

**COMPARATIVE ANALYSIS OF OUTSOURCING REGULATION
IN INDONESIA AND THE PHILIPPINES****Mira Sonia Seba Liawati, Paltiada Saragi, Hulman Panjaitan****Universitas Kristen Indonesia**Corresponding email : rafaelalfinpr@gmail.com**Abstract**

This study examines the Comparative Analysis of Outsourcing Legal Regulations in Indonesia and the Philippines. Unlike Indonesia, which absolves the Employer Company of responsibility for fulfilling the rights of outsourced workers, the focus of outsourcing regulations in the Philippines—from the Labor Code to Department Order No. 174 Series of 2017—is the protection of outsourced workers' rights. The guaranteed protection of outsourced workers' rights has proven successful as a foundation for the Philippines to foster a healthy outsourcing climate, which has become one of the catalysts for economic development in the Philippines, evenduring the pandemic. This study is a normative juridical research conducted through legal comparison using a Statute Approach and a Comparative Approach. The legal materials utilized in this research consist of primary, secondary, and tertiary legal sources. Data collection was conducted through document studies from 2023 to 2024. Based on the collected data, this study employs a qualitative approach for data analysis. In Indonesia, outsourcing is regulated by Law No. 13 of 2003 on Manpower, Law No. 6 of 2023 on Job Creation, and their implementing regulations. Meanwhile, the Philippines regulates outsourcing through DOLE 174, Republic Act No. 11199 of 2019 and its amendments, as well as related rules that emphasize the welfare protection of outsourced workers and legal certainty for investors. Worker protection in the Philippines focuses more on workers' fundamental rights and occupational safety, with policies requiring outsourcing companies to ensure their workers receive protection aligned with national standards.

Keywords: Outsourcing, Employment, Law No. 13 of 2003 on Manpower, Law No. 6 of 2023 on Job Creation, Workers, Laborers, Philippine Labor Law.

INTRODUCTION

The World Trade Organisation in its 'World Trade Report 2019' states that the Philippines is an example of how Outsourcing can support economic growth. In 2000, the Outsourcing industry accounted for only 0.075% of the Philippines' GDP, but increased to 7.3% in 2015 and nearly US\$30 billion in 2021 (Bloomberg, 2022). This growth saw service sector revenues surpass industry during the pandemic, with the service sector accounting for 61.4% of Philippine GDP in 2020 (Tehe World Bank, 2022). The Outsourcing industry is also important in job creation, fulfilling the skills required by companies. The World Economic Forum notes that 65% of companies choose to outsource jobs amid shifting skill needs (World Economic Forum, 2018). Job creation was highlighted in the World Bank's report on the development of the Philippines.

In Indonesia, in 2012, the Outsourcing concept created 16 million jobs or 40% of the total workforce (Wanandi, 2023), which could potentially cause unemployment problems if it is phased out (Izzati, 2017). Indonesia will have a demographic bonus in 2045, so labour policies, including outsourcing, are crucial for economic growth. The Philippines is a positive example, where the Outsourcing industry has contributed significantly to economic growth since foreign investment entered in 1995, with contribution to GDP increasing from 0.075% in 2000 to 2.4% in 2005 (Oxford Business Group, 2023) and reaching nearly USD 30 Billion in 2021 (Bloomberg, 2022).

Outsourcing arrangements in the Philippines emphasise the protection of the Outsourced Personnel, with shared responsibility between the Employer and the Outsourcing Company (Labor Code of the Philippines). Outsourcing companies are required to have certain capital and meet conditions of cooperation to ensure the protection of labour rights (Labor Code of the Philippines). In contrast, Indonesian regulations tend to abdicate the responsibility of the Employer Company, leaving many companies without regard for the rights of Outsourced Workers. Problems arise due to the lack of strict requirements for setting up an Outsourcing company, which often does not meet standards. The focus of Indonesian regulations is on sectors that can or cannot be outsourced, with a limitation to five fields according to Article 17 paragraph 3 of Permenaker No. 19 Year 2012. This is different from the regulation of outsourcing in the Philippines. Academics in Indonesia also revealed that the main problem that makes outsourcing a bad image is the weak protection for outsourced workers (Izzati, 2017).

This makes outsourced workers vulnerable, as they cannot sue the employer if their rights are violated. Indonesia's regulations do not hold Employer Companies liable, while in the Philippines, a focus on protecting the rights of Outsourced Workers has helped the development of the Outsourcing industry and the country's economic growth, including during the pandemic.

