahun 2022," accessed July 24, 2025, <https://peraturan.bpk.go.id/Details/234926/perpu-no-2-tahun-2022>.

¹⁶ Achmad Irwan Hamzani et al., "Legal Research Method: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (August 24, 2023): 3610–3619, <https://cosmoscholars.com/phms/index.php/ijmst/article/view/3191>.

legal research. The literature study involves a systematic effort to gather legal materials through reading, examining, recording, and organizing relevant sources. This process includes the inventorying of legal sources, grouping materials according to the research problems, and reviewing them in order to ensure their relevance and accountability to the problem formulation.

The processing of legal materials is conducted through normative methods, which involve critical identification and inventory of legal data. These materials are then subjected to classification and in-depth legal analysis to construct a coherent and responsible legal argumentation.

The collected materials will be analyzed to draw conclusions using an empirical analytical method. The analysis will be presented in a systematic exposition, explaining the interrelationships between various types of legal materials. All data will be carefully selected, processed, and analyzed. Primary legal materials, such as statutory regulations, along with secondary legal materials obtained from literature and field studies, will be inventoried using a deductive method. This process involves identifying and organizing all legal materials relevant to the research problem, classifying them accordingly, and arranging them in a systematic manner.

The interpretation will involve linking the definitions and provisions contained in applicable laws and regulations with scholarly perspectives from legal academics. This approach aims to present a coherent and structured analysis that clearly illustrates the legal facts and issues under investigation.

RESULT AND DISCUSSION

Regulation of the Transfer of Workers under Fixed-Term Employment Contracts (PKWT) in the Outsourcing Company Trsansion

1. Implementation of Fixed-Term Employment Contracts for Outsourced Workers

The formation of an employment agreement requires the fulfillment of several fundamental prerequisites before a binding contract can be considered valid.¹⁷ One of these is the mutual consent between both parties. For an employment agreement to be legally binding, the following conditions must be met:

- a. Mutual understanding and intention of the parties to enter into a binding agreement;
- b. Legal capacity of the contracting parties in accordance with applicable regulations;
- c. Legal certainty concerning the object of the agreement;

¹⁷ Yudith Ilela, Adonia Ivonne Laturette, and Sarah Selfina Kuahaty, "Penerapan Sistem Perjanjian Kerja Waktu Tertentu Dalam Perspektif Hukum Positif Indonesia," *PAMALI: Pattimura Magister Law Review* 4, no. 2 (July 31, 2024): 226, <https://fhukum.unpatti.ac.id/jurnal/pamali/article/view/2144>.

- d. Absence of elements of fraud or deception in forming the agreement;
- e. Clarity of the contractual terms and their compliance with prevailing legal norms.

The employer retains the right to convert an outsourcing employment relationship under a Fixed-Term Employment Contract (PKWT) into an Indefinite-Term Employment Contract (PKWTT).¹⁸ However, the establishment of a PKWTT status within the company is subject to the following conditions:

- a. The employer's intention to establish a PKWTT;
- b. The outsourced worker's consent to the conversion into PKWTT status;
- c. Legal certainty concerning the mutually agreed change in employment status;
- d. Assurance of improved welfare for the worker following the conversion;
- e. Provision of future employment security after attaining PKWTT status.

These constitute the core requirements that must be satisfied for the legal binding of a contractual transfer from fixed-term to indefinite-term employment status.

2. Employment Relationship and Contractual Arrangements for Outsourced Labor

The recruitment system for outsourced labor essentially follows the same process as the general hiring system for employees.¹⁹ The primary difference lies in the fact that these employees are recruited by labor supply companies—now referred to as outsourcing companies—rather than directly by the end-user company. The outsourcing company subsequently deploys these workers to client companies requiring their services. Within this arrangement, the outsourcing company is responsible for initially disbursing wages to the workers, after which it seeks reimbursement from the client companies through invoicing.

Several critical aspects must be observed in the drafting of employment agreements, including the duration of the agreement and

¹⁸ Evanto Pandora Manalu et al., "Legal Position of Employment Agreement after the Enactment of Government Regulation in Lieu of Law (Perpu) Number 02 of 2022 Concerning Manpower," *JUSTISI* 10, no. 3 (June 10, 2024): 535–546, <http://www.ejournal.um-sorong.ac.id/index.php/js/article/view/2420>.

