



Type: **Research Article**

## Indonesia's Constitutional Court Decisions on Outsourcing Scheme: Balancing Protection and Efficiency?

I Dewa Gede Palguna<sup>1</sup>, Ita Nurjanah<sup>2</sup>, Ni Komang Tari Padmawati<sup>3</sup>, I Komang Dananjaya<sup>4</sup>, I Made Halmadiningrat<sup>5</sup>


<sup>1</sup> Faculty of Law, Universitas Udayana, Denpasar, Indonesia

<sup>2</sup> Tokyo International University, Tokyo, Japan

<sup>3</sup> Faculty of Law, Universitas Udayana, Denpasar, Indonesia

<sup>4</sup> Faculty of Law, Universitas Udayana, Denpasar, Indonesia

<sup>5</sup> Faculty of Law, Universitas Udayana, Denpasar, Indonesia

 [dewa\\_palguna@unud.ac.id](mailto:dewa_palguna@unud.ac.id)

### ABSTRACT

This article explores the Indonesian Constitutional Court's views through its decisions in shaping the practice of outsourcing in Indonesia based on the 1945 Constitution. The study was first conducted by analyzing Decision No. 012/PUU-I/2003 and later Decision No. 27/PUU-IX/2011. The novelty of this research is evident from the involvement of perspective in analyzing the outsourcing scheme in Indonesia as newly regulated in several laws, namely Job Creation Law and the Government Regulation *in lieu* of Job Creation



Law. Using the normative legal research method, the authors used statutory, case, and conceptual approaches. Based on the research conducted, the authors found that the Constitutional Court aims to uphold the balance of companies' efficiency and outsourced workers' rights protection. The findings are evidenced by the Constitutional Court's stance in a decision that implies that outsourcing is constitutional to enhance the State's economy while simultaneously protecting the outsourced workers' rights to ensure the fulfillment of their constitutional rights by setting two-fold models of protection. Therefore, even if new outsourcing scheme regulations are issued, the criterion of legality in future judicial reviews must involve determining whether such balance has been sufficiently met.

**Keywords:** Constitutional Court, Outsourcing, Efficiency, Worker's Rights Protection

## INTRODUCTION

Structural changes in business management by reducing the span of management control so that it is more effective, efficient, and productive have given rise to the tendency for the outsourcing system<sup>1</sup> to be carried out by outsourcing one part or several parts of a company's activities that were originally managed by itself to another company, which is then called the company receiving the work.<sup>2</sup> Law No. 13 of 2003 concerning Manpower (*Indonesian Labor Law*) does not

---

<sup>1</sup> Humala Sitinjak, "Legal Issues on Outsourcing Company with Its Employee in Getting High Salary at PT Tiara Gada Pratama, Medan, Indonesia", *Global Journal of Politics and Law Research* Vol. 6, No. 2 (2018), p. 17.

<sup>2</sup> Adrian Sutedi, *Hukum Perburuhan*, (Jakarta: Sinar Grafika, 2011), p. 219.

expressly mention the meaning of outsourcing.<sup>3</sup> *Outsourcing in the Indonesian legal system can be defined as the outsourcing of work and the provision of labor services or the delegation of daily operations and management of a business process to an outside party (outsourcing service companies).*<sup>4</sup> Outsourcing mechanisms in the business sector arise because of the desire to share work risks.<sup>5</sup> With the rapid development of technology and the free market, various other forms of work relations have emerged that are considered more flexible, to maximize company efficiency.<sup>6</sup> The working relationships are contract work agreements or Fixed-Term Work Agreements and outsourcing. Fixed-term work Agreements and contracts are recruited directly by companies using labor services, while outsourcing is recruited through companies providing labor services.

The Indonesian Labor Law, which serves as the country's legal framework for outsourcing, categorizes the practice into two categories: worker/labor services providing and work contracting. Thus, in work relations, the outsourcing system gives rise to a third party in the working relationship between workers and companies, which is referred to as a contracting company or a company that provides worker/labor services. In contrast to outsourcing work contracting, outsourcing the provision of labor services is a new form of outsourcing. This form of outsourcing that involves providing services is frequently referred to as "*insourcing*," which may be understood as hiring employees from a business that offers labor

---

<sup>3</sup> See Article 1 of Law No. 13 of 2003 on Labor which does not define the phrase "outsourcing" at all.

<sup>4</sup> Surya Tjandra, "Labour Law and Development in Indonesia," *Dissertation*, (Leiden: Universiteit Leiden, 2016), p. 265.

<sup>5</sup> Sanghoon Ahn, Kyoji Fukao & Keiko Ito, "The Impact of Outsourcing on the Japanese and South Korean Labor Markets: International Outsourcing of Intermediate Inputs and Assembly in East Asia", *Working Paper Series 260*, 2008. p. 3.

<sup>6</sup> Andong Dony Irawan, "Status Hukum Outsourcing Pasca Putusan Mahkamah Konstitusi Perkara Nomor 27/PUU-IX/2011", *Arena Hukum* 12, No. 2 (2019), p. 254. See also Suwinto Johan, and Luo Yuan Yuan. "What Does Financial Institution Termination of Employment Mean in Terms of Labor Law?". *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 1 (2023): 49-59.

services to work for the company on a particular job. In its development, the Manpower Law has changed to Law No 6 of 2023 on Job Creation<sup>7</sup> which updates the provisions regarding matters in outsourcing work.<sup>8</sup>

Since the enactment of the Manpower Law, the terms of Contract work and outsourcing have caused several problems, namely:<sup>9</sup> *First*, from an ideological standpoint, neoliberalism is primarily responsible for the articles on contract work and outsourcing that are harmful to workers. These articles violate the kinship and togetherness ideals of the Indonesian people, which are contained in Article 33 of the Republic of Indonesia's 1945 Constitution (hereinafter "1945 Constitution"). The provision of free power chances for investors to derivatize the tenets of the people's economy is an article of contract labor and outsourcing that is connected to investment competitiveness. *Second*, in terms of protections for employees, contract work and outsourcing have a negative impact on labor rights, particularly in terms of various benefits, social security, and adequate job security. *Third*, there is inconsistency in how work relations are applied. It is because the Manpower Law definition of an employment relationship in Article 1 Paragraph (15) states the following: "An employment relationship is a legal relationship that arises between a worker

---

<sup>7</sup> See Article 64, Article 65 and Article 66 of Law No 6 of 2023 on Job Creation

<sup>8</sup> Alnick Nathan, "Omnibus Law dan Fleksibilitas Pasar Tenaga Kerja di Indonesia: Perspektif Makro-Ekonomi dan Ketenagakerjaan, *Jurnal Kebijakan dan Administrasi Publik* 1, No. 9 (2019), p. 19. See also Nur Putri Hidayah, Quincy R. Cloet, David Pradhan. "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights". *Bestuur* 9, no. 1 (2021): 68-76; Sidik Sunaryo, "The Philosophy of Social Injustice for All Indonesian Laborers Set Forth in Job Creation Law". *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 112-23.

<sup>9</sup> Haedar Akib Yusriadi & Andi Ihsan, "Bureaucratic Reform in Public Service: A Case Study on the One Stop-Integrated Service", *Mediterranean Journal of Social Sciences* 8, No. 2 (2017), p. 253. See also Tri Sulistiyono, Pratama Herlambang, Dwi Pangestu Khoirunisa, and Ahmad Zaharuddin Sani Ahmad Sabri. "Strengthening the Role of Community in Improving the Quality of The Manpower". *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 123-140.

*and an employer based on a work agreement that has the characteristics of a wage, an order, and a job”.*

However, it is stipulated in Article 66 Paragraph (2) Letter a, that there must be an employment relationship between enterprises offering worker services. There is no legal relationship that satisfies the requirements of orders, work, and wages between employers who provide worker services and employees. *Fourth*, employees are too easily fired and hired since they are only considered a production factor (like goods) in outsourcing or contract employment schemes. *Fifth*, the legal assurance that the sale of contemporary persons or their use as modern-day slaves is legal. The process of buying and selling people who benefit from the economic crises and turn workers into collateral damage of investment politics is known as outsourcing legality, as stated in Articles 64–66. *Sixth*, the conflict paradigm, even though it ought to use the partnership paradigm, which has to be employed as a theoretical foundation for developing laws.

In Indonesia's national development, especially in the field of employment, the Indonesian government prioritizes the interests of workers to the greatest extent possible to achieve the prosperity of workers.<sup>10</sup> Laws related to employment are expected to guarantee justice, usefulness, and legal certainty that support the welfare of workers. The interests of workers through good legal instruments are one of the guarantees for the protection of fundamental rights owned by workers.<sup>11</sup> The reform era was initially expected to be able to build more transparent and democratic political, economic, social, and cultural legal conditions. Still, until now the benefits have not been felt by workers. The barrier to the existence of incoherence in the Manpower Law system is due to structural, cultural, legislative, or policy substance, as well as financial barriers which have implications for the weak enforcement of Manpower Law from the government

---

<sup>10</sup> Julyatika Fitriyaningrum, “Implementasi Sistem Alih Daya atau Outsourcing Dalam Mencapai Kesejahteraan Pekerja Indonesia Ditinjau Dari Undang-Undang Nomor 13 Tahun 2003”, *Indonesian State Law Review* 2, No. 1 (2019), p. 326.

<sup>11</sup> Kukuh Pambudi, “Quo Vadis Indonesian Labor Act: How Far the Protection for Labors?”, *Journal of Law and Legal Reform* 2, No. 1 (2021), p. 539.

and the lack of work protection for workers and working conditions from employers for workers as a whole.

The pros and cons of outsourcing workers have until now been problematic.<sup>12</sup> This is because, on the one hand, in terms of efficiency, outsourced workers are seen by employers as a way out in the search for a safer workforce. On the other hand, the position of workers who work under the outsourcing system is uncertain, this is because all outsourced workers work based on a fixed-term employment agreement. In its development, almost all jobs can be entered by outsourced workers/laborers, including basic work or work that is in contact with the production process, which is contrary to the outsourcing regulations in Law No. 13 of 2003. Aside from the weaknesses in the implementation of outsourcing in Law No.13 of 2003, the implementation of outsourcing itself cannot be avoided by employers, let alone by workers/laborers.<sup>13</sup> This is because Article 64 and Article 66 of Law No.13 of 2003 on Manpower seem to give legalization to the practice of outsourcing without regard to matters prohibited by law. In actuality, there is a distinction between the rule of law and the implementation of the law.<sup>14</sup>

The polemics over the existence of the outsourcing system, allegedly to the detriment of the working class, who are also citizens whose constitutional rights are protected by the Constitution, eventually led to a judicial review of the Manpower Law in the Constitutional Court. There were 2 (two) judicial challenges to the Constitutional Court, which requested that the provisions of Article 64, Article 65, and Article 66 be tested. In the first lawsuit, the Constitutional Court believed that there were no problems with the outsourcing arrangement; thus, the Constitutional Court's decision

---

<sup>12</sup> Sonhaji Sonhaji, "Tinjauan Terhadap Kesejahteraan Pekerja Alih Daya di Perusahaan Perbankan," *Administrative Law and Governance Journal* 4, No. 1 (2021), pp. 38–50

<sup>13</sup> I Nyoman Putu Budiarta, *Hukum Outsourcing*, (Malang: Setara Press, 2016), p. 22.

