

UNCERTAINTY OF EMPLOYMENT RELATIONS AND WAGE DISCRIMINATION OF OUTSOURCED WORKERS FROM A LEGAL AND ECONOMIC PERSPECTIVE

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Received : 01 June 2026

Accepted : 15 June 2026

Revised : 05 June 2026

Published : 25 June 2026

Abstract

Outsourcing refers to work that is not directly related to a company's core business activities, where such work is delegated to another party or company. Generally, outsourcing can be carried out when an agreement has been signed between the labor service provider and the labor service user. However, in practice, outsourcing often leads to issues that disadvantage outsourced workers or laborers. There are companies that fail to uphold workers' rights as specified by labor laws and regulations, thus neglecting their obligations to provide all the rights of outsourced employees. As a result, even though legal provisions regulate various aspects of employment relations, they do not guarantee that companies will comply with these regulations. Problems arising from outsourcing include job insecurity and wage discrimination, both of which clearly violate the provisions set forth in labor legislation. In addition to violating the law, the issues of employment uncertainty and wage discrimination also have severe economic consequences for outsourced workers, as they struggle to achieve a decent standard of living.

Keyword: *Outsourcing, The Rights of Outsourced Employees, Economic Consequences, Job Insecurity, Wage Discrimination*

INTRODUCTION

Outsourced workers or what will be referred to as outsourcing are people who work for a service provider company by receiving wages or compensation which is then transferred by the service provider company to the work company with a written agreement so that it can be concluded that outsourcing transfers part of the work to another company. In Law Number 13 of 2003 concerning Manpower, Article 59 paragraph (1) states several provisions so that a work agreement for a certain period can be made, such as:

- Work that is completed once or is temporary in nature
- Work that is estimated to be completed within a relatively short time and a maximum of three years
- Seasonal work
- Work related to new products, new activities or additional products that are still in the experimental or exploratory stage.

Article 64 also states that a company may hand over part of the work to another company with the provision of a written contract for the provision of services/labor. In general, outsourcing can be implemented if an agreement between the labor service provider and the labor service user has been signed. In line with the development of the times and the increasing breadth of new business fields that have emerged, many companies are creating job vacancies for the outsourcing sector in our country, Indonesia. Currently, many companies are using outsourcing in carrying out their business processes such as security, drivers, cleaning services, catering, customer support, human resource specialists, accountants, personal assistants, programmers and others.

The practice of outsourcing has caused problems that are detrimental to workers. Problems arising from outsourcing include uncertainty in employment relationships, wage discrimination, lack of social security, vulnerability to termination of employment (PHK), difficulty exercising union rights, stalled careers, lack of job training, and minimal occupational health and safety (K3). The Minister of Manpower, Mr. Yassierli, stated that the outsourcing system often causes problems. He found that there were practices in the field that were far from adequate in fulfilling the rights of these workers. Mr. Yassierli also stated that there were workers who were forty to fifty years old who still had the status of outsourced workers without a clear career path and with their salaries fixed at the

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provincial minimum wage. He also said that the outsourcing system often caused losses for workers because they received low salaries even though the contract stated the salary was in accordance with the provincial minimum wage, but what was paid by the company did not match the agreement.

RESEARCH METHODS

In this study, the author uses legal research with an interdisciplinary approach, which is a legal research approach that combines legal science with non-juridical disciplines, namely economics, to be able to understand the law more comprehensively, contextually, and applicatively. By using the normative juridical method taken in collecting research data from the legal aspect and linking several cases with the uncertainty of employment relations to the incompatibility of outsourced workers' wages with the laws and regulations carried out by companies so that ultimately affect the aspects of the lives of outsourced workers, especially in the economy of workers. The author uses interdisciplinary with the aim of being able to understand law as a living system and has an impact on society, not only norms (law in the books) but also its impact on the community's economy. So by using the interdisciplinary approach to legal research methods, the results of this study will be more relevant, empirical, and support effective legal reform.

RESULTS AND DISCUSSION

Uncertainty of employment relationships and wage discrimination for outsourced workers

The uncertainty of employment relationships in outsourcing creates many problems for outsourced workers, especially for those who have worked for a long time or workers who are approaching retirement. In Indonesia, outsourced workers often hold demonstrations due to the uncertainty of employment relationships, one of which is the case of PT Freeport Indonesia with Outsourced Workers (PHI Decision Number 38 / Pdt.Sus-PHI / 2017 / PN.JKT.PST) where PT Freeport Indonesia operates in the gold and copper mining sector where its operational activities are very broad including underground mining, material transportation, ore processing which also requires facility maintenance, security, construction and other supporting services so that due to the large operational scale, PT Freeport Indonesia uses an outsourcing company to handle some of the supporting work in order to be more efficient and flexible. PT Freeport Indonesia initially used outsourced workers for several non-core activities of its production process such as cleaning, catering, transportation, security and several technical jobs such as light maintenance and mine logistics. However, in practice, the boundaries between core work and outsourcing are blurred because many outsourced workers end up operating heavy equipment, working in the main production area (core mining operations) and receiving direct instructions from PT Freeport Indonesia supervisors.