¹⁹ Krisanty, Sari Marlina, and July Yuliawaty, "Analisis Penyaluran Tenaga Kerja Oleh Perusahaan Outsourcing PT Gama Prima Karya Kepada PT. Fumakilla Indonesia," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 12 (December 2, 2024), <https://journal-laaroiba.com/ojs/index.php/alkharaj/article/view/4600>.

ensuring that its term aligns with the duration of the employment being offered.²⁰ In most cases, the employment contract between an outsourced worker and the outsourcing company is aligned with the duration of the service agreement established between the outsourcing company and the client company. This arrangement is intended to ensure that, should the client company terminate its service agreement with the outsourcing provider, the employment contract between the outsourced worker and the outsourcing company would simultaneously expire.

Employment agreements between outsourced workers and outsourcing companies may be based on either a Fixed-Term Employment Contract (PKWT) or an Indefinite-Term Employment Contract (PKWTT).²¹ The substance of these agreements—specifically PKWT—must, at a minimum, adhere to the stipulations set forth in Article 13 of Government Regulation No. 35 of 2021.

The employment relationship between outsourced workers and the employing entity inevitably involves a binding legal agreement. To ensure that such agreements are implemented in accordance with applicable labor laws, a regulatory framework governing employment has been established. The purpose of this framework is to articulate the rights and responsibilities that result from the employment relationship between employers and employees.²² Soepomo posits that the reciprocal positions of both parties define an employment relationship between an outsourced worker and an employer. This definition illustrates the fundamental elements of the employment relationship, including the rights and responsibilities of the employer toward the worker and vice versa.²³

The employment relationship in the practice of outsourcing differs significantly from conventional employment arrangements, primarily due to its triangular structure. The triangular relationship is comprised of three primary parties: the outsourcing service provider (the

²⁰ I Wayan Agus Mahendra and I Nyoman Bagiastra, “The Problematics of Regulating the Maximum Duration of Fixed-Term Employment Agreements Based on the Completion of Specific Work in Legislation: An Analysis of the Implications of Constitutional Court Decision Number 168/PUU-XXI/2023,” *POLICY LAW NOTARY AND REGULATORY ISSUES (POLRI)* 4, no. 1 (December 31, 2024): 123–133, <https://ojs.transpublika.com/index.php/POLRI/article/view/1570>.

²¹ Liana Liana and Dr. Yahman Yahman, “LEGAL PROTECTION OF WORKERS WITH A SPECIFIC TIME WORK AGREEMENT (PKWT) IN THE TRANSFER OF OUTSOURCING COMPANIES FOLLOWING THE ENACTMENT OF LAW NO. 6/2023,” *Journal of Court and Justice* (June 28, 2024): 110–122, <https://journal.jfpublisher.com/index.php/jcj/article/view/559>.

²² Budi Santoso, “Hukum Ketenagakerjaan Perjanjian Kerja Bersama,” *Bookstore UB Press*, last modified 2012, accessed July 24, 2025, <https://bookstore.ub.ac.id/shop/hukum/hukum-ketenagakerjaan-perjanjian-kerja-bersama/>.

²³ Imam Soepomo, Helena Poerwanto, and Suiati Rachmat, *Hukum Perburuhan: Bidang Hubungan Kerja*, 9th ed. (Jakarta: Djambatan, 2001).

outsourcing company), the company where the outsourced worker is assigned, and the worker themselves, who is commonly referred to as the outsourced worker.

The employment relationship in this context is comprised of two interconnected legal relationships: (1) the employment relationship between the outsourcing company and the outsourced worker, and (2) the contractual agreement for partial work delivery between the outsourcing company and the client company where the worker is placed, as indicated by the aforementioned explanation. The legal relationship established by this outsourcing arrangement is a civil contractual relationship or partnership. The outsourced worker is contractually obligated to the outsourcing company under an employment agreement, rather than bound by an employment agreement with the client company where they are assigned. This is the case in legal terms.²⁴ The worker will be assigned and posted at the client company to perform duties, with the working conditions being governed by the internal regulations of the client company, as stipulated in this agreement.