<sup>14</sup> Asri Wijayanti, "Rights to The Freedom of The Trade Unions in The Constitution and Its Implementation", *International Journal of Applied Business and Economic Research* 15, No. 7 (2017), p. 108.



strengthened the position of outsourcing in the Manpower Law.<sup>15</sup> The second lawsuit then was filed again by a worker at the State Electricity Company who sued to have the provisions in Articles 65 and 66 removed since they were not following the principles contained in Article 27 and Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution which protect to obtain employment for every citizen. The second Constitutional Court decision states that there are 2 phrases in Articles 65 and 66 of the Manpower Law that are declared invalid.<sup>16</sup>

One of the authorities of the Constitutional Court through testing laws against the Constitution can be an effort to ensure that the process and substance of the formation of laws do not conflict with constitutional provisions.<sup>17</sup> The existence of the Constitutional Court is essential to safeguard the constitutional rights of citizens.<sup>18</sup> The Constitutional Court's decision will ultimately reflect two things, *first*, the position of the Constitutional Court in upholding the regulation on the rails of the Constitution and *second*, the Constitutional Court's decision can influence the legislators in carrying out the constitutional mandate.<sup>19</sup> Thus, with the issuance of Constitutional Court Decision No. 27/PUU-IX/2011, the Outsourcing Work Agreement in Articles 65 - 66 of Law No. 13/2003 on Labor is considered conditionally unconstitutional, especially Article 65 paragraph (7) and Article 66 paragraph (2) letter b. The Constitutional Court's decision necessitates the establishment of a protection clause for outsourced workers, specifically by requiring outsourced work agreements to be tied to an Indefinite Time Work Agreement and

---

<sup>15</sup> See Constitutional Court Decision Number 012/PUU-I/2003

<sup>16</sup> See Constitutional Court Decision Number 27/PUU-IX/2011

<sup>17</sup> Nurrahman Aji Utomo, "Dinamika Hubungan Antara Pengujian Undang-Undang dengan Pembentukan Undang-Undang", *Jurnal Konstitusi* 12, No. 4 (2015), p. 827

<sup>18</sup> Wicipto Setiadi, "Dukungan Politik Dalam Implementasi Putusan Mahkamah Konstitusi", *Jurnal Rechtsvinding* 2, No. 3 (2013), p. 297

<sup>19</sup> Theunis Roux and Fritz Siregar, "Trajectories of Curial Power: The Rise, Fall and Partial Rehabilitation of the Indonesian Constitutional Court", *Australian Journal of Asian Law* 16, No. 2 (2016), pp. 1-21.

through the Transfer of Under Protection of Employment if outsourced workers are tied under a Fixed Time Work Agreement.

This research did a literature review of numerous comparable studies to gain a comprehensive understanding of the position of the judgment of the Indonesian Constitutional Court concerning outsourcing schemes in the Indonesian labor system. *First*, a study by Khairani entitled "*Kedudukan Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011*" outlines (i) the position of outsourcing in the Manpower Law is still valid and has binding force except for the provisions of Article 65 paragraph (7) and Article 66 paragraph (2) letter b relating to work agreements that are carried out continuously with specific time work agreements and (ii) recommendations for the follow-up to the decision to the legislators. *Second*, a study by Amani Fidella entitled "*Analisis terhadap Hubungan Kerja dengan Sistem Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor: 27/PUU-IX/2011*" outlines (i) the use of the outsourcing system at this time is still relevant but has not approached the actual purpose of outsourcing in increasing work professionalism, and (ii) efforts to protect workers as the right of citizens must be protected by law.

*Third*, a study by Vicentious Oesman entitled "*Permasalahan Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011*" outlines that (i) the Constitutional Court Decision No. 27/PUU-IX/2011 raises new problems because it legalizes the principle of outsourcing and wrong working relationships through the mechanism of providing worker services and (ii) the finding that in practice the Constitutional Court Decision No. 27/PUU-IX/2011 is not implemented because there is no law that regulates the follow-up to a Constitutional Court decision. *Fourth*, a study by AnangDonyIrawan entitled "*Status Outsourcing Pasca Putusan Mahkamah Konstitusi Perkara Nomor 27/PUU-IX/2011*" outlines that (i) the outsourcing system is a consequence of the economic crisis of 1997/1998 which caused high unemployment and was actualized through the Manpower Law as a solution and (ii) it provides leeway to recruit and dismiss workers on the grounds of a flexible labor market.



*Fifth*, a study by DefiSantiatika entitled "*Permasalahan Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011*" basically outlines (i) outsourcing arrangements in the Manpower Law have not protected workers' rights and do not provide career guarantees, (ii) the protection of workers only works at the juridical level and not at the practical level, (iii) the testing of Article 59, Article 64, Article 65 and Article 66 in the Manpower Law is a reaction of workers in demanding their rights as outsourced workers and (iv) Permenakertrans No. 19/2012 as a response to the Constitutional Court's decision obliges companies to implement the transfer of protection for workers or laborers. 19/2012 as a response to the Constitutional Court's decision obliges companies to implement the transfer of protection for workers or laborers in work agreements. Based on this analysis, this study analyzes in more depth the position of Constitutional Court Decision No. 27/PUU-IX/2011 within the framework of guarantees and interests of the state, companies, and workers. In addition, this study also offers what aspects should be considered by the Constitutional Court if there is another judicial review of the Manpower Law concerning outsourcing.

## REVIEW OF CONSTITUTIONAL COURT DECISION NO. 012/PUU-I/2003: EFFICIENCY CREATES JOB OPPORTUNITY?

### *Neoliberalism Ideology as Necessary Step to Save Indonesia from Economic Crisis*

Neoliberal reforms were implemented in most Latin American countries during the 1970s and 1980s as a development strategy to replace the import substitution industrialization model (ISI). The ISI model assumed that economic progress in the form of industrialization would serve as the foundation for the flourishing of

democratic institutions.<sup>20</sup> While some scholars view the authoritarian-bureaucratic state as the starting point for neoliberal reforms, others emphasize the differences between a state that was still focused on industrialization and a state that prioritized the reprioritization of national economies towards supporting the export sector.<sup>21</sup>

The emergence of neoliberalism took place within a context defined by incomplete democratization efforts, the residual impacts of colonial power structures, and a reinvigorated form of authoritarianism that prioritized market-based policies. The politics of neoliberalism in Latin America, which refers to the set of practices that contest the normative, economic, and political orientation of these societies, has been attributed to the convergence of international and domestic factors. This convergence has resulted in a transformation of the normative, economic, and political framework of these societies, causing them to shift towards market-based policies. The legacy of colonial power structures and incomplete democratization efforts have contributed to the persistence of authoritarianism in its reconfigured form, which has consistently favoured market-oriented policies.<sup>22</sup>

The oil shocks of the 1970s and the debt crisis contributed to the decline of the Keynesian Post-War consensus that predominated in Western countries.<sup>23</sup> This resulted in a transition from state-centric societies to those that prioritize market-oriented principles. Domestically, the political and economic instabilities and crises brought about the end of the developmental model, which was founded on the preservation of domestic industry and the promotion of inward growth. In this scenario, supporters of neoliberalism perceived it as a solution to the crisis of the Import Substitution

---

<sup>20</sup> Juan Pablo Rodríguez, "The Politics of Neoliberalism in Latin America: Dynamics of Resilience and Contestation." *Sociology Compass* 15, No. 3 (2021), p. 2.

<sup>21</sup> Juan Pablo Rodríguez, "The Politics of Neoliberalism in Latin America: Dynamics of Resilience and Contestation," *Sociology Compass* 15, no. 3 (2021): 3.

<sup>22</sup> Rodríguez, 3. p. 4.

<sup>23</sup> Engelbert Stockhammer, "Post-Keynesian Macroeconomic Foundations for Comparative Political Economy," *Politics & Society* 50, no. 1 (2022): 158–159.

Industrialization (ISI) model and considered it a more advanced development model due to its market-oriented principles.<sup>24</sup>

The sudden and intense nature of the Asian financial crisis caught many off guard, particularly concerning Indonesia's economy. The nation was not immune to the larger regional problem despite a lengthy history of remarkable growth, with average annual rates reaching as high as 6.9% since 1970. The causes of this crisis were multifaceted and can be broadly classified into two categories: (1) fundamental deficiencies within the affected countries and (2) largely unavoidable financial panics.

Concerning the first category, it is widely recognized that the crisis was caused by the weaknesses of the afflicted countries themselves. Domestic financial institutions in these countries were often weak and ill-equipped to handle the large capital inflows they received. This interaction between weak institutions and capital inflows resulted in pervasive moral hazard problems and poor lending practices, both of which contributed to the crisis.

The second category of causes, on the other hand, might be considered as mostly unavoidable financial panics or rational "bank runs," that happened in otherwise sustainable economies. Countries with high ratios of short-term external debt to GDP were particularly vulnerable, as a lack of reserves and investor confidence led to self-fulfilling panics. In these cases, the solution was not to implement major structural reforms or tighten macroeconomic policy, but rather to provide liquidity and reassurance to investors. This approach is akin to providing liquidity to a solvent but illiquid bank to stabilize it.

In conclusion, the Asian financial crisis was a complex and multifaceted event that had both internal and external causes. Despite the impressive growth history of Indonesia's economy, the country was not immune to the crisis, and the solutions required to address it

---

<sup>24</sup> Suryomenggolo, Jafar, and Indah Saptorini. *Kekuatan Sosial Serikat Buruh: Peraturan Baru Dalam Perjuangan Menolak Outsourcing*. (Jakarta: Trade Union Rights Center Jakarta, 2007), p. 5.

were primarily focused on providing liquidity and reassurance to investors.

