



## THE DYNAMIC OF OUTSOURCING REGULATION WITHIN THE NATIONAL LEGAL FRAMEWORK (THE NEED FOR RECONCEPTUALIZATION OF PROTECTION FOR TEMPORARY WORKERS)

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### Abstract

*The dynamics of outsourcing regulation bring varied impacts, especially regarding the legal protection for outsourced workers, which has been gradually regulated through Law Number 11 of 2020 on Job Creation. However, the legal protection system for outsourced workers still presents unresolved issues, particularly the imperfect concept of TUPE (Transfer of Undertakings Protection of Employment), which is a consequence of the legal transplant concept. This study is a normative juridical research with a legislative approach. The results of this study indicate that there are several factors contributing to the incomplete implementation of the TUPE concept, namely the effects of a flexible labor market and the inconsistency of the state's role in providing legal protection. These issues become evident in the imperfect regulation of the TUPE concept.*

**Keywords:** *Outsourcing, Legal Protection, Indonesia*

### 1. INTRODUCTION

The workforce is a crucial factor in development, as it not only serves as the executor of development but also determines the success of it. The workforce, as the executor of development, must have their rights protected, obligations regulated, and their capabilities developed. According to Article 1 number (2) of Law No. 13 of 2003, the workforce refers to any person capable of performing work to produce goods and/or services, both for their own needs and for the society. The workforce itself includes civil servants, formal workers, and unemployed individuals. Anyone capable of performing work to produce goods and/or services, whether for their own needs or for the society, can include individuals who work and receive wages or compensation in other forms, as well as those who work independently without receiving wages or compensation. In other words, the concept of the workforce is broader than that of workers or laborers (Asri Wijayanti, 2009). The system of legal protection guaranteed by the state must be contextually present and should encompass the guarantees of certainty, justice, and usefulness.

These three guarantees need to be maximally pursued by the state in order to achieve the aspirations of governance. The significant task undertaken by the state needs to be implemented in various aspects of societal life, including in the field of labor. The labor system in Indonesia has undergone numerous dynamics, starting from before the era of independence., Reforms have been carried out both during and after the reform era. The adjustment of laws is intended to keep up with the changing times as a concrete manifestation of legal responsiveness to the realities on the ground, particularly in addressing issues of protection, welfare, and the balance of rights and obligations between workers and business owners. Vertical and horizontal conflicts are major issues in labor relations in Indonesia because both workers and business owners have their own interests. Therefore, the involvement of the state is necessary to mediate between the two parties. Juridically, labor regulations are governed by Law Number 13 of 2003 concerning Manpower, which simplifies the employment agreements into two types: Fixed-Term Employment Agreement (PKWT) and Permanent Employment Agreement (PKWTT).

These agreements reflect the models of employment relationships between workers and business owners. Apart from the two types of employment agreements mentioned above, the Manpower Law also accommodates outsourcing by companies as a response that aligns with market mechanisms and aims to create a more flexible labor market in Indonesia. In relation to outsourcing employment relationships, the dynamic business competition in the world has forced companies to concentrate on the sequence of processes or activities related to their core competencies in creating products and services. The logical consequence of this strategy is the decision of companies to delegate or hand over non-core processes to external parties through a system known as outsourcing (Richard T. Carson, 2012). Outsourcing has indeed been accommodated in Law Number 13 of 2003 concerning Manpower in Indonesia.

However, its regulations are written in a limited manner, specifically in Articles 64 to 66. It seems that the norms in these provisions still leave various problems unresolved. This is evidenced by two instances of judicial review submitted to the Constitutional Court by 37 labor unions protesting against the restrictive and biased nature of the outsourcing system. Both decisions are documented in Constitutional Court Decision Number 12/PUU-I/2003 and Constitutional Court Decision Number 27/PUU-IX/2011. These decisions have made significant contributions to labor law in Indonesia, particularly regarding outsourcing. In the Constitutional Court's considerations, the issues outlined by the Petitioners regarding the complex matter of outsourcing can be annulled through various means. First, by requiring that the employment agreement between workers and the company implementing outsourcing be in the form of a "permanent employment agreement" rather than a fixed-term employment agreement (PKWT). Second, by applying the principle of Transfer of Undertaking Protection of Employment (TUPE) to ensure the transfer of protective measures for workers employed by companies implementing outsourcing (Pertimbangan Mahkamah Konstitusi Nomor MK 27/PUU-IX/2011, 45 C.E.)