Looking at the Philippines' success, Indonesia could improve its outsourcing regulations by focusing more on labour protection. This study therefore aims to analyse the differences in the legal regulation of outsourcing in Indonesia and the Philippines, as well as the legal protection for outsourced workers in both countries.

LITERATURE REVIEW

History of Labour Law in Indonesia

The history of labour law in Indonesia began before independence in 1945, when the country was still colonised by the Dutch and Japanese. At that time, labour relations were based on the social class system and included slavery, forced labour, punitive sanctions, and the recourse system (Hardjoprajitno et al., 2014). Slavery allowed slave owners to control the lives and work of slaves without the right for slaves to refuse. Forced labour, which was more cruel, was done without pay and caused many deaths.

The system of slavery in Indonesia before the proclamation had been going on for a long time, influenced by the social class system. The Dutch East Indies' policy on slavery began to be noticed with the issuance of a regulation in 1817, which regulated the sending of slaves to the island of Java. However, this regulation only aimed to limit the number of slaves on Java. In 1825, further regulations were issued to limit the number of slave owners and regulate the responsibilities of owners towards slaves. There were five main points in the regulation: firstly, married slaves could not be

separated from their families; secondly, it was forbidden to trade in slaves; thirdly, it regulated the way to free slaves; fourthly, the owner's obligation to provide food, clothing and wages; fifthly, there were criminal penalties for mistreatment of slaves and for slaves who ran away or refused work (Hardjoprajitno et al., 2014).

After the issuance of regulations on slave owners and ownership in 1854, the Dutch East Indies government decided to abolish slavery by issuing the Regeringsreglement (RR). According to Article 115 of the RR, slavery had to end no later than 1 January 1860. However, although slavery was legally abolished, the more cruel system of forced labour, or *rodi*, continued. This forced labour was applied collectively in village or tribal units for the benefit of the king or the construction of infrastructure, such as factories and roads. One famous incident of forced labour was during the time of Governor-General Heandrik William Deandels, between 1807-1811, who required people to work to build the road from Anyer to Panarukan, resulting in many casualties (Hardjoprajitno et al., 2014). This forced labour was worse than slavery as workers were deprived of food and shelter. During the Japanese colonial period, forced labour conditions became even harsher, with people forced to work without pay on various projects and threatened with physical punishment if they were slow at work. In addition to slavery and forced labour, there was also the term *punale sanksi*, which was a punishment for workers who left work without a valid reason, subject to fines or forced labour for several days. *Punale* sanction emerged after the issuance of the *Agrarische wet* (Agrarian Law) in 1870 to support large private plantations that required a lot of labour. However, as it was considered burdensome for workers, the Dutch parliament repealed *punale* sanctions in 1879.

However, in 1880, a similar regulation called *Koeli Ordonnantie* was again issued in East Sumatra and followed by other regions, only to be repealed in 1941. In addition, there was also the slavery system, in which a person pawned themselves or people under their power to work to pay off debts (Hardjoprajitno et al., 2014). Finally, the *peruluran* system, which emerged during the time of Governor-General Jan Pieterszoon Coen, involved the distribution of vacant land to landless farm labourers, who had to grow crops whose produce was sold to the company at a unilaterally set price.

After the proclamation, the Indonesian government tried to improve the labour situation with the aim of protecting and promoting the welfare of the people, in accordance with Article 27 paragraph (2) of the 1945 Constitution which guarantees the right to work. In the early days, there was no new labour law, so colonial regulations still applied. In the period 1945-1969, labour did not receive serious attention as the state focused on maintaining independence. The first law, Law No. 12/1948, was passed in 1951 and contained the basics of labour. After the recognition of sovereignty, disputes between workers and employers increased, triggering strikes. The government established the Labour Dispute Settlement Committee in 1951, replacing the previous law when labour issues had not been fully resolved. In 1957, a more permanent law on labour dispute settlement was implemented.

In the following years, laws began to be released to ensure a balance between workers and employers, introducing protection for workers through work safety regulations and social security. Under the New Order government, labour laws were drafted to provide better protection to workers, including Law No. 14 of 1969 and various regulations that improved working conditions. Labour reform continued until 2003, where new laws such as Law No. 21 of 2000 and Law No. 13 of 2003 were passed. Law No. 13 Year

2003 became comprehensive, covering various aspects of labour, replacing colonial regulations, and accommodating post-reform changes to provide protection and rights to workers.