In the aftermath of the Thai devaluation, the Indonesian rupiah faced intense pressure due to its extensive stock of short-term external debt and inadequate banking system, making it susceptible to capital outflows. To counteract this issue, Indonesia implemented a strong interest rate defence, which resulted in overnight rates surging to nearly 100 per cent. However, as concerns about a potential banking system collapse grew, the authorities decided to allow rates to decrease and to float the rupiah on August 14<sup>th</sup>. By the end of October, Indonesia was impacted as severely as Thailand, with corporations struggling to renew their maturing short-term external credits. The effort of these debtors to secure foreign exchange intensified the pressure on the rupiah and local currency interest rates. The strain of high-interest rates on the banking system reduced confidence in the ability of the authorities to maintain their policies, leading to a lowering of interest rates, which further worsened the exchange rate. The banking system's vulnerability is exacerbated by the maturation of short-term external debt and unstable financial markets, which have already been impacted by increasing interest rates and declining currency.

In light of this economic and banking vulnerability in Indonesia, a 23 billion USD external assistance package, led by the IMF and supported by the World Bank, Asian Development Bank, and bilateral donors, was announced in October. However, even when the IMF and World Bank requested help, the rupiah continued to decline until January 1998. The financial position of the banks further deteriorated, as funds continued to exit the banking system and currency, leading to foreign interbank lines of credit being cut even to state banks. The poor performance of the Indonesian economy was a result of several factors, including a lack of strong commitment to the reform program by the authorities, monetary policy limitations, and the slow progress made by the IMF's plan to restructure external corporate debt.

To address these financial issues in Indonesia, the April revisions to the IMF program included a commitment to a firm monetary policy, accelerated bank restructuring, comprehensive structural reforms, budget loosening to accommodate subsidies and financial costs, and a new corporate debt workout mechanism with limited government involvement. Augmented official financing and efforts to maintain foreign credit lines and trade credit were expected to restore stability to the exchange rate.

In response to the IMF's plans to alleviate the economic crisis in Indonesia, the Indonesian government was required to regulate several rules to align with the programs. This plan also impacted Indonesia's new regulation on Manpower in 2003, which was supported by the Constitutional Court's decision stating:

“Considering that the decline of the Indonesian economy after the crisis since 1998 and the inclusion of the role of international financial institutions in the economic recovery process has caused Indonesia to make changes in economic policy in such a way as to relate to aid funds for the economic rescue. This has made it increasingly difficult for Indonesia to formulate economic policies based on the system set out in Article 33 of the 1945 Constitution, and to formulate laws and regulations in the socio-economic field in harmony with the 1945 Constitution according to the philosophy laid down by Indonesia's founding fathers. The economic downturn and the decline in investment activities, as well as the difficulty in attracting new investment due to unfavorable conditions, have led to an imbalance in supply and demand in the labor market. This has strengthened the bargaining position of employers in determining conditions that are more favourable to the interests of employers and detrimental to the interests of workers.”

The Constitutional Court of Indonesia, in its decision regarding the government's regulations on manpower, took into account the complex economic and legal issues surrounding the matter. The Court

recognized that the country is facing challenges, including labor conditions and wages that are below international standards and competition from other countries in the region that offer more favourable investment conditions.

In the context of a market economy, the Court held that government intervention through economic policies and regulations must be carried out proportionally, in line with the ideals of Article 33 of the 1945 Constitution, which prioritizes the greatest prosperity of the people. This means that market laws should be influenced proportionally to eliminate market distortions and weaknesses while considering the risks that investors may face and providing balanced and reasonable incentives.

However, the Court also emphasized the importance of providing sufficient legal protection for workers and improving their welfare. The interpretation of laws and regulations in the economic field must take into account the various interests and values that often clash, and strive to promote a balanced arrangement that removes legal obstacles and benefits the overall well-being of the people.

Therefore, the Court emphasized the need for a dynamic and contextual interpretation of the law and constitution in the economic field, which can only be achieved by carefully weighing and balancing the various dimensions of interests and values. This necessitates a complex decision, which should result in a better overall understanding of the law.

### *Effectiveness of Job Opportunity by Outsourcing*

In the world of business, outsourcing has become a popular strategy for companies seeking to reduce costs and improve efficiency. As a result, it has also become a subject of much discussion and debate, particularly concerning its effect on job opportunities. This subsection will delve deeper into the impact of outsourcing on employment, exploring both the positive and negative perspectives on this issue.



Three parties can be involved if we are talking about outsourcing, they are the company (or business owner), workers, and the government. The use of outsourcing by a company has been shown to provide the ability to quickly and effectively respond to short-term increases in workload, such as seasonal demands, temporary sales growth, or project-based work. This is due to the greater flexibility in hiring and dismissing employees that outsourcing provides. From the perspective of the worker, outsourcing has been identified as a potential pathway toward permanent employment. This is because outsourcing positions may serve as a stepping stone for individuals to acquire experience and develop skills in the workforce.<sup>25</sup> To make it clearer, several benefits can be given by the implementation of outsourcing for business owners, especially company users:<sup>26</sup>

1. Refining the Company's Core Focus: A company's primary objective is to focus on its core business operations and achieve success in its main area of expertise. However, managing all operations internally can divert the company's attention and resources away from its core business. By outsourcing non-core tasks, the company can free up its time and resources to concentrate on its primary objectives. This can result in increased productivity, efficiency, and competitiveness.
2. Financial Flexibility: Outsourcing helps companies save on their capital funds, as they do not need to invest in setting up and maintaining an in-house team for specific tasks. The outsourcing company takes care of the expenses for recruitment, training, and infrastructure for the outsourced employees. This allows the user company to save money and invest it in more important areas of their business.
3. Operational Cost-Effectiveness: Outsourcing can help companies reduce operational costs in several ways. For

---

<sup>25</sup> T. Hartmann, *Temporary Agency Work in Germany and the Netherlands.* Thesis. (Tilburg: Tilburg University, 2012). p. 3.

<sup>26</sup> Nabiyla Risfa Izzati, "Improving Outsourcing System in Indonesia: Fixing the Gap of Labour Regulation," *Mimbar Hukum* 29, no. 3 (2018): p. 533.

example, outsourcing companies often have economies of scale and can provide services at a lower cost than the user company can provide in-house. Outsourcing can also help companies save on costs associated with benefits, taxes, and insurance for employees.

4. Resolving Labor Matters: Labor-related issues such as layoffs and severance pay can be a burden for companies. Outsourcing can provide a solution to these issues as the user company does not have an employment relationship with the outsourced workers. The outsourcing company is responsible for handling all labor matters related to its employees, which can provide peace of mind for the user company.

Besides the user company, the adoption of outsourcing as a form of "labor market flexibility" policy by the Indonesian government has brought several benefits to the side of the government, particularly during the economic crisis of 1997. This policy was implemented at the insistence of international organizations such as the International Monetary Fund (IMF) and the World Bank, who saw it as a requirement for granting financial assistance to the country.<sup>27</sup> Labor market flexibility refers to the ability of employers to hire and dismiss employees at will, as well as the option to delegate parts or the entirety of their operations to external entities. This approach reduces production costs and attracts foreign investments, making it a desirable strategy for many businesses.<sup>28</sup>

According to YasarIftida, the media's portrayal of outsourcing is negative, depicting it as a form of modern-day slavery. He argues that outsourcing fails to protect workers and often leads to wage cuts and precarious temporary employment. This has resulted in calls from workers to eliminate the outsourcing system.

---

<sup>27</sup> Tjandraningsih, Indrasari, Rina Herawati, and Suhamadi. *Diskriminatif dan Eksploitatif Praktek Kerja Kontrak Dan Outsourcing Buruh Di Sektor Industri Metal di Indonesia*. (Jakarta: AKATIGA-FSPMI-FES, 2010).

<sup>28</sup> Benny Hari Juliawan, "Extracting Labour From Its Owner: Private Employment Agencies and Labour Market Flexibility in Indonesia", *Critical Asian Studies*, 26, no. 1 (2010), p. 29.

The issue of outsourcing in Indonesia has become increasingly controversial due to its legalization under Labor Law No. 13 of 2003. Those in favour of outsourcing argue that it contributes to the growth of new businesses and creates employment opportunities. However, opponents argue that it undermines workers' rights and allows employers to exert greater control over industrial relations.

From a sociological and legal perspective, the legalization of outsourcing is problematic as it goes against the wishes of the majority of workers who desire improved working conditions and protection of their rights. Despite reforms aimed at creating a more open and democratic society, workers have not seen significant improvements in their rights and conditions. This is due to imbalances in the labor law system, including structural, substantive, and cultural obstacles, as well as financial barriers that hinder the government's ability to enforce labor laws and protect workers' rights. Additionally, employers are not providing sufficient job protection or employment conditions to their workers.

However, the bad impacts of the implementation of outsourcing especially towards workers, have been anticipated by the Indonesian Government through Manpower Law article 64 until 66. According to the Constitutional Court Decision, The Court acknowledges the fact that the 1945 Constitution serves as the guiding principles and foundation for normative policy, and if the role of the state as protector is not explicitly stated in the Labor Law, it is because the Law refers to the 1945 Constitution, which takes into account the balance of various interests, particularly the interests of workers and employers in the market economy mechanism. The interests of employers are also taken into consideration as their absence of investment would lead to a reduction in employment and an increase in unemployment, ultimately hurting the workers themselves. As such, the Court believes that Article 33 of the 1945 Constitution should not be interpreted as a rejection of the market economy system, and instead, the state should intervene when the market economy mechanism becomes distorted.

Regarding the Applicant' argument that the Labor Law views workers as mere commodities, the Court finds that the Applicant has failed to prove this contention as there are no provisions in the Law that support this argument. However, indeed outsourcing is specifically regulated in Articles 64-66 of the Act. These articles explain the existence and limitations of outsourcing, which is considered a supporting activity for the company as a whole that does not directly impact the production process. Because the working connection between the outsourced worker/ and the business providing the worker/labor services is with the company providing the worker/labor services, the employer may not use the worker/ in question to carry out the principal activities or activities connected to the production process.