Legal Protection for Outsourced Workers Following the Enactment of Law of the Republic of Indonesia Number 6 of 2023

.S.T. Kansil argues that legal protection is a collection of legal measures that law enforcement authorities must implement to guarantee a sense of security, both mentally and physically, from threats or disturbances posed by any party, following the enactment of Law of the Republic of Indonesia Number 6 of 2023.²⁵

Legal protection under Law Number 13 of 2003 concerning Manpower, particularly in Article 1 paragraph (2), defines a worker as any individual capable of performing work to produce goods and/or services, either for personal needs or for the benefit of society. This provision implies that any person who is capable of carrying out work and receives compensation from an employer, with the objective of producing goods and/or services, falls under the category of a worker. This encompasses individuals employed in both the private and public sectors, as well as those who are unemployed, job seekers, and individuals in independent professions such as lawyers, doctors, and others.

²⁴ Dede Agus and Hilton Tarnama PM, "LAW PROTECTION OF OUTSOURCING WORKERS IN EMPLOYMENT LAW POST THE JOB CREATION PERPU," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 2 (July 3, 2024): 940, <https://jurnal.unikal.ac.id/index.php/hk/article/view/4568>.

²⁵ Kansil C.S.T, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, 8th ed. (Jakarta: Balai Pustaka, 1989).

In essence, outsourcing employees are contractual employees rather than permanent staff.²⁶ In other words, they are employed for a predetermined period in accordance with an employment agreement between the employer and the outsourced worker. Outsourced laborers are individuals who are employed under the supervision of another party or institution pursuant to a Fixed-Term Employment Agreement (Perjanjian Kerja Waktu Tertentu or PKWT). As per Article 59 of Law Number 13 of 2003 concerning Manpower, the employment tenure under this arrangement is limited to a maximum of two years and may be extended only once for an additional period of not more than one year.²⁷

Outsourcing constitutes a contractual system in which the execution of specific tasks is delegated by a company to a third party, aimed at distributing risks and reducing the operational burdens of the company.²⁸ The allocation of risks within this contractual framework is fully subject to the mutual agreement between the employer and the outsourced worker. In the absence of mutual consent from either party, the employment contract shall not be established. Effective implementation of such agreements is contingent upon the free will and mutual acceptance of both parties, without coercion. The employment contract may be concluded either in written or verbal form, provided it is executed in compliance with prevailing laws and regulations.

The enforcement of legal protection for outsourced workers, in essence, does not substantially differ from the standard legal safeguards afforded to regular employees.²⁹ From a legal standpoint, regulations governing outsourced labor must be aligned with those applicable to the general workforce. As long as the outsourced position remains active and ongoing, any newly designated service provider is obligated to maintain the continuity of the existing employment contract without modifying the previously agreed-upon terms—except when such amendments offer greater benefits to the outsourced worker, such as increased compensation, which may result from accrued work experience or length of service.³⁰

²⁶ Siska Mariza and Imam Budi Santoso, “Understanding the Legal Implications of Regulatory Transfers: A Post-Decision Analysis of MK No. 27/PUU-IX/2011 under the Omnibus Law Framework,” *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 4, no. 1 (June 9, 2024): 123, <https://jurnal.untirta.ac.id/index.php/jurisprudence/article/view/24735>.

²⁷ “UU No. 13 Tahun 2003.”

²⁸ Nur Zafirah Zaharudin, Mat Naim Abdullah @ Mohd Asmoni, and Nurul Syakima Yusoff, “A Review of Benefits and Risks of Outsourcing Building Operation and Maintenance,” *International Journal of Real Estate Studies* 18, no. 2 (December 12, 2024): 9–18, <https://intrest.utm.my/index.php/intrest/article/view/361>.

²⁹ Iona Febrina Simanjuntak, July Esther, and Roida Nababan, “Principles of Implementation of Transfer of Undertaking Protection of Employment (Tupe) as a Form of Legal Protection for Outsourcing Workers,” *Journal of Legal and Cultural Analytics* 4, no. 1 (February 21, 2025): 449–462, <https://journal.formosapublisher.org/index.php/jlca/article/view/13862>.