Over time, this has triggered dissatisfaction and protests from laborers or outsourced workers because these workers feel they do not have job security and welfare facilities equal to permanent workers there, often their contracts are terminated without clear severance pay and they even receive lower wages even though the work they do is the same as permanent workers of PT Freeport Indonesia considering they are only outsourced workers with temporary contracts. Even labor unions have staged strikes and filed complaints with the Manpower Office and the Industrial Relations Court (PHI) demanding that their employment status be recognized directly by PT Freeport Indonesia. In fact, PT Freeport Indonesia also often terminates employment (PHK) which also causes social and economic problems. Finally, a group of outsourced workers sued the Central Jakarta Industrial Relations Court (PHI) arguing that the work done by outsourced workers is work that is included in core activities, outsourced workers are under the direct supervision and management of PT Freeport Indonesia and the outsourcing company is only an administrative formality. The Industrial Relations Court (PHI) granted the plaintiff's request, declaring that the employment relationship between PT Freeport Indonesia and the outsourced workers constituted direct employment. This case emphasized that the outsourced workers were in a vulnerable situation, not only because the employment relationship was unclear but also because the very meaning of "work" was uncertain.

Indeed, in Indonesia, legal protection for employees is regulated by laws and regulations such as Law Number 13 of 2003 concerning Manpower and Government Regulation Number 35 of 2021, which regulates several employee rights related to employment contracts, outsourcing, and termination procedures. However, even though several regulations govern all aspects of employment relations, this does not guarantee that a company will comply with existing regulations. The public generally understands that discrimination between fellow workers or between workers and employers should not be enforced. In addition to the problem of uncertainty in employment relations, there are other problems that often arise in outsourcing workers, namely regarding wage discrimination. Wages as referred to in Article 1 paragraph (30) of Law Number 13 of 2003 concerning Manpower are the rights of workers/laborers received and stated in the form of money as compensation from employers or employers to workers/laborers which are determined and paid according to an employment agreement, agreement, or statutory

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regulations including allowances for workers/laborers and their families for work and/or services that have been or will be performed. In general, employers or companies provide minimum wages that must follow the provincial minimum wage (UMP) standards that have been determined by each region. The government itself determines the provincial minimum wage, which will hereinafter be referred to as UMP, based on decent living needs, productivity and regional economic growth, so that when companies pay workers wages below the UMP that has been determined by each region, it is a violation of the law. Even in the outsourcing system, outsourcing companies are still obliged to follow the UMP provisions in the area where the workers are placed. If we look at the case of PT Freeport Indonesia with outsourcing workers who receive lower wages, it can cause structural injustice because permanent workers of PT Freeport Indonesia receive full salaries and benefits even though outsourcing workers also carry out core activities which are sometimes no different from permanent workers of PT Freeport Indonesia so it can be concluded that outsourcing workers do similar work but only receive a basic salary which is often below the UMP or only slightly above it. Proof can also be seen if outsourcing workers do core work with an equal level of risk and responsibility but receive wages below the UMP then this is wage discrimination, then the employer violates Law Number 13 of 2003 concerning Manpower, articles 5 and 6, where article 5 states that

"Every worker has the same opportunity without discrimination to get a job."

Article 6 also states that

"Every worker/laborer has the right to receive equal treatment without discrimination from employers."

Another case comes from outsourcing workers of PT. Nur Hasta Utama company which collaborates with Soekarno-Hatta Airport Indonesia starting from the outsourcing company, namely Pt. Nur Hasta Utama which will hereinafter be referred to as PT. NHU which is a company providing labor services (outsourcing) for PT Aerofood Indonesia and International Service System (ISS). PT NHU is one of the business units of the Angsana Boga Employee Cooperative (Kopkar). Kopkar membership is the permanent workers of PT. Aerofood Indonesia. Kopkar Angsana Boga in short developed a business unit by establishing an outsourcing service provider company to supply workers in the companies where the cooperative members work so that Kopkar established a legal entity called PT. NHU and acted as an official labor broker for PT Aerofood Indonesia. In the end, PT. NHU which collaborates with Soekarno Hatta Airport in outsourcing in the catering sector, one of the outsourcing workers at PT. NHU namely Rizky stated that at that time the facts on the ground regarding the working conditions of outsourced workers were poor, long working hours, low wages, and absolutely no guarantee of job continuity were problems for outsourced workers. This was experienced by Rizky and 800 other PT. NHU workers when they were outsourced workers.