The protection of outsourced workers are provided for in Article 66 paragraphs (1), (2) a, c and paragraph (4), which state that the workers from companies providing worker/labor services may not be used by the employer to carry out the principal activities or activities directly related to the production process and that the worker/labor service providers must meet the requirements stated in paragraph (2). If the provisions outlined in the article are not fulfilled, the status of the employment relationship between the worker and the company providing the worker/labor service shall be changed to an employment relationship between the worker and the company providing the work. If the company providing the worker/labor services is not a legal entity, the status of the employment relationship between the worker and the company providing the worker/labor services shall be changed to an employment relationship between the worker and the employer.

Therefore, the Court believes that the employment relationship between a worker and a service provider company that performs work for another company, as stipulated in Articles 64 - 66 of the Labor Law, shall receive the same employment protection and conditions as the employment protection and conditions of employment at the employer company or following the prevailing laws and regulations. Thus, the Applicant's arguments are not well-

founded, and the protection of workers' rights under the Labor Law does not constitute modern slavery in the production process.

Despite the provisions in the Manpower Law that guarantee workers the right to legal protection of their rights, the Court finds that employers' violations of certain provisions, such as Articles 55, 59(1), 61(1) and (3), 62, 65(2), are not met with criminal sanctions that would force employers to provide their workers with the proper labor rights. Furthermore, the testimony of two witnesses presented by the Applicant reveals that employers engage in practices, such as company lockouts and the obligation to pay minimal severance pay, to make savings and pressure workers to resign, and then offer employment opportunities under work agreements for a certain time that the witnesses referred to as contract workers, with conditions that are extremely detrimental to the workers, despite the workers' right to legal protection, supervision, and law enforcement.

The implementation of obligations for employers towards outsourced workers is clearly stated in Article 65 paragraph (4) of the Labor Law No. 13 of 2003. The article states that the protection and working conditions provided to outsourced workers must be at least equivalent to those provided to workers at the commissioning enterprise, and must comply with all relevant laws and regulations. This is an important aspect of labor law that is aimed at ensuring that workers in outsourced relationships are not treated unfairly or unjustly.

According to DjokoTriyanto, work protection encompasses a wide range of factors that are crucial for ensuring the well-being of workers. This includes physical protection, which encompasses measures aimed at preventing workplace accidents and ensuring workers' health and safety. It also includes the preservation of work morale and treatment in line with human dignity, morality, and religion.

Labor Law No. 13 of 2003 outlines some employment protections for workers in outsourced relationships. These protections are designed to ensure that workers in outsourced relationships are not disadvantaged in any way and can enjoy the

same rights and benefits as workers in traditional employment relationships. Some of the key employment protections outlined in the law include the right to equal opportunity and treatment without discrimination, the right to improve job competency through training, equal rights and opportunities to choose, obtain, or move to another job, certainty in the employment relationship, the right to work, rest, leave, overtime, and overtime wages, protection of health and safety, and the right to death insurance from accidents, rights relating to wages, social security, and welfare, the right to form and join a trade union, the right to strike, and the right to receive severance pay after dismissal.

Although these employment protections are outlined in the law, it is important to note that their enforcement and implementation can be difficult, particularly in a country like Indonesia where there may be inconsistencies in the labor law system, structural and substantive enforcement barriers, and cultural and financial barriers that can restrict workers' ability to fully exercise their rights.<sup>29</sup>

---

<sup>29</sup> Furthermore, while employment protections for workers, including child labor regulations, are codified in the legal framework of many countries, their effective enforcement and implementation can be a formidable challenge. In the case of Indonesia, several factors contribute to these difficulties. First, there are inconsistencies within the labor law system, resulting in fragmented oversight and enforcement responsibilities, leading to gaps and ambiguities in protecting workers, especially children. Second, structural and substantive barriers, such as inadequate resources, limited labor inspections, and lax penalties for violators, hinder the government's ability to monitor and enforce labor laws effectively. Third, cultural and financial barriers can be significant, as families facing economic hardship or influenced by traditional norms may prioritize immediate financial needs over workers' rights, making it difficult for workers, including children, to exercise their legal protections fully. These challenges highlight the need for comprehensive and coordinated efforts by government, civil society, and international organizations to ensure the effective implementation of labor laws and protect workers' rights in such complex environments. *See also* Errika Putri Anggriani, "Policy on Reducing Child Labor as the Elimination of the Worst Forms of Child Labor". *Unnes Law Journal* 6, no. 1 (2020): 1-20; Nabiyla Risfa Izzati, "New Direction of Indonesian Migrant Workers Protection through the Law Number 18 of 2017 and Its Implementation Challenges". *Padjadjaran Jurnal Ilmu Hukum* 6, no. 1 (2019): 190-210; Andry Harijanto, Siti Hatikasari, and



However, by ensuring that the obligations of employers towards outsourced workers are clearly stated and protected in law, it is possible to create a fairer and more equitable system for workers in outsourced relationships.

## CONSTITUTIONAL COURT DECISION NO. 27/PUU-IX/2011: BALANCING PROTECTION AND EFFICIENCY FOR OUTSOURCING WORKERS IN INDONESIA

### *Judicial (re)review of Articles 59 & 64 of the Manpower Law*

Since the enactment of the Manpower Law, outsourcing can be legally conducted by companies in Indonesia.<sup>30</sup> The legality of that practice was reaffirmed by the Constitutional Court Decision No. 012/PUU-I/2003. However, apart from its adherence to the 1945 Constitution in principle, the reality of its practice unveils various problems. After seven years since the last Constitutional Court's outsourcing-related decision was issued, an attempt to re-review the outsourcing-related provisions in the Manpower Law was carried out, precisely on April 4<sup>th</sup> 2011.<sup>31</sup>

---

Juliet Musabula. "The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice." *Journal of Human Rights, Culture and Legal System* 2, no. 2 (2022): 100-112.

<sup>30</sup> 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 (2021), pp. 39-40. See also Tri Sulistiyono, Pratama Herlambang, Safari Chandra, Moch Fahmi Abdulaziz, and Nur Arissa Izzati binti Mohamad Roki. "Protection of Indonesian Migrant Workers in China: The Government's Role and Legal Aspects". *Lex Scientia Law Review* 6, no. 1 (2022): 93-120.

<sup>31</sup> See Constitutional Court Decision No. 012/PUU-I/2003

Didik Suprijadi, the head of *Aliansi Petugas Pembaca Meter Listrik Indonesia*—a non-governmental organization of alliance for electricity meter readers—submitted a judicial review application of Articles 59 and 64 of the Manpower Law before the Constitutional Court. For clarity, the former governs the conditions of employment agreement for a specified period, meanwhile the latter stipulates the legality of outsourcing practice. In their application, the applicant submitted that since the two aforementioned articles correlate with Articles 65 and 66 of the Manpower Law, if the Court finds them in their favour, all four articles shall be deemed unconstitutional.

Since outsourcing has never been formally practised in the model set within the Manpower Law, arguably previous judicial review was heavily based upon the theoretical assessment of how outsourcing will eventually lead to modern slavery.<sup>32</sup> In the 2011 proceedings, the review was more to analyze the legal loophole in the Manpower Law which causes the improper implementation of outsourcing—based upon eight years of practice—that bring eventually harms the outsourced workers' rights.<sup>33</sup> *In case*, the applicant argued that Articles 59, and 64 of the Manpower Law are inconsistent with Article 27 paragraph (2), 28D paragraph (2) and 33 paragraph (1) of the 1945 Constitution. Reasons for such assertions are presented below.

According to the applicant, outsourcing within the framework of an employment contract for a set amount of time causes businesses to consider employees just as a commodity in the industrial market.<sup>34</sup> The applicant argued that companies as the ones that hold capital would only utilize workers to gain utmost efficiency and terminate their contracts when no longer needed.<sup>35</sup> The assertion can be understood by the cost scheme, that is, employees' wages are one of the production costs. Accordingly, to keep their production costs low companies will be continuously using outsourced workers for a

---

<sup>32</sup> See Constitutional Court Decision No. 012/PUU-I/2003 at 19–20.

<sup>33</sup> See Constitutional Court Decision No. 27/PUU-IX/2011

<sup>34</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 7.

<sup>35</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 6.

specified period since the type of employment does not require user companies to pay for work allowance or to ensure the workers' job security – unlike permanent employment.

As illustrated above outsourced workers bound by employment agreements for a specified time have no assurance of job security since they will be constantly in need of another job the moment when their current job elapses. As such, outsourcing within the said scheme is inconsistent with Article 27 paragraph (2) of the 1945 Constitution that stipulates “**every citizen shall be entitled to work** and a living that is decent for humanity” (emphasize added); Article 28D paragraph (2) that governs “Every person shall be entitled to work as well as to obtain reward and just and decent treatment in work relationship” because the articles guarantee the constitutional right of decent job owed to every Indonesian meanwhile the temporary (contract) outsourced workers are not assured of it, notwithstanding government's obligation to fulfill such a right.<sup>36</sup> Moreover, the practice of outsourcing within the employment agreement for a specified period was claimed to be inconsistent with Article 33 paragraph (1) of the 1945 Constitution which upheld the principle of kinship in economic development.

In response to the applicant's claim, the government representative argued otherwise. According to them, outsourcing in the employment agreement for a specified period will open up opportunities for citizens to gain experience and skills.<sup>37</sup> When those formerly outsourced workers have acquired the desired skills, they will have a higher probability of being employed. The government representative also argued that the Constitutional Court shall not entertain the applicant's submission as the subject matter had been reviewed in Decision No. 012/PUU-I/2003, in other words, *ne bis in idem*.<sup>38</sup>

In addition, the People's Representative Council (Dewan Perwakilan Rakyat, hereinafter 'DPR') responded applicant's claim

---

<sup>36</sup> The 1945 Constitution of the Republic of Indonesia, art. 28(I) paragraph (4).

<sup>37</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 15.

<sup>38</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 26.

by arguing that the legal framework for employment agreements for a specified time is consistent with the constitution as it provides protections over those who work on that basis.<sup>39</sup> DPR was in the same view of the Government representative that this proceeding is *ne bis in idem*, hence the Court shall not further adjudicate this matter.<sup>40</sup>

After taking into account each party's argument, the Constitutional Court granted the applicant's request in part. The Court ruled in the applicant's favour concerning the employment agreement for a specified period for outsourced workers is conditionally inconsistent with the 1945 Constitution and, therefore, has no binding effect *if* such an employment agreement does not provide transfer of protection of rights for workers whose work object remains in place, despite the change of sub-contractor companies or company providing worker services.