History of Labour Law in the Philippines

The history of labour law in the Philippines reflects a long journey influenced by various periods of political history, ranging from pre-colonial times to the modern era. These laws protect the rights of workers and are divided into two main areas: labour relations and labour standards. Labour relations include union registration, bargaining, and dispute resolution, while labour standards pertain to wages, health, working hours, and compensation. The history of Philippine labour law can be divided into the following periods (Simatupang, 2024):

1. Pre-Colonial Period: People lived in barangays with a customary law system that emphasised collective responsibility.
2. Spanish Colonial Era (1521-1898): Customary law was replaced by colonial law. The *encomienda* and *polo y servicio* systems forced labourers to work without pay, sparking rebellions.
3. American Occupation Era (1898-1935): The Philippines under American rule adopted Anglo-Saxon law, introduced basic labour rights and established the Bureau of Labour in 1908.
4. Commonwealth Era (1935-1946): Labour laws evolved to prepare for independence, with recognition of trade unions.
5. Japanese Occupation (1941-1944): Labour rights were ignored, with many forced to work for the war effort.
6. Republican Era (1946-1972): After independence, labour laws focused on international standards with the introduction of the Industrial Peace Act in 1953 and the Labor Code of the Philippines in 1974.
7. Martial Law and Reform Period (1972-1986): Despite restrictions, labour laws remained important. Protections for women and child labourers were introduced. In Rene Ofreneo, Assessment Report Series No. 6, Informal Sector: Labour Laws and Industrial Relations it is written that after martial law was implemented in 1972, labour laws in the Philippines were expanded and codified. The Philippine Labour Code (LCP) came into effect on 1 May 1974, serving to regulate labour relations, including union registration, bargaining, and dispute resolution, as well as setting labour standards such as wages, working hours, and occupational safety. The code also supports the promotion of employment through various bodies, including the Employment Services Bureau. Tripartism was adopted as a national policy through consultations conducted in the early 1970s. However, in the martial law era, there were restrictions on workers' rights, such as the prohibition of strikes, and the strengthening of the arbitration system through the establishment of the National Labour Relations Commission.
8. Modern Era (1986-present): After the EDSA Revolution, labour laws were more open with stronger protections for workers, as well as amendments to improve workers' rights.

Today, Philippine labour law continues to evolve to face new challenges, with the aim of promoting employment, welfare, and good labour relations between workers and

management. There are various offices that deal with these aspects. In Rene Ofreneo, Assessment Report Series No. 6, Informal Sector: Labour Laws and Industrial Relations, it is written that for employment promotion and workforce development, the main offices involved are POEA, BLE, BLES, MTC, NMP, and NMYC. For worker protection and labour standards, those that can be consulted are ECC, NWPC, OWWA, BRW, BWYW, and BWC. For stabilising relations between management and workers, the offices involved are NLRC, NCMB, and BLR. All regional offices perform all three functions.

Concept and Definition of Outsourcing

The business world is becoming increasingly complex, with companies focusing on operational specialisation. This has encouraged the practice of outsourcing for tasks that are not core to the company. Outsourcing allows companies more flexibility in carrying out their core activities (Indrajit & Djokopranoto, 2006). Some of the benefits of outsourcing for companies include increased focus, use of worldwide expertise, accelerated gains from reengineering, risk sharing, utilisation of resources for other needs, provision of funds, creation of fresh funds, control of operating costs, access to resources that are not owned, and resolution of problems that are difficult to manage (Indrajit & Djokopranoto, 2006).

The concept of outsourcing dates back to ancient Roman times, for example, when mercenaries were used (Priambada & Maharta, 2008). Although there is no official definition of outsourcing in Indonesia, the practice is regulated in law, specifically in the Civil Code Article 1601 which describes work contracting, which is a contract in which one party performs work for another party for a fee (Fauzi, 2006). Outsourcing includes work that is not directly related to the company's production process, such as cleaning services, food provision, and security (Yasar, 2013).

Outsourcing implementation is becoming a trend in the business world so that companies can focus on their core competencies, so as to produce quality and efficient products and services. Through outsourcing, companies can reduce costs by not having to engage in the process of recruiting and training labour.

By law, outsourcing is regulated as the delegation of tasks from an employer company to a service provider company. In Law 13/2003, outsourcing includes the assignment of part of the work to another company, where only supporting work can be outsourced. Protection for workers in outsourcing is guaranteed through existing regulations, and a 2011 Constitutional Court decision emphasised the importance of protecting workers' rights despite the change of service provider company.