With this vulnerability, the company easily fired outsourced workers when the economic crisis caused by the Covid-19 Pandemic occurred in 2020. In the end, after going through various resistances to fight for the workers' rights of outsourced workers, the Tangerang City Manpower Office mediator issued a recommendation as a legal requirement to sue the company at the Industrial Relations Court (PHI) so that the outsourced workers had the encouragement to sue the company to PHI. Long story short, mid-January 2023 the outsourced workers of PT. NHU registered a lawsuit with PHI Serang with two categories of lawsuit material: dismissal disputes followed by rights disputes with two defendants, namely PT. NHU as defendant 1 and PT. Aerofood Indonesia as defendant 2. After nearly four months of trial at the Industrial Relations Court (PHI), the judge ruled NO for the second time in the lawsuit filed by the outsourcing workers. Ultimately, the legal process decided to file an appeal with the Supreme Court. In mid-June 2023, the plaintiffs submitted an appeal memorandum to the Supreme Court. The results are as follows:

1. Kabul – Declares that the employment relationship between the plaintiff and defendant II has been terminated since April 2020.
2. Ordering the defendants to pay the plaintiffs their rights in the form of severance pay, long service award money and compensation money.

The above case certainly shows the increasingly clear impact of contract agreements for outsourcing workers who cannot guarantee the continuity of work and decent wages for workers, unlike other permanent employees who receive social security and guaranteed wages, even their career paths and jobs are very clear compared to outsourcing workers. In addition to violating applicable laws with uncertainty of employment relationships and wage discrimination, outsourcing workers also have a very detrimental social and economic impact on outsourcing workers.

The Impact of Uncertainty in Employment Relations and Wage Discrimination on Outsourced Workers from an Economic Perspective

Uncertainty of employment relationships and wage discrimination of outsourced workers not only violates the law but also has an impact on the decent life aspect of a worker, especially in the economy. As we know, everyone definitely needs a job that produces wages for their survival, in this sense to fulfill all the needs of clothing, shelter and food. By working, everyone can also improve the welfare of life that elevates their dignity and status. By working, a worker receives wages or compensation for what they have done, this is as stated in Law Number 13 of 2003 concerning Manpower, Article 1 paragraph (30) and Government Regulation Number 78 of 2015 concerning Wages, Article 1 paragraph (1). As explained in the legislation regarding the definition of wages in question must be in accordance with a decent standard of living, but in practice in society there is confusion regarding the size of the appropriateness itself because each person has a different size, therefore the government issues a minimum wage that is considered and calculated based on general community standards, with that the government sets the provincial minimum wage (UMP which is regulated in Law Number 13 of 2003 concerning Manpower (articles 88 and 90), which is strengthened by Government Regulation Number 36 of 2021 and its amendments such as Government Regulation Number 51 of 2023 . So when the lack of certainty of employment relationships for outsourced workers does not guarantee career clarity, many workers' careers become deadlocked and wages given to outsourced workers are often below the provincial minimum wage (UMP). If this continues to happen, how can an outsourced worker fulfill a decent life? Many outsourced workers only support themselves, but workers also have families they must support for their survival. Therefore, the problem of uncertainty of employment relationships and wage discrimination of outsourced workers in Indonesia remains unclear and has not found a solution that guarantees outsourced workers

CONCLUSION

Outsourced workers or what will be referred to as outsourcing are people who work for a service provider company by receiving wages or compensation which is then transferred by the service provider company to the work company with a written agreement so that it can be concluded that this outsourcing transfers some of the work to another company. Regulations regarding outsourcing work are regulated in Law Number 13 of 2003 concerning Manpower, Article 59 paragraph (1) states several provisions so that a work agreement for a certain period can be made such as work that is completed once or is temporary in nature, work that is estimated to be completed in a time that is not too long and a maximum of three years, seasonal work and work related to new products, new activities or additional products that are still in the trial or exploration stage, in Article 64 also states that a company can hand over part of the work to another company with the provision of making a written contract or service/labor provision agreement . In general, outsourcing can be implemented if an agreement between the service provider and the user of the service has signed an agreement. The practice of outsourcing until now has caused problems that are detrimental to the workers or laborers. Problems arising from outsourcing include uncertainty in employment relationships, wage discrimination, lack of social security, vulnerability to termination, difficulty exercising union rights, career stagnation, lack of job training, and minimal occupational health and safety. Uncertainty in employment relationships in outsourcing creates numerous problems for outsourced workers, especially those with long-term employment or those approaching retirement. In Indonesia, outsourced workers frequently stage demonstrations due to uncertainty in employment relationships and mass layoffs. Therefore, it can be concluded that although Indonesia has laws and regulations such as Law No. 13 of 2003, Government Regulation No. 35 of 2021, and others that regulate workers' rights, their implementation in the field does not guarantee company compliance. This outsourcing problem remains unclear and has not yet found a solution that guarantees workers' welfare rights and impacts the economy of outsourced workers in meeting a decent living.

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