The Constitutional Court determined in its judgement that outsourcing is reasonable for the corporation to perform for the benefit of efficiency,<sup>41</sup> however, the outsourced workers' rights shall also be protected firmly. In this vein, to avoid exploitation from companies over the outsourced workers, the Constitutional Court formulated a model to conduct outsourcing. **Firstly**, companies are suggested to use written employment agreements for an unspecified period as the basis of the outsourcing process. The alternative, **secondly**, if companies still demand workers for only a specified period, they are bound to apply the Transfer of Undertaking Protection of Employment (TUPE) principle. This principle aims to protect outsourcing workers' job continuity if changes in the outsourcing companies—those that provide workers to the principal/user company—are made. The moment when the principal companies change their outsourcing firm, the new outsourcing companies shall continue the former employment agreement. By doing so, the outsourced workers will not be worried about their job security.

---

<sup>39</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 30.

<sup>40</sup> See Constitutional Court Decision No. 27/PUU-IX/2011 at 31.

### *Commentaries on the Decision No. 27/PUU-IX/2011*

Having described the judicial review of outsourcing provisions in Decision No. 27/PUU-IX/2011, the authors will now analyze the abovementioned decision in two parts; substantive and procedural. This analysis is important for one main reason; the Constitutional Court seems to alter its standing from the previous decision in 2003, making it crucial to assess such an altercation. The 2003 decision does not take any stance opposing the practice of outsourcing, instead, declaring it unconditionally constitutional. Due to the existence of the Constitutional Court's formulation of the outsourcing model, the ruling in the 2011 Decision suggests that the outsourcing provision is conditionally constitutional. It is a small, but fundamental change. According to the previous decision, outsourcing will be constitutional regardless of the companies' model of implementation. Meanwhile in the latest decision, if the companies do not obey the Constitutional Court's formulation, outsourcing will be unconstitutional.

**Firstly**, on substantive grounds. The 2011 decision is inevitably filling the gap that existed in the Manpower Law regarding outsourcing practices. This is evident from the formulation of the outsourcing model as mentioned above which strengthens the protection of outsourced workers' rights. Analyzing the Manpower Law closely, there are strict rules on how outsourcing shall be carried out by companies. One of which pertains the outsourcing that may be carried out through a written employment agreement, for a specified *or* unspecified period. If companies use the former, they must follow the provisions under Article 59 of the Manpower Law, which requires companies to only use it as a basis of employment contract if the jobs are temporary in character. The instances of jobs of that kind may include one-off jobs; or those works that require no longer than three years of completion; or seasonal works; or jobs related to newly explored additional products or activities.<sup>42</sup> The issues that arise from such an option are as follows:

---

<sup>42</sup> See Law No. 13 of 2003 concerning Manpower (Indonesian Labor Law), art. 59.

1. Outsourcing companies will more likely use the agreement for a specified time. Because companies are in principle profit-oriented, they will cut any costs if it is reduceable to spend less yet gain more benefits. Employing people permanently would attribute the outsourcing company's responsibility to take into account employees' tenure for the amount of wage the employees are entitled to, meaning that the more years employees work for the company, the more wage shall be considered to be given raised. It is following with Article 92 of the Manpower Law which governs that "**Entrepreneurs shall formulate the structure and scales of wages by taking into account** the functional and structural positions and ranks, the occupation, **years of work**, education and competence of the workers." (Original in Indonesian, translated and emphasized by authors). Due to the different basis of employment agreements, contract workers will inevitably spend fewer years in the companies compared to the permanent ones, thereby, companies will give a smaller number of wages to the former. Connecting this fact to the outsourcing basis option, most likely outsourcing companies will use a scheme of specified time as costs are arguably reduced. On the employee side, such a circumstance ultimately harms them as they will be trapped in an endless cycle of being contract employees.
2. In an outsourcing scheme, the industrial relation only exists between the outsourcing workers with the outsourcing companies, not with the user/principal companies.<sup>43</sup> Consequently, the responsibility to fulfil the outsourced workers' welfare lies with the outsourcing companies. User companies on the other hand will freely utilize the manpower provided to them, by just conducting outsourcing agreements with relatively a lot cheaper costs. Such an illustration shows that outsourcing, unfortunately, triggers user companies to exploit the manpower by way of changing the outsourcing

---

<sup>43</sup> See Indonesian Labor Law, art. 65 paragraph (5); 66 paragraph (2).



companies on the same basis as well when the outsourcing agreement with the former companies is elapsed.

3. For the reason mentioned above, the options provided in the Manpower Law have enabled companies to change outsourcing companies whenever the outsourcing agreement has ended. On the one hand, no disadvantage is suffered by the outsourcing company as they can end their employment agreement with the workers as it is for a specified time. On the other hand, the user/principal companies are also free of any harm since they can change the outsourcing companies continuously. Outsourced workers are the only ones who suffer in this situation, as they must eventually find jobs where their welfare is likewise not assured. Besides, they do not necessarily gain an advantage in bargaining positions as likely their years of working are not worth being considered in the job application.

At the very least, the Constitutional Court's definition ensures that both outsourcing and user/principal corporations will not exploit outsourced workers due to a legal vulnerability in the Manpower Law. Given the fact that outsourcing companies are encouraged to use written employment agreements for unspecified periods, outsourcing workers will no longer be paranoid about their job security. It is worth noting that the first model proposed by the Constitutional Court is merely a "suggestion", thus the outsourcing companies do have the option to still use employment agreements for a specified period. In that condition, the TUPE principle applies to restraining the user companies from effortlessly changing the outsourcing companies as a means to gain efficiency without respecting the workers' constitutional rights. As such, the Constitutional Court has safeguarded the companies from exploiting workers, while simultaneously filling the gap within the outsourcing-related provisions in the Manpower Law.

Secondly, on procedural grounds, Decision No. 27/PUU-IX/2011 seems to provide better conditions for outsourced workers by

adding some mechanism to safeguard the ideal practice of outsourcing. While doing so, the Constitutional Court changed its stance from ‘constitutional’—in Decision No. 012/PUU-I/2003—to ‘conditionally unconstitutional’ in the 2011 decision. Small yet fundamental changes have been made. Conditionally unconstitutional ruling provides several conditions for a norm in legislation to be constitutional. In this regard, outsourcing might not be constitutional if it is conducted not in conformity with the conditions set out in the 2011 decision.

Albeit arguably formulating better protection, the decision made in 2011 is odd from a procedural view. In the aforementioned decision, the court did not explain why in the first place the re-review of Articles 54 and 64 of the Manpower Law is permissible while had been examined back in 2003. To provide a clear illustration of both judicial review cases, a comparison table is presented below. On notes, in the 2003 decision, as the application includes arguments on many parts of the Manpower Law, authors only insert the ones related to outsourcing provision.

**TABLE 1** Comparison between the 2003 and 2011 Decision

| Case | Constitutionality Benchmark   | Main Argument of the Applicant   | Constitutional Court Decision  |
|------|---|--|--|
| 2003 | Article 27 paragraph (2) and 33 paragraph (1) of the 1945 Constitution. | The applicant argued that the <b>core provision of Manpower Law</b> —this shall be interpreted including outsourcing— has abolished job security and created a flexible labor market. Specifically for the outsourcing provider, the applicant argued that such a provision only places the outsourced workers as a production factor, thereby leading to modern slavery because companies tend to minimize costs, including | Other than Article 158, 159, 160 paragraph (1), 170, 171, and 186 of the Manpower Law, no provision (including outsourcing) is unconstitutional. |

| Case | Constitutionality Benchmark   | Main Argument of the Applicant  | Constitutional Court Decision   |
|------|---|---|---|
|      |   | production costs, therefore workers will be deemed as a commodity.  |   |
| 2011 | Article 27 paragraph (2), 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution | Outsourcing based on employment agreements for a specified period abolishes workers' job security. Workers are trapped in the continuous cycle to be employed as non-permanent workers; this leads to modern slavery. | The phrase "employment agreement for a specified period" within Articles 65 and 66 of the Manpower Law is conditionally unconstitutional. |

Outsourcing-related provisions, as well as application arguments, have been reviewed in the table above using nearly the same constitutionality benchmark. The government and DPR representatives in the proceeding submitted to the Court that this case *ne bis in idem*.

The issue of re-examination in judicial review is a crucial one. The 1945 Constitution has affirmed that the Constitutional Court is the last resort for justice seekers to examine the constitutionality of legislation,<sup>44</sup> rendering Constitutional Court's decisions final and binding. Final means that the decision is not subject to appeal, while binding means that it owes an obligation to every Indonesian to adhere to the decision. According to the aforementioned, Article 60 of Law No. 7 Year 2020 *j.o* Law No. 24 the year 2003 concerning Constitutional Court rules that it is prohibited to apply for judicial review if the subject matter—Article, paragraph, and/or part of the law/legislation—has been examined prior. Based on that article, the Constitutional Court shall not entertain an application of judicial review if the subject matter has been examined in the previous judgement. One exception may apply; the benchmark must differ from the previous review as governed in Article 60 paragraphs (2) of the Law Concerning Constitutional Court. However, in the 2011

<sup>44</sup> See The 1945 Constitution of the Republic of Indonesia, art. 24C paragraph (1).

judgement, the constitutional court did not mention the reason why the case is admissible despite having the subject matter reviewed in 2003. The Constitutional Court referred to the previous judgement when determining the case at hand.

Although the Constitutional Court's decision is final and binding, it shall not be interpreted that the Court cannot change its standing on a particular matter. Yet if the Court seeks to do so, a strong and fundamental argument shall be elaborated. This is connected to the duty of the Constitutional Court to provide legal certainty in each decision it makes. Ergo, every change made—especially when it comes to a stance on the same subject matter and benchmark—will undermine the certainty that it should have provided.

To put into perspective, the authors are of the view that the Constitutional Court Decision in 2011 is significant in protecting the outsourced workers' rights, but it does not mean that the Court shall abandon the procedural rules, made to safeguard the interest of all. What the Constitutional Court is lacking in such a decision is the Constitutional Court's justice's adherence to its very own code of conduct known as "*Sapta Karsa Utama*", specifically to maintain accuracy embodied in the sixth principle of the said code of conduct.

## OUTSOURCING IN THE GLOBAL PERSPECTIVE: A COMPARATIVE FROM BRAZIL & VIETNAM LAW

As outsourcing has also been practiced in other parts of the world, it is important to analyze the way it is carried out to understand the balance formulation of gaining business efficiency yet at the same time ensuring the workers' protection. In this part, authors will focus on the implementation of outsourcing in Brazil and Vietnam. The two states are growing in term of industrialization, which has similar conditions with Indonesia.