Currently, outsourcing is further regulated in GR 35/2021, without providing an official definition. There are two layers of legal relationships in outsourcing practices: one between the employer company and the subcontractor, and the other between the subcontractor and the workers (Uwiyono, 2018). In this process, there are three parties involved: the employer company, the subcontractor company, and the workers (Farida, 2017). The relationship between the employer company and the workers only exists through the subcontractor company.

Labour

Article 1 paragraph (1) of Law No. 14/1969 defines labour as a person who can work to produce goods or services. However, in Law 13/2003, this definition is expanded. In article 1 point 2, labour is defined as everyone who is able to work to produce goods or

services, both for personal and community needs. This definition is broader as it includes all people who work, whether for individuals, groups, or legal entities, in return for rewards that can be in the form of money or goods. This shows that benefits are not only tied to monetary forms.

This definition of labour is also in line with the concept of labour in general, as expressed by Payaman Simanjuntak, who explains that labour includes people who have worked, who are looking for work, and who are doing other activities such as studying or taking care of the household (Rusli, 2003). From this, it can be seen that labour includes more than just workers or labourers, which only refer to individuals who work in an employment relationship and receive remuneration.

Organisation of Cooperation Agreement between User Company and Outsourcing Company

Cooperation agreements between outsourcing users and outsourcing companies in Indonesia are strictly regulated to protect the rights and obligations of the parties. This is regulated in Law Number 13 Year 2003 on Labour, which is amended by Law Number 11 Year 2020 on Job Creation. Work that can be outsourced is work that is supporting in nature, not directly related to the main production. The cooperation agreement must be in writing and include the rights and obligations of each party, as well as protection for outsourced workers. Outsourcing companies must be legal and have a business licence, and ensure that workers have the same rights as direct workers, such as minimum wage and safety protection. Written labour contracts are mandatory and essential for legal certainty and evidence in case of disputes. The agreement should include company and employee information, type of work, wages, rights and obligations, duration of the contract, and date of signing. PP No. 35 of 2021 also regulates the protection of workers' rights when changing outsourcing companies, with a maximum agreement duration of two years and an extension of one year.

Theoretical Review

Theory of Legal Protection

Pancasila is the foundation for the principles of legal protection in Indonesia, which emphasises the recognition and protection of human dignity. The idea of human rights focuses on limiting and assigning responsibilities to society and government (Hadjon, 1987). Legal protection involves efforts to protect the interests of individuals by giving them the power to act in their own interests. One of the main purposes of law is to provide protection (or guidance) to society, which should be realised in the form of legal certainty (Rahardjo, 1983). Legal protection is carried out through applicable regulations that are enforced with sanctions. There are two types of legal protection (Muchsin, 2003):

1. Preventive legal protection, which aims to prevent offences through regulations that establish rules and allow citizens to voice their opinions before the government's final decision is made.
2. Repressive legal protection, which involves sanctions such as fines or imprisonment that occur after an offence or dispute has occurred, with a focus on conflict resolution. Laws must consistently protect society to ensure legal certainty and prevent problems from arising.

Labour Agreement Theory

Employment agreements are governed by various laws in Indonesia, including the Civil Code and the Labour Law. According to Article 1 Point 14 of the Labour Law, a work agreement is an agreement between workers and employers that covers the rights and obligations of each. Experts explain that this agreement is binding, so the parties are not entirely free to determine its terms (Khakim, 2017). In practice, workers and employers usually have equal status, but labour law regulates the relationship that arises from the employment agreement. There are two types of employment agreements: Specified Time Work Agreement (PKWT) and Indefinite Time Work Agreement (PKWTT). Article 1320 BW sets out the requirements for a valid agreement, which includes the elements of employment, subordination, wages, and time. A valid employment agreement must be based on an agreement between the parties involved, their legal capacity, and provisions that do not violate applicable laws or norms.

Legal Theory of Development

Mochtar Kusumaatmadja in his legal theory of development put forward some important thoughts about law (Salman & Damian, 2002). First, law has the main meaning and function in creating order in society, which is the basic requirement for an orderly society. To achieve order, certainty is needed in human relations. In addition, law also aims to achieve justice, which can vary depending on the context of society and its times. Second, law as a social rule is not only governed by the law itself, but is also influenced by religion, ethical norms, politeness, and customs. Between the law and other social rules there is a close relationship, and if there is a mismatch, the law must be corrected regularly. Third, there is a reciprocal relationship between law and power; law requires power to be exercised, while power is limited by law. Law without power is considered meaningless, while power without law can become tyranny. Fourth, law reflects the values that exist in society. A good law is a law that is in accordance with the values that live in society. Fifth, law functions as a tool to renew society. The function of law is to maintain order while supporting social change. However, efforts to use law for change must be done carefully so as not to harm society, considering sociological and cultural aspects. Complex social changes require the law to adapt and function as a means of renewal. In Indonesia, the development of law, especially in the digitalisation of the economy, is crucial to achieving sustainable economic growth and renewing people's lives.