According to the Constitutional Court, the Transfer of Undertaking Protection principle involves the transfer of workers' rights from the company implementing outsourcing. Although it is regulated in the Manpower Law, there are several aspects that have been overlooked, such as the main rights and limitations on changing the contract from the old outsourcing agreement to the new one without altering the existing provisions in the contract without the consent of the relevant parties. Except for changes that increase benefits for workers due to increased work experience, other dimensions of rights and obligations that need to be comprehensively regulated are also essential. Despite the issuance of Presidential Regulation (Perppu) Number 2 of 2022 concerning Job Creation, it still does not comprehensively accommodate provisions in the field of outsourcing. The Perppu reintroduces Article 64, which contains norms that are not significantly supportive of protecting the rights of workers in the outsourcing sector. The scope of the Manpower Law is vast and overly complex. In terms of substance, the two provisions on outsourcing in the Manpower Law are no longer suitable to be upheld, and it is almost impossible to revise or add new regulations to the outsourcing provisions in the Manpower Law. This is because outsourcing regulates the relationships between the three parties involved: the user, the vendor, and the workers. Each party has interdependencies, including rights and obligations. This relationship is quite challenging, requiring detailed and clear regulations, accompanied by provisions on sanctions (as part of legal consequences) to achieve legal certainty and fairness for all parties involved.

Previous relevant research will serve as the basis for re-conceptualizing TUPE, thereby emphasizing the focus of this research, which is to propose an effective and equitable legal conceptual framework (rules). The ineffectiveness of the law in practice is indicated by some



experts who believe that one of the three other elements, namely legal structure, legal culture, and legal substance, may be lacking (Dian Tantri Cahyaningsih, 2020).

Based on the background description above, the research problem addressed in this study is as follows: Does the protective action arrangement contain legal protection rights (transfer of business protection) for outsourced workers with work agreements for a certain time in employment in Indonesia regarding the rights of workers in Indonesia Need to Reconceptualize?

## 2. IMPLEMENTATION METHOD

This research is a normative juridical study conducted by examining various applicable legislation and literature containing theoretical concepts, which are then linked to the issues to be discussed in this research (Irwansyah, 2021). The primary legal materials in this study are Law Number 13 of 2003 concerning Manpower, Law Number 21 of 2000 concerning Labor Unions, Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, and Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. Secondary legal materials used include Academic Texts and related Draft Laws, books, and scientific articles such as theses, dissertations, scientific journals, and relevant papers. The analytical descriptive technique is used for legal analysis, where the obtained data is analyzed descriptively by describing or depicting the data produced from the research in a systematic manner, providing meaningful explanations and drawing conclusions to answer the research problems.

## 3. RESULTS AND DISCUSSION

### 3.1 Dynamics of Outsourcing Arrangements in Indonesia

The current law is different from the future legal system, as the existing legal system undoubtedly contains elements from the past legal system, which are still recognized and applicable. On the other hand, the current legal system contains the seeds of the legal system that will be realized in the future. This is the subject of a distinct field in legal science called legal history. Therefore, the research on ratio legis will directly touch upon the origins or legal history within the framework of legislative products from the past to the present. Initially, the researcher will discuss the ratio legis regarding the delegation of certain job implementation to other companies within the legal reasoning. This will be followed by an exploration of the ratio legis behind the transfer of legal protection actions for outsourced workers, in order to obtain a comprehensive and complete understanding.

When viewed from the perspective of benefits, outsourcing has several advantages, including:

1. Focus on Main Business Line Competencies

By outsourcing, companies can focus on their core business. This can be achieved by updating strategies and restructuring existing resources. The company will benefit from focusing these resources on meeting customer needs and increasing company profits by redirecting non-core business support functions to outsourcing vendors.

2. Operational Cost Savings and Control

Handing over the management of their Human Resources (HR) to an outsourcing vendor occurs because the vendor can leverage the economics of scale in HR management.

3. Utilizing the Competence of Outsourcing Vendors

Due to their core business in providing and managing Human Resources (HR) services, outsourcing vendors have better resources and capabilities in this field compared to companies.