The adoption of an outsourcing work system In Brazil can be traced back to 1967.<sup>45</sup> This progression was significantly influenced by the decision to align contracts with the stipulations of Decree-Law No. 200/67, Art. 10, paragraph 7. This decree underscores that administrative functions should prioritize managerial activities over operational tasks. Such directives catalyzed a substantial increase in the engagement of outsourced personnel, particularly within IT services in public administration.<sup>46</sup>

In Brazil's legislative landscape, the concept of outsourcing was initially recognized exclusively within governmental bodies, without delineating provisions for its legality in private sector enterprises. This legislative void presented significant complications in legal disputes initiated by workers perceived to be outsourced. Central to such disputes was the determination of the legitimate employer: the contracting entity or the recipient of the service. The resolution of this query delineated which organization bore the responsibility for adhering to Brazilian labor stipulations concerning the outsourced worker's compensation, benefits, and employment safeguards.<sup>47</sup>

In 1986, the Superior Labor Court issued Enunciado 256, a one-paragraph precedent stating that the Court understood the practice of outsourcing to be restricted except in instances approved by legislation, in response to disputes concerning third contracting party.<sup>48</sup>

---

<sup>45</sup> Decree-Law No 200/67 Regarding the Organisation of the Federal Administration, Establishes Guidelines for Administrative Reform and Other Measures.

<sup>46</sup> Graziela Ferreira Guarda, Edgard Costa Oliveira, and Rafael Timóteo De Sousa Júnior, "Analysis of IT Outsourcing Contracts at the TCU (Federal Court of Accounts) and of the Legislation That Governs These Contracts in the Brazilian Federal Public Administration," *Journal of Information Systems and Technology Management* 12, no. 1 (2015), p. 82.

<sup>47</sup> Mayara Felix, and Michael B. Wong. *Labor market consequences of domestic outsourcing: Evidence from legalization in Brazil*. Working Paper, 2021, p. 6.

<sup>48</sup> Filipe Augusto Silveira De Souza, Ana Heloisa Da Costa Lemos, and Pontifícia Universidade Católica do Rio de Janeiro, Brazil, "Terceirização e Resistência No Brasil: O Projeto de Lei n. 4.330/04 e a Ação Dos Atores Coletivos," *Cadernos EBAPE.BR* 14, no. 4 (2016): 1035–1053.

Nonetheless, regional disparities in judges' opinions about the legitimacy of outsourcing remained. On December 17, 1993, the legality of the majority of outsourcing practices was finally established. After an unexpected chain of circumstances, the Superior Labor Court issued Súmula 331, a comprehensive precedent stating that any corporation may legally outsource any of its non-core services. From now on, as long as the worker's service was regarded as a non-core activity of the client firm, they would be regarded as legal employees of the intermediate firm.

In many corporate settings, companies frequently invoke Ordinance 331 as a legal shield, contending their outsourcing practices solely encompass non-core activities. This assertion becomes particularly contentious given the numerous instances of contractual defaults by outsourcing entities and the associated health risks, including fatalities, among outsourced personnel. In this context, the principal hiring entity remains insulated from liability, placing the onus entirely on the outsourced firm. Despite these challenges, the Brazilian Labor Court System maintained its proscription against the outsourcing of core business functions. However, this restriction did not impede the rapid proliferation of outsourcing, which became particularly evident in the 1990s and persisted through the subsequent decade.<sup>49</sup>

This marked surge in outsourcing in Brazil led to the introduction of Bill of Law 4,330/2004 by then-Congressman and entrepreneur Sandro Mabel. The legislative proposal sought a comprehensive elimination of existing restrictions on outsourcing, thereby allowing for all organizational functions, including the establishment of individual micro-businesses by company personnel. Furthermore, it sought to absolve hiring parties from joint and several liabilities. Several attempts to usher this bill through the Congress faced stiff opposition from labor unions, legal scholars, labor law organizations, and a significant majority of the TST justices, as evinced by their 2013 letter critiquing the bill. Among their primary

---

<sup>49</sup> Druck G, Filgueiras V. "The outsourcing epidemic and the responsibility of the STF". *Revista do TST* 80 (2014): 106-125



concerns was the bill's potential to significantly erode labor rights, resulting in diminished wages and benefits. Additionally, the justices noted the heightened health risks to outsourced personnel.<sup>50</sup>

In April 2015, following significant public protests and digital campaigns, Bill 4,330 was narrowly ratified in the House of Representatives by a margin of 230 to 203. The ongoing legislative discourse surrounding Bill 4,330 underscores the intrinsic linkage between the proliferation of outsourcing and the deterioration of labor conditions in Brazil. The socio-economic fragility of outsourced personnel in Brazil, as evidenced by multiple studies, denotes a heightened susceptibility to unchecked capitalistic practices and persistent labor exploitation.<sup>51</sup>

Endorsing such outsourcing practices in Brazil essentially amounts to the sanctioning and normalization of egregious labor exploitation, with workers facing severe health hazards and potential regressions to antiquated labor practices infringing upon basic human dignity.

Therefore, Indonesia's approach to outsourcing, though influenced by neoliberal principles, showcases a distinct stance. The Indonesian Constitutional Court remains unwavering in its principle that core business functions cannot be outsourced. Their Manpower Law articulates mechanisms that offer enhanced protection to outsourced personnel compared to Brazilian regulations. It's noteworthy that in 1993, the Brazilian Superior Labor Court (TST) had indeed issued policies restricting outsourcing in core business areas. However, subsequent revisions, influenced by private sector pressures, altered this stance.

Likewise Indonesia and Brazil, Vietnam recognizes the type of employment through agency outsourcing. The regulation of such issue is set out in the principal labor statute and its subordinate regulations. The term used for describing outsourcing within Vietnam Labor Code is "Labor Dispatch" substantiated in Article 52 of the said law.

---

<sup>50</sup> Graça Druck, "Unrestrained Outsourcing in Brazil: More Precarization and Health Risks for Workers," *Cadernos de Saúde Pública* 32, no. 6 (2016), p. 3.

<sup>51</sup> Druck.

The dispatching agency is only permitted to dispatch employee for conditional business.<sup>52</sup> The scope of work is also restricted to only for certain types,<sup>53</sup> which is further listed in the Decree No. 55-2013-ND-CP (“Vietnam Decree on Labor Outsourcing”).<sup>54</sup> Furthermore, the dispatching agency is prohibited to employ for more than 12 months, indicating that outsourcing is applicable only for temporary manners. In fact, there are several ‘temporariness’ criteria needs to be satisfied for the principal employer to outsource employees as set out in Article 23 Vietnam Decree on Labor Outsourcing. For example, outsourcing can be carried out in the case where there is an abrupt surge in the need for labors over a specific time frame. Another permissible condition is where the employer is intended to replace female employee who at the time being take her maternity leave, or when the job requires an expert on specific technical ability.

Vietnam has showcase protective nuance towards its people with a detailed regulation on prohibition of conducting outsourcing if the principle employer does not reach agreement with the dispatching agency regarding the workers' compensation. In this sense, the principal employer and the dispatching agency shall have sublease contracts with provisions that as similar as possible to those signed by the employee and the agency itself.

Based on the foregoing, notwithstanding the fact that Vietnam legally allow the practice of outsourcing, the regulations of which manage to protect the employees from abuse of rights. The strict criteria on conducting outsourcing to be only temporary yet simultaneously ensure that this practice would not be misused. Unlike Indonesia where the first ever outsourcing law has many 'holes' when it comes to implementation, Vietnam law has a detailed rule which eventually minimizing the potential abuse. Indonesia needs to take several notes, especially on the issue of job criteria where

---

<sup>52</sup> Labour Code (No. 45/2019/QH14). (2019), art. 52 paragraph (1).

<sup>53</sup> Labour Code (No. 45/2019/QH14)., art. 52 paragraph (2).

<sup>54</sup> Decree Implementing Article 54.3 of the Labour Code on Licensing of Labour Outsourcing Activities, Payment of an Escrow Deposit, and Regulating the List of Jobs for Which Labour May Be Outsourced No. 55-2013-ND-CP (2013).

Vietnam strictly lists the permissible jobs with an outsourcing scheme, so outsourcing is purely conducted for the purpose of business efficiency, not manpower exploitation.

## NEW REGULATION ON OUTSOURCING: WHAT THE CONSTITUTIONAL COURT SHALL CONSIDER IN THE FUTURE JUDICIAL REVIEW?

The outsourcing regulation has now been updated by several new laws. At first, the Indonesian government issued the Job Creation Omnibus Law,<sup>55</sup> a controversial one since many view the law as not in conformity with the law-making procedural, apart from its substance that is not in favor of society's demands. The government has altered numerous labor-related regulations to make them flexible enough to facilitate easier corporate operations and ultimately draw in more investors and job opportunities.

Job Creation Law has changed the substance of outsourcing as unveiled within the Manpower Cluster. Regarding the employment agreement for a specified period, the Job Creation law has added one additional criterion *i.e.*, type of work that the nature or activities are not permanent. The said law, however, has abolished Articles 64, 65 and 66 paragraph (1) of the Manpower Law. The most important part claimed to be the protective provision, that is not included in the new job creation law is Article 65 paragraph (2) which states that:

“Work that may be handed over to the other enterprise as referred to under subsection (1) must meet the following requirements:

---

<sup>55</sup> Petra Mahy, “Indonesia’s Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments,” *Asian Journal of Comparative Law* 17, no. 1 (2022), p. 70.

- a. The work can be kept separate from the main [business] activity [of the enterprise that contracts the work to be other enterprises];
- b. The work is to be undertaken under either a direct or an indirect order from the [original] party commissioning the work;
- c. The work is an entirely auxiliary activity of the enterprise [that contracts the work to the other enterprise]; and
- d. The work [when pending completion while being contracted out to the other enterprise] does not directly inhibit [the] production process [of the enterprise that subcontracts the work to the other enterprise].” (Originally in Indonesian, translated by authors according to the International Labor Organization’s translation of Manpower Law)

As well as Article 66 paragraph (1) stipulates that: *“Workers/labors from enterprises that provide workers/labors’ service must not be utilized by employers to carry out their enterprises’ main activities or activities that are directly related to the production process except for auxiliary service activities or activities that are indirectly related to production process”*.

Although the formulation set out by the Constitutional Court in 2011 on the TUPE principle has been embodied in Article 66 paragraph (3) of the Job Creation Law, the abolishment of Articles 65 and 66 paragraph (1) has created a vital change: outsourcing can be carried out in every job, notwithstanding the nature of the jobs whether it is a core or auxiliary one.