³⁰ Lestari, Santoso, and Setiady, “LEGAL PROTECTION OF OUTSOURCING WORKERS AGAINST EMPLOYERS’ ARBITRARY ACTIONS IN TERMINATION OF EMPLOYMENT RELATIONSHIPS IN INDONESIA BASED ON THE JOB CREATION LAW.”

At its core, an outsourced worker does not have a direct legal employment relationship with the client company where they are placed, due to the absence of a binding contractual agreement between them. This legal structure is commonly illustrated as a triangular relationship, as depicted in the schematic diagram above.

Law Number 2 of 2004 concerning Industrial Relations provides comprehensive regulation regarding the resolution of disputes through procedures mutually agreed upon by the involved parties, particularly through non-litigation (Alternative Dispute Resolution or ADR) mechanisms. Alternative Dispute Resolution (ADR) refers to the process of resolving conflicts through mechanisms that operate outside the formal judicial system, based on mutual consent, by setting aside the litigation process. Industrial relations disputes are, at times, unavoidable; hence, all parties involved must possess openness and goodwill to resolve the issues at hand in a constructive and dignified manner.

Dispute settlement through the Tripartite Negotiation mechanism must involve a third party through mediation, conciliation, or arbitration, which are collectively categorized as non-litigation pathways.³¹ If both Bipartite and Tripartite negotiations fail or do not result in consensus, the industrial relations dispute may then proceed to the Industrial Relations Court, thus entering the litigation process.

In general, the polarization of industrial dispute resolution mechanisms, whether through litigation or non-litigation, may be structurally described in the following schematic diagram:

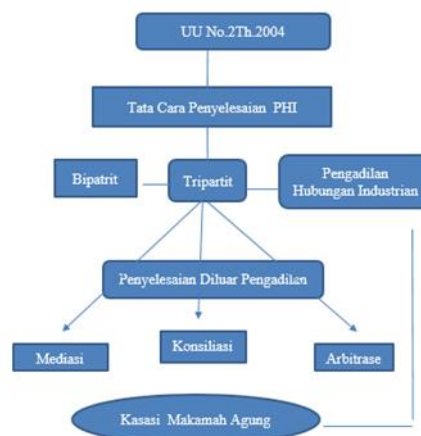


Figure 1 Litigation and Non-Litigation Resolution Pathways

The resolution of industrial relations disputes (PHI) may be undertaken through two primary mechanisms: non-litigation (out-of-court) and litigation

³¹ Lewiandy Lewiandy, Rasji Rasji, and Samantha Elizabeth Fitzgerald, "THE ROLE OF MEDIATION AS A FORM OF AMICABLE SETTLEMENT PRIOR TO ARBITRAL PROCEEDINGS UNDER BANI ARBITRATION CENTER RULES AND PROCEDURES," *International Journal of Application on Social Science and Humanities* 1, no. 1 (February 20, 2023): 67–75, <https://journal.untar.ac.id/index.php/ijassh/article/view/25688>.

(through the court system). With regard to the non-litigation pathway, dispute settlement emphasizes the use of Bipartite negotiations, Mediation, Conciliation, and Arbitration as alternative means of resolving conflicts between parties. The procedures for out-of-court dispute resolution are explained as follows:

1. Settlement Through Bipartite Negotiation

The resolution of disputes between the conflicting parties through deliberation and consensus, without interference from any external party, aims to reach a mutually beneficial outcome for both parties. In addition to fostering agreement, this deliberative process also minimizes costs, time, and effort. Bipartite negotiations may be conducted between workers or laborers—now commonly referred to as outsourced workers—and the service provider company in resolving industrial relations disputes outside the judicial process (non-litigation).

Substantively, Article 3 paragraph (1) of Law Number 2 of 2004 mandates that industrial relations disputes must initially be addressed through Bipartite deliberations, with the aim of reaching a mutual agreement between the parties. In the literature on Alternative Dispute Resolution (ADR), Bipartite settlement is classified as negotiation, namely, a dispute resolution effort undertaken by the parties themselves without involving third parties, aimed at reaching mutual agreement based on cooperative and constructive engagement.

The *Kamus Besar Bahasa Indonesia* defines negotiation as a process of bargaining through deliberation to give or receive offers in order to reach mutual agreement between two parties.³² This method reflects a peaceful resolution of disputes through direct discussion between the parties involved. Such a provision leads to the understanding that every industrial relations dispute, regardless of its type, must first be resolved through Bipartite negotiation. This process is limited to a maximum duration of 30 working days from the commencement of the deliberation.