These capabilities are acquired through their experience in providing and managing HR for various companies. When entering into a partnership with a professional outsourcing vendor, companies can benefit by leveraging the vendor's expertise to provide and manage the necessary HR resources for the company.

4. Companies are Becoming Leaner and More Agile in Responding to the Market

Every company, whether big or small, inevitably has resource limitations. By outsourcing, companies can redirect these limited resources from non-core tasks that do not directly impact the company's revenue and profits to strategic core-business activities. This ultimately can enhance customer satisfaction, increase revenue, and improve company profitability.

5. Reduce Risk

By outsourcing, companies are able to employ fewer employees and select only those who are essential. This is one of the company's efforts to reduce the risk of uncertainty in future business. If the business situation is favorable and there is a need for more employees, this need can still be fulfilled through outsourcing.

6. Increasing Efficiency and Improving Non Core Business Works

Currently, many companies choose to outsource at least one non-core job for various reasons. They generally realize that tasks such as recruiting and contracting employees, calculating, and paying salaries, overtime and allowances, providing training, general administration, and ensuring compliance with regulations can be complex, time-consuming, mentally taxing, and require significant financial resources. The government, through this law, strives to provide legal protection both preventively by establishing specific provisions compared to Article 1601 of the Civil Code and by setting standards for legal protection for workers. Standards for legal protection are a set of rules or principles designed to safeguard human rights, social welfare, and the security of individuals or specific groups. Generally, provisions accommodating these standards include regulations concerning individual rights, law enforcement, protection mechanisms, including sanctions or penalties for violators. The aim is to ensure that the rights of individuals or specific groups are well protected and fulfilled while preventing human rights violations or harmful actions. On the other hand, regarding job contracting regulations, only three aspects are explicitly addressed in the minutes of the meeting, namely wage protection (Article 60), clarity limits of outsourced work (Article 59, points a-d), and work requirements (Article 65, paragraph 4)

Relationships of employment are categorized as fixed-term employment if the termination is not solely dependent on one party. If there is no agreement regarding the specified duration in the employment agreement, it can be concluded that the employment agreement is made for an indefinite period. However, determining whether an employment agreement is made for a fixed-term or indefinite period can be challenging in practice, especially if (Dian Tantri Cahyaningsih, 2020). If an employment agreement is made for a fixed-term, the termination of the agreement is typically subject to a notice of termination, If an employment agreement is made for a fixed-term, it may specify that the agreement can only be terminated on certain specified dates.

Payaman Simanjuntak defines Fixed-Term Employment Agreement (PKWT) as an agreement between the worker/employee and the employer to perform work that is expected to be completed within a short and limited period, not exceeding 2 years. The agreement can only be extended once, with the extension duration not exceeding the duration of the initial agreement, and the total duration of the agreement must not exceed three years. Furthermore, a one-year employment agreement can only be extended once, with a maximum extension duration of one year (Simanjuntak, 2009).



Indeed, as mentioned earlier, the Fixed-Term Employment Agreement (PKWT) model leaves gaps in the protection of workers/employees. This is because in the case of service providers, they can unilaterally terminate the contract with the justification that the employment agreement with the employer has expired, or the employing company may no longer use the services of the service provider. The outsourcing system in employment relationships has become an inevitable and widely growing necessity in line with global economic growth. Since the mid-1990s, the practice of outsourcing in many countries, especially in advanced countries such as Japan, the United Kingdom, Germany, the United States, and France, has spread rapidly. The economic sectors in these countries, particularly in the manufacturing and service industries such as banking, insurance, healthcare, transportation, and trade, have adopted outsourcing practices in their employment relationships (LIPI, n.d.).

The implementation of employment relationships through the outsourcing system in Indonesia initially started as part of the business facilitation incentives provided to companies operating in export processing zones. Such context is understood as an inevitable consequence of the progress of time, particularly in the business and industrial sectors. Business entities and service providers generally believe that, in the current context, companies cannot be directly involved in every step of production as they used to. Instead, they need to focus on their core business and improving their productivity. Therefore, they contract other agents to carry out less critical activities in which these intermediaries have specialized expertise.