The problem derived from the Job Creation Law has triggered many to submit judicial review applications to the Constitutional Court, which resulted in the Constitutional Court’s Decision No. 91/PUU-XVIII/2020. The said decision was issued on November 25<sup>th</sup>, 2021, which ruled that the making of job creation law is contrary to the 1945 Constitution and has no binding effect conditionally to the extent that it is not interpreted as “no improvement is made within 2 (two) years from the date this decision is pronounced.”

Almost a year later, exactly on December 30<sup>th</sup>, 2022, President Jokowi issued Government Regulation in Lieu No. 2 Year 2022, aimed to replace Job Creation Law. Regarding this, one shall recourse to the 1945 Constitution particularly Article 22 paragraph (1) which requires the issuance of government regulation in lieu of law can only be conducted in the circumstances where the compelling exigency exists. Contrarily the regulation is problematic since the threshold of exigency, believed by many, is not sufficiently met. However, as this article mainly focuses on outsourcing in the new Laws, the authors will not discuss the legality of such law’s issuance, rather analyzing the changes in outsourcing mechanisms made in the new regulations.

In the outsourcing-related provision, the said government regulation has brought back Article 64 of the Manpower Law with several changes:

- “(1) The company may hand over part of its work to another company under a written outsourcing agreement.
- (2) The Government determines the partial implementation of work as referred to in paragraph (1).
- (3) Further provisions regarding the determination of partial implementation of work as referred to in paragraph (2) shall be regulated in a Government Regulation.”

Articles 59, 65, and 66 remained the same as Job Creation Law. To picture a clearer comparison between the three legal instruments regarding outsourcing stipulation in Indonesia, a table is presented.

**TABLE 2** Comparison of Outsourcing Regulation in Manpower Law, Job Creation Law, and Government Regulation in lieu of Job Creation Law

| No | Matter                | Manpower Law | Job Creation Law   | Government Regulation in Lieu of Job Creation Law                          |
|----|-----------------------|--------------|--|--|
| 1  | Basis of the practice | Article 64   | Does not specifically stipulate the basis, but rather directly regulates | Article 64 with two additional paragraphs concerning the government’s role |

| No | Matter  | Manpower Law  | Job Creation Law  | Government Regulation in Lieu of Job Creation Law                               |
|----|---|---|---|---|
|    |   |   | the requirement of outsourcing  | in determining the partial implementation                                       |
| 2  | Type of Employment Agreement for Outsourcing Mechanism  | Written Employment Agreement for a Specified or Unspecified Period (Articles 65 and 66)                       | Written Employment Agreement for a specified or unspecified period (Article 66) | Written Employment Agreement for a specified or unspecified period (Article 66) |
| 3  | Job Criteria  | Work that is separate from the main business, entirely auxiliary, and does not inhibit the production process | No provision (abolished)  | No provision (abolished)  |
| 4  | The Responsible Actor of Outsourcing Workers' Welfare   | The outsourcing companies according to Article 65 paragraph (6) and Article 66 paragraph (2) letter a         | The outsourcing companies according to Article 66 paragraph (2)                 | The outsourcing companies according to Article 66 paragraph (2)                 |
| 5  | Transfer Protection Principle if the work is based upon Employment Agreement for a specified period | None  | Regulated under Article 66 Paragraph (3)  | Regulated Under Article 66 paragraph (3)  |



Based on the table above, correlating with the analysis explained in the commentaries 2011 decision commentary part in this article, it seems that the government wants to increase the number of outsourcing practices. Even when the TUPE principle is embodied in the new regulations, the job restriction requirement has been abolished. Such a legal framework will encourage companies to use outsourcing schemes rather than recruiting their employee, as the core business can be carried out by outsourced ones while still maintaining low costs as the responsibility of the outsourcing workers' wages and welfare is in the hands of the outsourcing companies. Therefore, user companies will be pushed to outsource more of their work to raise profits.

As per the job creation law, the Constitutional Court decided that the legislative process of that law is contrary to the 1945 Constitution. Consequently, since the Constitutional Court split material and formal judicial review cases, the question of the constitutionality of the unlimited outsourcing job criteria is to be determined later. However, the fact that the government has issued government regulation *in lieu* of job creation law, a material judicial review on that matter seems likely to happen. This is evident from the widespread protests from a society that could trigger them to submit a judicial review before the Constitutional Court.

Considering its previous judgements, the authors will address the important aspects that the Constitutional Courts shall consider. As mentioned earlier, Constitutional Court decisions shall provide legal certainty, and its previous judgement to the future case that has the same subject matter shall be coherent accordingly. Authors are in the view that the Constitutional Court shall recall its 2003 decisions on outsourcing, when it is inquired to determine the constitutionality of outsourcing practice based on the provision contained in Articles 65 and 66 of the Manpower Law, the Court states that:

"Considering that, based on the aforementioned provisions, **if the worker in question is found to be employed to carry out**

**core activities, there is no employment relationship with the company providing the worker/labor services,** and if the company providing the worker/labor services is not a legal entity, then by law the status of the employment relationship between the worker/laborer and the company providing the worker/labor services switches to an employment relationship between the worker/laborer and the company providing the work. Therefore, concerning **the necessary balance in the protection of employers, workers, and society in harmony, the arguments of the Applicant are not well-founded.**<sup>56</sup> (Original in Indonesian, translated and emphasized by Authors)

The Constitutional Court's stance as seen in the quote above seems to limit jobs is quite essential to protect workers from companies' exploitation. Indeed, the Court seeks harmony between actors involved in industrial relations. In doing so, it hinges upon the protections guaranteed in Articles 65 and 66 of the Manpower Law and the efficiency offered by the practice of outsourcing in general. Hence the Court was of the view that as long as the protection is there, the provision is constitutional. *A contrario*, as the limitation on the permissible job to be outsourced no longer exists, the outsourcing shall be deemed inconsistent with the 1945 Constitution.

The Constitutional Court also affirmed in the 2011 judgment that outsourcing is reasonable for business efficiency as long as it satisfied the criteria set out in Articles 65 and 66 of the Manpower Law. Furthermore, in assessing the potential loss of workers' job security and their constitutional rights, the Constitutional Court states that:

"For this reason, the Court must ensure that the working relationship between workers/laborers and **outsourcing companies that carry out outsourced work is carried out while still guaranteeing the protection of the rights of workers/laborers** and that **the use of the outsourcing model is not abused by companies only for the interests and profits of**

---

<sup>56</sup> Constitutional Court Decision No. 012/PUU-I/2003, 110.

**the company** without regard to, or even at the expense of, the rights of workers/laborers." (Original in Indonesian, translated and emphasized by authors)

Based on the foregoing, the Court was able to support outsourcing while respecting the constitutional rights of outsourced workers.

One also should keep in mind that the past practices, even when the job criteria were regulated in Manpower law, in practice outsourcing employees are often forced to outsource almost all types of work to the user companies. This suggests that more outsourcing practices will be carried out, and the workers' welfare will be more likely jeopardized. Furthermore, the lawmaker was at first in the view that the justified threshold of a company's efficiency is when outsourcing has protection over the workers. As seen in the government's representative argument in the 2003 judicial review, the argument was read:

"In the formulation of Article 65 of the Manpower Law, **protects workers by stipulating conditions that are intended to protect workers**. The stipulation of these conditions will ensure that the protection of workers who work under a contracting agreement will not receive lower rights than those who do not work under a contracting agreement." (Originally in Indonesian, translated and emphasized by Authors)

Similarly, the DPR's representative also advances the same argument "The formulation of Article 65 of the Manpower Law further regulates the conditions of work that can be carried out through work contracting agreements **as well as work protection and working conditions for workers and provides adequate protection for workers who work in work contracting companies**." (Originally in Indonesian, translated and emphasized by Authors)

As such, if the Constitutional Shall recourse to those considerations when adjudicating the constitutionality of outsourcing-related provisions, the new model shall be rendered unconstitutional. Indeed, the Court shall still be in the view of balancing companies' efficiency and the protection of outsourced workers' rights.

## CONCLUSION

The issue of manpower in Indonesia faced a new problem when the economic crisis hit back in 2003. The practice of outsourcing was introduced to create more efficiency for companies so that Indonesia will attract more foreign investment with the hope to improve its economic condition. The newly introduced manpower practice was subject to rejection by Indonesians by way of judicial review several times. In the first-time judicial review, the Court in the 2003 decision found that the protection over the outsourced workers is safeguarded within the Manpower Law. Having witnessed the reality of outsourcing practices, the 2011 Decision, apart from its procedural issue, has provided a firmer protection by introducing a formulation of the outsourcing model. For the foregoing reason, it can be concluded that the Constitutional Court seeks to formulate a balance weight between business efficiency and the protection of workers' constitutional rights. In the future judicial review, the Constitutional Court must stay in its standing and not let the protection loose.

## ACKNOWLEDGMENT

The authors would like to thank the Constitutional Court Republic of Indonesia, the Faculty of Law Universitas Udayana, Denpasar Indonesia, and the Tokyo International University, Japan.

## REFERENCES

- Ahn, Sanghoon, Kyoji Fukao and Keiko Ito. "The Impact of Outsourcing on the Japanese and South Korean Labor Markets: International Outsourcing of Intermediate Inputs and Assembly in East Asia". *CEI Working Paper Series* 260, no. 27 (Center for Economic Institutions, Institute of Economic Research, Hitotsubashi University, 2008). Available online <https://ideas.repec.org/p/hst/ghsdps/gd08-001.html>
- Anggriani, Errika Putri. "Policy on Reducing Child Labor as the Elimination of the Worst Forms of Child Labor". *Unnes Law Journal* 6, no. 1 (2020): 1-20. <https://doi.org/10.15294/ulj.v6i1.8222>
- Arifin, Saru. "Human Rights and Business: Human Rights Violations in the Outsourcing Industry in Modern Business Indonesia". *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 35-52. <https://doi.org/10.15294/jils.v6i1.45841>
- Budiarta, I Nyoman Putu. *Hukum Outsourcing*. (Malang: Setara Press, 2016).
- De Souza, Filipe Augusto Silveira, Ana Heloisa Da Costa Lemos, and Pontifícia Universidade Católica do Rio de Janeiro, Brazil, "Terceirização e Resistência No Brasil: O Projeto de Lei n. 4.330/04 e a Ação Dos Atores Coletivos," *Cadernos EBAPE.BR* 14, no. 4 (2016): 1035–1053, <https://doi.org/10.1590/1679-395153863>.
- Druck, Graça, and Filgueiras V. "The outsourcing epidemic and the responsibility of the STF". *Revista do TST* 80 (2014): 106-125.
- Druck, Graça. "Unrestrained Outsourcing in Brazil: More Precarization and Health Risks for Workers." *Cadernos de Saúde Pública* 32, no. 6 (2016): 1-9. <https://doi.org/10.1590/0102-311X00146315>
- Felix, Mayara, and Michael B. Wong. "Labor market consequences of domestic outsourcing: Evidence from legalization in Brazil". *Working Paper Institute Labor of Economics*, 2021.