Regardless of the negotiation outcome, both parties are required to draft an official record of the proceedings. This document must include the identities of both the workers and the company, the date of negotiation, the central issues discussed, the respective positions of the parties, the solutions proposed, and the conclusions reached, along with the signatures of both parties.

Bipartite resolution is mandatory in nature. This is explicitly stipulated in Article 83 paragraph (1) of Law Number 2 of 2004, which states: “Any lawsuit filed without being accompanied by a record of

³² Lalu Husni, *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengaduan Di Luar Pengadilan*, 3rd ed. (Jakarta: PT Raja Grafindo Persada, 2007).

resolution through Bipartite, Mediation, or Conciliation must be returned by the Industrial Relations Court judge to the Plaintiff.”³³

To provide a more detailed understanding of this matter, attention must be given to the provisions stipulated in Article 4 paragraph (1) of Law Number 2 of 2004, which reads as follows: “*In the event that Bipartite negotiations fail as referred to in Article 3 paragraph (3), either one or both parties shall register the dispute with the local agency responsible for the field of manpower, accompanied by evidence demonstrating that efforts to resolve the dispute through Bipartite negotiation have been undertaken.*”

Furthermore, Article 4 paragraph (2) of Law Number 2 of 2004 asserts that: “*If the supporting evidence as referred to in paragraph (1) is not attached, the agency responsible for the field of manpower shall return the submitted documents to be completed no later than seven (7) working days from the date of receipt of such return.*”

In the event that the negotiation process reaches a deadlock or fails entirely, the registration of the dispute must be conducted through the competent manpower authority in the relevant jurisdiction. This process must be supported by written documentation indicating that Bipartite negotiations have been attempted but were unsuccessful. Such a situation requires the pursuit of further resolution efforts, either through litigation or by submitting the matter to the Industrial Relations Court for judicial settlement.

2. Dispute Resolution through Mediation

The term *mediation* is derived from the English word *mediation*, which refers to a dispute resolution process involving the participation of a third party who acts as an intermediary³⁴. This third party, who remains independent and is not directly involved in the dispute, plays a role in assisting the conflicting parties in reaching a resolution and must remain impartial and neutral throughout the process.

Gary Gaadpaster defines mediation as a collaborative negotiation process guided by a neutral and impartial third party, aimed at helping the disputing parties arrive at a resolution that is acceptable to both sides. Unlike a judge, a mediator does not possess the authority to impose a binding decision upon the parties. Instead, the parties voluntarily grant the mediator the mandate to facilitate the resolution

³³ “UU No. 2 Tahun 2004,” accessed July 24, 2025, <https://peraturan.bpk.go.id/Details/40452/uu-no-2-tahun-2004>.

³⁴ Yon Maley, “From Adjudication to Mediation: Third Party Discourse in Conflict Resolution,” *Journal of Pragmatics* 23, no. 1 (January 1995): 93–110, <https://linkinghub.elsevier.com/retrieve/pii/037821669400030I>.

of their disputes. The underlying assumption is that a third party can transform the power dynamics and social interactions of the conflict by influencing the parties' trust and behavior. Whether through the provision of relevant knowledge or information, the application of more effective negotiation strategies, or a combination of both. Through this process, the mediator assists the parties in identifying solutions to the issues in contention.³⁵

Legal protection concerning employment termination for outsourced workers presents a significant challenge, as these workers rely on their employment to sustain their livelihoods and support their families. From a theoretical standpoint, both the outsourcing company and the outsourced workers hold equal rights and autonomy to terminate the employment relationship, in accordance with the principle of freedom of contract as embedded in contract law. However, in practical application, a distinct imbalance persists, as the initiation of termination is predominantly exercised by the employer. In reality, outsourced workers seldom desire the termination of their employment contracts.