Throughout the world, there are many criticisms of outsourcing/subcontracting, claiming that this phenomenon damages working conditions, reduces wages, increases workplace accidents, and so on. Numerous studies conducted in many countries have shown that these accusations are indeed true. However, even when they are engaged in serious struggles against the consequences, critics of outsourcing/subcontracting tend to use the same conceptual understanding as those who defend this management strategy. For example, some writers have shown that the disadvantages associated with outsourcing/subcontracting, such as wage reduction and poor working conditions, are largely caused by unethical practices or abuse by companies. They argue that these issues are not inherent problems of outsourcing/subcontracting itself, but rather related to non-compliance with fair labor rules and adequate worker protection. In this regard, they advocate the need for stricter oversight and regulation of outsourcing/subcontracting practices to protect workers' rights.

On the other hand, proponents of outsourcing/subcontracting argue that this practice brings economic benefits such as cost efficiency, access to specialization and technology, and flexibility in managing the workforce. They argue that these advantages can enhance economic growth and provide broader employment opportunities. In this debate, it is important to consider the context, regulations, and implementation of outsourcing/subcontracting practices. While criticism of its negative impacts cannot be ignored, there are also benefits that can be obtained if these practices are properly managed and within a fair framework to protect workers' rights: (Ursula, Podro, 2012)

“radical changes to the structure of employment in the UK, notably in the form of a sectoral shift from the traditional sector (including manufacturing and the public sector) to the business services sector as service activities are separated from their original arrangements and transferred to companies in other countries. part of the economy. Then There are many reasons why employers choose to outsource services including the ability to focus on core functions and to access specialist services, but the desire to reduce costs is often a key consideration. The demand for lower cost services is passed on to successful suppliers who must meet service quality targets within the agreed contract price, while ensuring that their business model remains profitable. There are

various strategies suppliers use to achieve this, including: wage caps; reducing the size of the workforce and providing the same services but with fewer employees; or hire fewer regular employees and use outsourced workers instead”

Based on the description above, business entities create two contradictory opportunities, with the initial intention of improving efficiency and productivity of the company, but on the other hand, they also desire to reduce costs and save as much as possible on support activities. This issue is managed differently in many European countries in order to generate profit. However, for certainty and protection, the presence of the state is necessary to provide guarantees for workers. The above description is an inseparable part of the inevitability that arises from radical changes in the business world, referred to as the phenomenon of flexible labor markets. This phenomenon arises due to the concepts and policies developed by capital to minimize the risks of entrepreneurship that emerge from economic turbulence. As global economic disruptions occur more frequently, impacting various parts of the world, the following will be systematically and structurally explained to form reasoning and arguments for the need to transfer legal protection measures for outsourced workers.

### **3.2 The Presence of The TUPE Concept in Indonesia**

Initially, the principle of transfer of undertaking has come under increasing scrutiny, not only in terms of technical principles but also in its philosophical foundation. The main question revolves around the central rights in the contract and other rights contained in the agreement that are enjoyed by employees and need to be respected by the new employer, who may not even wish to continue employing the existing employees, let alone under the same terms and conditions they previously enjoyed (Fang Lee Cooke, Jill Earnshaw, 2004). In other words, the new employer cannot enforce certain rules and regulations that they typically apply to their own employees before the transfer took place. However, despite the initial acquisition of this principle by the European Union in 1977 through the Rights Directive, it was further implemented by the UK government in the form of the (Protection of Employment) Regulations 1981, known as TUPE. The purpose of TUPE is to provide protection for employees when their work is transferred to a new employer.

Specifically, TUPE allows for consultation with transferred employees and preserves their pre-transfer terms and conditions of employment, with the exception of pension rights. This means that not all aspects of employee protection are facilitated under TUPE. For example, in the UK, TUPE excludes the implementation of pension rights. In the presented legal considerations, it can be observed that the principle of Transfer of Undertakings (TUPE) serves to ensure the continuity of employment relationships and the same terms and conditions of work for workers, including recognition of their length of service and appropriate benefits based on their work experience. TUPE is regarded as a principle that protects workers' rights, affirming that when a company undergoes a change of ownership or is transferred to an outsourcing company, the workers' length of service is still calculated and acknowledged by the new outsourcing company, with the same compensation. However, the application of TUPE is implemented in the context of fixed-term employment agreements (PKWT).