- Fitriyaningrum, Julyatika. "Implementasi Sistem Alih Daya atau Outsourcing Dalam Mencapai Kesejahteraan Pekerja Indonesia Ditinjau dari Undang-Undang Nomor 13 Tahun 2003", *Indonesian State Law Review* 2, no. 1 (2019): 322-335. <https://doi.org/10.15294/islrev.v2i1.38448>
- Guarda, Graziela Ferreira, Edgard Costa Oliveira, and Rafael Timóteo De Sousa Júnior. "Analys of IT Outsourcing Contracts at the TCU (Federal Court of Accounts) and of the Legislation That Governs These Contracts in the Brazilian Federal Public Administration." *Journal of Information Systems and Technology Management* 12, no. 1 (2015): 81-106. <https://doi.org/10.4301/S1807-17752015000100005>
- Harijanto, Andry, Siti Hatikasari, and Juliet Musabula. "The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice." *Journal of Human Rights, Culture and Legal System* 2, no. 2 (2022): 100-112. <https://doi.org/10.53955/jhcls.v2i2.33>
- Hartmann, T. "Temporary Agency Work in Germany and the Netherlands". *Thesis*. (Tilburg: Tilburg University, 2012).
- Hidayah, Nur Putri, Quincy R. Cloet, and David Pradhan. "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights". *Bestuur* 9, no. 1 (2021): 68-76. <https://doi.org/10.20961/bestuur.v9i1.49252>
- Irawan, Andong Dony. "Status Hukum Outsourcing Pasca Putusan Mahkamah Konstitusi Perkara Nomor 27/PUU-IX/2011". *Arena Hukum* 12, no. 2 (2019): 253-273. <https://doi.org/10.21776/ub.arenahukum.2019.01202.3>.
- Izzati, Nabiyla Risfa. "Improving Outsourcing System in Indonesia: Fixing the Gap of Labor Regulation," *Mimbar Hukum* 29, no. 3 (2018): 528-541 <https://doi.org/10.22146/jmh.28372>
- Izzati, Nabiyla Risfa. "New Direction of Indonesian Migrant Workers Protection through the Law Number 18 of 2017 and Its Implementation Challenges". *Padjadjaran Jurnal Ilmu Hukum* 6, no. 1 (2019): 190-210. <https://doi.org/10.22304/pjih.v6n1.a10>
- Johan, Suwinto, and Luo Yuan Yuan. "What Does Financial Institution Termination of Employment Mean in Terms of Labor



- Law?". *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 1 (2023): 49-59. <https://doi.org/10.24090/volksgeist.v6i1.6372>
- Juliawan, Benny Hari. "Extracting Labor From Its Owner: Private Employment Agencies and Labor Market Flexibility in Indonesia". *Critical Asian Studies* 42, no. 1. (2010): 25-52. <https://doi.org/10.1080/14672710903537464>
- Mahy, Petra. "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labor Cluster of Amendments." *Asian Journal of Comparative Law* 17, no. 1 (2022): 51-75. <https://doi.org/10.1017/asjcl.2022.7>
- Nathan, Alnick. "Omnibus Law dan Fleksibilitas Pasar Tenaga Kerja di Indonesia: Perspektif Makro-Ekonomi dan Ketenagakerjaan." *INSIGHT* 1, no. 9 (2019): 3-28.
- Pambudi, Kukuh. "Quo Vadis Indonesian Labor Act: How Far the Protection for Labors?", *Journal of Law and Legal Reform* 2, no. 1 (2021). 591-602. <https://doi.org/10.15294/jllr.v2i4.48762>
- Republic of Indonesia. *Constitutional Court Decision Number 012/PUU-I/2003*. Available online at [https://www.mkri.id/public/content/persidangan/risalah/risalah\\_sidang\\_9095\\_perkara%20012-puu-i-2003.pdf](https://www.mkri.id/public/content/persidangan/risalah/risalah_sidang_9095_perkara%20012-puu-i-2003.pdf)
- Republic of Indonesia. *Constitutional Court Decision Number 27/PUU-IX/2011*. Available online at [https://www.bphn.go.id/data/documents/putusan\\_27-puu-ix-2011\\_\(ketenagakerjaan\)\(outsourcing\).pdf](https://www.bphn.go.id/data/documents/putusan_27-puu-ix-2011_(ketenagakerjaan)(outsourcing).pdf)
- Republic of Indonesia. Law No. 13 of 2003 on Manpower (Indonesian Labor Law). Available online at [https://jdih.kemnaker.go.id/asset/data\\_puue/UU\\_NO\\_13\\_Thn\\_2003.pdf](https://jdih.kemnaker.go.id/asset/data_puue/UU_NO_13_Thn_2003.pdf)
- Republic of Indonesia. *Law No. 6 of 2023 concerning Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Indonesian Job Creation Law)*.
- Republic of Indonesia. *The 1945 Constitution of the Republic of Indonesia*.
- Rodríguez, Juan Pablo, "The Politics of Neoliberalism in Latin America: Dynamics of Resilience and Contestation." *Sociology Compass* 15, No. 3 (2021): 1-31. <https://doi.org/10.1111/soc4.12854>

- Roux, Theunis and Fritz Siregar, "Trajectories of Curial Power: The Rise, Fall and Partial Rehabilitation of the Indonesian Constitutional Court", *Australian Journal of Asian Law* 16, no. 2 (2016): 1-21
- Setiadi, Wicipito. "Dukungan Politik Dalam Implementasi Putusan Mahkamah Konstitusi", *Jurnal Rechtsvinding* 2, no. 3 (2013): 295-313.
- Sitinjak, Humala. "Legal Issues on Outsourcing Company with Its Employee in Getting High Salary at PT Tiara Gada Pratama, Medan, Indonesia". *Global Journal of Politics and Law Research* 6, no. 2 (2018): 14-23. <https://doi.org/10.37745/gjplr.2013>
- Sonhaji, Sonhaji. "Tinjauan Terhadap Kesejahteraan Pekerja Alih Daya di Perusahaan Perbankan". *Administrative Law and Governance Journal* 4, no. 1 (2021): 38–50. <https://doi.org/10.14710/alj.v4i1.38%20-%2050>
- Stockhammer, Engelbert. "Post-Keynesian Macroeconomic Foundations for Comparative Political Economy," *Politics & Society* 50, no. 1 (2022): 158–159. <https://doi.org/10.1177/00323292211006562>.
- Sulistiyono, Tri, Pratama Herlambang, Dwi Pangestu Khoirunisa, and Ahmad Zaharuddin Sani Ahmad Sabri. "Strengthening the Role of Community in Improving the Quality of The Manpower." *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 123-140. <https://doi.org/10.15294/ijals.v4i1.53366>
- Sulistiyono, Tri, Pratama Herlambang, Safari Chandra, Moch Fahmi Abdulaziz, and Nur Arissa Izzati binti Mohamad Roki. "Protection of Indonesian Migrant Workers in China: The Government's Role and Legal Aspects". *Lex Scientia Law Review* 6, no. 1 (2022): 93-120. <https://doi.org/10.15294/lesrev.v6i1.55112>
- Sunaryo, Sidik. "The Philosophy of Social Injustice for All Indonesian Laborers Set Forth in Job Creation Law". *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 112-23. <https://doi.org/10.22219/ljih.v31i1.25330>

- Suryomenggolo, Jafar, and Indah Saptorini. *Kekuatan Sosial Serikat Buruh: Peraturan Baru dalam Perjuangan Menolak Outsourcing*. (Jakarta: Trade Union Rights Center Jakarta, 2007).
- Sutedi, Adrian. *Hukum Perburuhan*. (Jakarta: Sinar Grafika, 2011).
- Tjandra, Surya. "Labor Law and Development in Indonesia". *Dissertation*. (Leiden: Universiteit Leiden, 2016).
- Tjandraningsih, Indrasari, Rina Herawati, and Suhamadi. *Diskriminatif dan Eksploitatif Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia*. (Jakarta: AKATIGA-FSPMI-FES, 2010).
- Utomo, Nurrahman Aji. "Dinamika Hubungan Antara Pengujian Undang-Undang dengan Pembentukan Undang-Undang". *Jurnal Konstitusi* 12, no. 4 (2015): 825-845. <https://doi.org/10.31078/jk1248>
- Viet Nam. *Decree Implementing Article 54.3 of the Labor Code on Licensing of Labor Outsourcing Activities, Payment of an Escrow Deposit, and Regulating the List of Jobs for Which Labor May Be Outsourced No. 55-2013-ND-CP, 2013*.
- Viet Nam. *Labor Code (No. 45/2019/QH14), 2019*. Available online at [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=110469&p\\_count=13&p\\_classification=01](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110469&p_count=13&p_classification=01)
- Wijayanti, Asri. "Rights to The Freedom of The Trade Unions in The Constitution and Its Implementation". *International Journal of Applied Business and Economic Research* 15, no. 7 (2017): 107-115.
- Yusriadi, Haedar Akib and Andi Ihsan. "Bureaucratic Reform in Public Service: A Case Study on the One Stop-Integrated Service". *Mediterranean Journal of Social Sciences* 8, no. 2 (2017): 253-258. <http://dx.doi.org/10.5901/mjss.2017.v8n2p253>

# *Workers' rights should be a central focus of development.*

**Joseph Stiglitz**

## **Declaration of Conflicting Statements**

The author(s) stated that this work is original and has not been previously published in another journal or publication. The author(s) also declared that there is no conflict of interest in the publication of this article.

## **Funding Statement**

None

## **Open Data Statement**

All data and information in this article were available without any restriction

## **Reproducibility Statement**

The author(s) stated that reproducibility of this article should be based on the Copyrights notice of this Journal under license a Creative Commons Attribution 4.0 International (CC BY-SA 4.0).