The dynamics of outsourced labor often give rise to legal and practical disputes, particularly in the context of employment termination. In addressing such disputes between outsourcing companies and outsourced workers, the government holds a direct and essential role, particularly in regulating and overseeing termination practices. This involvement stems from the government's responsibility to uphold economic stability, maintain public order, and safeguard the rights of economically vulnerable groups. Accordingly, the government has enacted legislation that prohibits employers from unilaterally terminating employment without adhering to procedures stipulated by law. As stipulated in the following legal provisions, employment termination may only proceed upon the issuance of a formal decision by the Industrial Relations Dispute Settlement Agency (Penyelesaian Perselisihan Hubungan Industrial, PPHI).

The Labor Law regulates the termination of employment contracts for outsourced workers by stipulating specific conditions that must be fulfilled. These include the following:

- a. Termination of employment resulting from a legal violation, wherein dismissal is executed pursuant to a court order that has obtained permanent legal force (*inkracht van gewijsde*).

³⁵ Gary, author Goodpaster, *Panduan Negosiasi Dan Mediasi* (Elips, 1999).

- b. Termination of employment based on mutual agreement between the outsourcing service provider and the outsourced worker, as stipulated in the established employment agreement.
- c. Termination of employment initiated either by the employer or by the outsourced worker independently.

The legal protection afforded to outsourced workers affected by employment termination is stipulated in Article 156(2) of the Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang, Perpu*) on Job Creation. This provision affirms the right of outsourced workers to receive severance pay, the amount of which is regulated under Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.

Law of the Republic of Indonesia Number 6 of 2023 concerning the ratification of Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 on Job Creation as statutory law was enacted to replace Law Number 11 of 2020 on Job Creation, which was declared *conditionally unconstitutional* by the Constitutional Court. In regulating severance compensation for the termination of employment (PHK) involving outsourced workers, the government requires employers to provide severance pay to affected employees. The provisions governing the amount of severance pay are set forth in Article 156(2) of the Government Regulation in Lieu of Law on Job Creation (Perpu Cipta Kerja), and are determined as follows:

- a. For a period of service of less than one year, the worker is entitled to one month's salary;
- b. For a period of service of one year or more but less than two years, two months' salary;
- c. For a period of service of two years or more but less than three years, three months' salary;
- d. For a period of service of three years or more but less than four years, four months' salary;

The severance pay for outsourced workers follows a progressive scale, increasing in accordance with the length of service. In circumstances where a company is classified as a small or medium-sized enterprise and is financially incapable of fulfilling the full compensation obligations prescribed by law, Article 16(6) provides that the amount of severance pay may be determined through mutual agreement between the employer and the outsourced worker. In this context, the term "wage" refers to the basic wage and fixed allowances. However, if fixed allowances are not part of the wage structure, the severance calculation shall be based on the basic wage and/or other allowances, or solely on the basic wage.

Beyond the expiration of the employment term, a fixed-term employment agreement may also be terminated due to a final and binding court decision or a ruling issued by an industrial relations dispute resolution body, such as a bankruptcy declaration against the company. Termination may likewise result from specific conditions or events as stipulated in the employment agreement, company regulations, or collective labor agreements, provided such grounds are legally recognized as justification for ending the employment relationship.

CONCLUSION

The Constitutional Court's decision regarding the Job Creation Law (Undang-Undang Cipta Kerja) declared the legislation conditionally unconstitutional, thereby posing the risk of a permanent legal vacuum. In such a scenario, both the President and the House of Representatives (DPR) could be considered to have engaged in an unlawful act due to the resulting legal uncertainty surrounding the law's implementation. To prevent this state of constitutional invalidity, the Government issued Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang/Perppu) No. 2 of 2022 on Job Creation, which was promulgated on December 30, 2022. This regulation was subsequently ratified and formalized as Law No. 6 of 2023 by the President of the Republic of Indonesia, having fulfilled the constitutional requirement of urgent necessity for addressing legal deficiencies in a timely manner.

The legal regulation of outsourcing must be prioritized to prevent arbitrariness on the part of employers or companies. Specifically, in situations involving the transfer of business ownership or a change in outsourcing providers—from a former outsourcing company to a new one—outsourced workers are automatically transferred as employees of the newly appointed service provider. As long as the outsourced work continues, the new vendor is required to uphold the existing employment contracts without altering the previously agreed terms and conditions. Any modifications to these contracts are permissible only if they offer greater benefits to the workers, particularly in acknowledgment of their accumulated experience and length of service.

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