The TUPE clause should provide benefits for workers. There are two types of transfers protected by TUPE, namely business transfers, and service provision changes. According to the Constitutional Court, the application of the TUPE principle to companies engaged in outsourcing work will have legal consequences for various matters, including: (Kadek Agus Sudiawaran, 2015)

1. Regarding wage protection, welfare, and employment conditions.



2. Workers must still receive protection for their rights as employees when a company is taken over by another company (acquisition of the company).
3. Protection for workers in the event of a change of outsourcing companies to continue their existing employment contracts.
4. Outsourced workers who are terminated due to a change in the service provider company can file a lawsuit based on this matter to the Industrial Relations Court as a dispute of rights.

The decision of the Constitutional Court was overturned in the implementing regulations. At least two regulations were issued in 2012 and 2013, one year after the Constitutional Court decided to provide two alternative models of legal protection for workers.

### 3.3 The Need for TUPE Reconceptualization in Indonesia

Spicker (Suharto, 1997) It is argued that a welfare state can be defined as a social welfare system that gives a larger role to the state (government) in allocating a portion of public funds to ensure the fulfillment of the basic needs of its citizens. Meanwhile, Husodo states that a welfare state can be briefly defined as a state where the government is considered responsible for guaranteeing minimum standards of living welfare for every citizen. Esping-Anderson (Triwibowo & Bahagijo, 2006; 9), A welfare state essentially refers to the active role of the state in managing and organizing the economy, which includes the responsibility of the state to ensure the availability of basic welfare services to a certain extent for its citizens. Generally, a country can be classified as a welfare state if it has four main pillars, namely: (1) social citizenship; (2) full democracy; (3) modern industrial relation systems; and (4) rights to education and the expansion of modern mass education systems. These four pillars are possible in a welfare state because the state treats the implementation of social policies as the granting of social rights to its citizens. These social rights are guaranteed similar to property rights, cannot be violated (inviolable), and are granted based on citizenship rather than performance or class basis.

In this context, it can be said that the state has the task of: (a) controlling and regulating anti-social manifestations of power that are in conflict with each other, so as not to become antagonistic and harmful; and (b) organizing and integrating human activities and groups towards the achievement of the goals of the entire society. The state determines how the activities of social associations are harmonized with each other and directed towards national goals. This control is carried out based on the legal system and through the government and all its apparatus. The state's power has the strongest and most organized organization, therefore all groups or associations that seek power must be able to position themselves within this framework.

In the discourse of democracy, as outlined by TH Marshall (1977), the establishment of a welfare state is one of the essential pillars of a democratic state. Therefore, there is no democracy without the fulfillment of social rights for every citizen. In other words, the fulfillment of social rights by the citizens is inherent as the responsibility of a democratic state. The concept of democracy in this context cannot be reduced solely to the procedural arrangement of political rules for selecting public officials. The fulfillment of social rights for the citizens is in line with the substantive democratic goal of providing a decent standard of social life for the community, enabling them to exercise their civil and political rights fully. The fundamental purpose of prioritizing the principles of social rights is to enable citizens to fully actualize their potential and protect them from processes of structural impoverishment. (Jhon Myles & Jill Quadagno, 2002)

Acceptance of government coercion by the coerced can serve the self interest of the latter in only one of two circumstances: (1) where the coerced fear that they will not otherwise make decisions that really serve their best interests and (2) where acceptance by the individuals of rules circumscribing their own conduct is a prerequisite for adoption of rules coercing others. (William J. Baumol, n.d.)

The re-conceptualization of TUPE in Indonesia seems inevitable, as this concept is essentially a legal transplant from European states. Additionally, there are several reasons that can serve as the basis for re-conceptualizing TUPE, including the following:

1. Flexible Labor Market Phenomenon

Currently, the state tends to reduce its role and responsibility in terms of citizen welfare, as reflected in the decrease in budget allocated to state responsibilities in this regard. Additionally, state regulations governing the market are diminishing, leading to the labor market and welfare provision being predominantly handled by market mechanisms themselves. The interaction between capital owners and workers or job seekers is considered a key factor in employment relations at the company level, and labor market flexibility is believed to have a positive impact on economic growth and social justice (Kadek Agus Sudiawaran, 2015). Hence, flexibility has become the main operational mode for capital in many sectors. (Jhon Rapley, n.d.)

The elimination of regulations that restrict and hinder the actions of economic actors is seen as a result of the culmination of the global capitalist system after the dissolution of the Soviet Union, which was seen as the antithesis of capitalism. As a result, the international world market desires a freely regulated market, where unrestricted interactions between employers (users of labor) and workers (employees or job seekers) are seen as a necessary condition for economic growth. With an absolute free-market system, a competitive environment is expected to emerge, promoting rational utilization of resources. The argument put forth suggests that by removing regulations and allowing unrestricted market interactions, the economy can achieve optimal efficiency and productivity. Proponents of this perspective believe that when employers have the freedom to hire and utilize labor without significant constraints, they can make rational decisions based on market forces, leading to economic growth and increased competition.

However, it is important to note that the concept of a completely free and unregulated market is a subject of debate. Critics argue that unregulated markets can lead to exploitative labor practices, income inequality, and other social and economic issues. Balancing the need for a competitive market environment with safeguards for workers' rights and welfare remains a complex challenge for policymakers and societies at large (Islam, 2001).

2. State Inconsistency in Providing Legal Protection for Workers

The described dilemma highlights the involvement of the government in managing the flow of flexible labor markets to meet societal expectations. However, it is challenging to effectively control and regulate these markets in practice. This is evident in the varying interpretations of the regulations, with each company having its own understanding and often disregarding the imposed limitations in favor of work flexibility. Furthermore, labor organizations typically represent a group of permanent employees within a company, rather than workers with non-permanent (flexible) status. This leaves flexible workers who are not integrated into labor unions and lack adequate economic resources to navigate the legal processes and face unemployment threats. In such circumstances, choosing to overlook violations may seem like the most rational option for these workers.





This highlights the power dynamics and vulnerabilities that exist within flexible labor markets. Workers in precarious employment situations often face challenges in asserting their rights and protecting their interests. The economic and social disparities between permanent and flexible workers can exacerbate these issues, making it difficult for flexible workers to engage in collective action or seek legal recourse. Addressing these challenges requires comprehensive measures that go beyond mere regulations. It involves creating a supportive environment for all workers, ensuring access to legal protections, promoting social dialogue, and addressing income disparities and job insecurity.

The mentioned issue can indeed be addressed through the commitment of the state to provide legal protection for outsourced workers and enforce the law against companies that violate their rights. Without effective law enforcement, even policies that provide minimal flexibility in the labor market can still disadvantage workers. Workers should not be left in an unbalanced position with employers within a legal system and market that does not allow for fair and equitable conditions. Therefore, the role of state supervision becomes crucial, including political oversight of the Department of Labor and Transmigration (Disnaker) through strengthened formal political institutions at the local level. Civil society also plays an important role, with labor unions being the most affected stakeholders. Thus, the state needs to provide a more structured political space for oversight functions at both the national and local levels.

Enhancing the legal protection and enforcement mechanisms for outsourced workers requires collaborative efforts from various stakeholders. This includes strengthening labor inspection systems, ensuring effective penalties for violators, promoting awareness among workers about their rights, and facilitating access to legal remedies. Additionally, creating an enabling environment for civil society organizations, including labor unions, to actively participate in monitoring and advocating for workers' rights is crucial.

Furthermore, continuous dialogue between the government, employers, workers, and civil society organizations can lead to the development of policies and regulations that strike a balance between flexibility and worker protection. This involves considering the specific needs and challenges faced by outsourced workers and designing measures that address their vulnerabilities. Overall, a comprehensive approach that combines legal protection, effective enforcement, strong oversight mechanisms, and active participation of stakeholders is necessary to address the issues faced by outsourced workers and ensure a fair and equitable labor market.

Based on these two reasons, it can be further concluded that the concept of outsourcing has been global since the early 20th century, and therefore, the state needs to position itself consistently. The legal protection provided needs to be implemented both preventively and repressively, and most importantly, the parts that have been overlooked in the TUPE concept need to be improved. One of the improvements needed is to add negotiation space, as done in the UK, which adopted the concept of Economic, Technical, or Organizational (ETO) as a rational basis for contract termination as long as it is justified. Therefore, based on these two reasons, it can be further argued that the concept of outsourcing is a worldwide phenomenon since the early 20th century, and thus, the state needs to take a consistent position on this matter. The legal protection provided should be implemented both preventively and repressively, and the most important aspect is to refine the parts that have been overlooked in the TUPE concept. One of these refinements is to incorporate negotiation space, similar to what has been done in the UK, where they have adopted the ETO (Economic, Technical, or Organizational) as a rational justification for contract termination, as long as it is justified.

By providing negotiation space, both employers and workers can reach fair agreements that consider the interests of each party. This allows for flexibility in cases where there are economic, technical, or organizational changes that may impact business continuity. Introducing negotiation mechanisms helps create an environment where both the interests of workers and employers can be considered fairly and balanced. In addition, the legal protection provided should also consider rational and justifiable criteria. For example, using the ETO rationale for contract termination is reasonable as long as it meets objective rationality criteria. Therefore, the state needs to consider comprehensive legal protection for outsourcing workers, including refining the TUPE concept and providing room for negotiation between the relevant parties. This will help create a fair and balanced work environment, where the interests of workers and employers can be proportionally considered.

Thus, the ETO system becomes more dynamic because it cannot be concretized into a single event; it can only be generalized into three aspects: Economic, Technical, and Organizational reasons. The underlying rationale behind the ETO rules under the TUPE regulations is to achieve a balance between protecting the rights of employees and allowing the new employer to implement necessary measures and revisions to meet operational business needs. Therefore, legal variations can be made to the employment contracts of transferred employees under TUPE, and employees can even be fairly dismissed, but only in circumstances where there are valid and reasonable business reasons to do so, and these reasons are unrelated to the transfer: (Davinson Morris, n.d.)

- Economic reasons: These refer to changes in the employer's financial situation, such as financial difficulties, cost-saving measures, or a need to restructure the business to remain competitive in the market.
- Technical reasons: These involve changes in the tools, equipment, technology, or production methods used in the business. Technological advancements or the need to adapt to new systems can be valid reasons for making changes that may affect employment contracts.
- Organizational reasons: These relate to changes in the organizational structure, management, or operational methods of the business. This may include mergers, acquisitions, outsourcing, or other strategic decisions that require adjustments to the workforce.

It is important to note that the application of ETO should be based on objective and reasonable justifications. The aim is to strike a balance between protecting the rights of employees and allowing employers the flexibility to adapt their business operations. By considering these aspects, the ETO system can provide a framework for managing employment contracts and making necessary changes while ensuring fairness and legality in the process.

This process avoids imbalances and business complexities that may occur if TUPE is rigidly applied only to transfers. Based on the principles of fairness, both the employer and the service provider are given the opportunity to renegotiate with the workforce. It should be emphasized that ETO has been effectively implemented across all business sectors in the UK because, in essence, the UK does not recognize the distinction between permanent and non-permanent employment as in Indonesia. Instead, the focus is on contractual relationships. Therefore, TUPE protects these contracts from excessive manipulation that could harm outsourced workers. It is important to note that ETO has been effectively applied to all business sectors in the UK. Unlike in Indonesia, the UK does not differentiate between permanent and non-permanent employment but rather focuses on contractual relationships. As such, TUPE safeguards these contracts to prevent excessive



manipulation that could disadvantage outsourced workers. Overall, the ETO system provides a flexible framework for negotiations, ensuring fairness and preventing undue harm to workers in the outsourcing sector.

#### 4. CONCLUSION

The basic concept of legal protection for workers with fixed-term employment contracts in the outsourcing industry is sometimes considered vulnerable to violations of their rights. However, it appears that TUPE, which has been adopted through transplantation, requires refinement in terms of its concept, particularly by adopting ETO (Economic, Technical, or Organizational) as a valid reason for contract termination, as long as it is rational. This opens up space for discussion and opportunities for both employers and workers. The refinement is done in a balanced manner based on the principle of substantive justice. By adopting ETO as a valid reason for contract termination, TUPE allows for a more flexible and balanced approach that takes into account the economic, technical, and organizational factors. This refinement provides an opportunity for both employers and workers to engage in discussions and negotiations, ensuring a fair and rational decision-making process. It aims to strike a balance between protecting workers' rights and meeting the operational needs of the business.

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