RESEARCH METHOD

This research is a normative juridical research that focuses on legal norms as the basis for comparing laws (Mamudji, 2005), namely outsourcing laws between Indonesia and the Philippines. This research will use a statutory approach and a comparative approach to identify and analyse legal regulations relevant to the issues discussed (Marzuki, 2011). Data types and sources will be adjusted to the type of research, using library materials as secondary data, consisting of primary, secondary, and tertiary legal materials (Soekanto & Mamudji, 2010). Data collection techniques will be carried out through document studies, studying theories and regulations related to outsourcing law in both countries. The data analysis technique used is a qualitative approach to understand the data that has been collected (Cresswell, 1994). The location of this research is Indonesia, and the research will be conducted in 2023 and 2024. This

research aims to provide a clear picture of the comparison of outsourcing laws between the two countries.

RESULT AND DISCUSSION

OUTSOURCING LAW IN INDONESIA AND THE PHILIPPINES

1. Outsourcing in Indonesia

Labour is an important component of production, and almost all countries experience annual increases in labour supply (M.J.Mol. Outsourcing, 2005). Therefore, policies are needed to encourage production in order to absorb the labour force. One important policy is the legalisation of outsourcing, which has existed for more than two decades. Globalisation has changed the pattern of employment relationships, and the outsourced labour system helps businesses focus on their core activities without being distracted by non-core tasks. Law No. 13 Year 2003 on Manpower, which legalises the use of outsourced labour, has encouraged companies to be more interested in using this system.

The advantages of outsourcing include benefits to the government in terms of economic growth, reduction of unemployment, and increased company focus on core business (Yasar, 2012). To date, surveys show that 73% of companies use this system (Yasar, 2012).

The number of companies providing labour services continues to increase to meet the demand of companies, with data in 2012 showing there were 6,239 companies employing more than 338,000 people (Nurhayat, 2023). The Indonesian Outsourcing Business Association (ABADI) was established in 2007 to facilitate discussions between various stakeholders in the industry. ABADI focuses on improving standards and services, and works closely with the government to provide input on industry issues.

In Indonesia, outsourcing is defined as the transfer of business activities to another company and is usually associated with contract labour. The use of outsourcing was limited to certain sectors until the early 2000s, but began to increase with the opening up of the banking and telecommunications sectors and the increased use of information technology. Even so, many companies still do not understand the applicable regulations, leading to misunderstandings in outsourcing practices.

ABADI continually strives to collaborate with other industry organisations to meet market challenges, including new regulations as they arise. With more than 100 members, ABADI represents process outsourcing providers and contract staffing firms across industries such as manufacturing, public services and banking, striving to continue to be innovative and meet labour needs in a competitive marketplace.

2. Outsourcing in the Philippines

The Philippines is an attractive country for investment, especially in outsourcing, as it has many advantages such as an improving business environment, industry incentives, and a competitive workforce. The Philippines has a significant global market share in outsourcing, especially in the Business Process Outsourcing (BPO) sector which has experienced rapid growth. The sector employs hundreds of thousands of people and accounts for a large portion of the country's revenue (Oxford Business Group, 2023).

BPO in the Philippines covers a wide range of services, including animation, game development and customer support. A skilled workforce supported by higher

education contributes to the Philippines' competitiveness in the global market. A clear legal structure for outsourcing helps protect workers and keeps the industry stable, even during the pandemic, with the BPO sector contributing greatly to the country's GDP (Phillippine Board of Investement, 2023).

In the implementation of outsourcing, there are two types of contracts under DOE 174/2017: 'Labour-Only Contracting' and 'Service Agreement.' Only Service Agreement is allowed, where the outsourcing company is responsible for the work without the direct involvement of the employer company. This is governed by regulations that ensure legal protection for workers.

Personal data and information security are governed by the Data Privacy Act which provides protection to sensitive information, which also applies to outsourcing transactions. In addition, intellectual property rights are protected by existing laws, although protection for trade secrets depends more on contractual policies.

With supportive laws and a clear structure, the Philippines has the potential to continue to grow as an outsourcing hub in the ASEAN region. In a free contract, parties can specify limitations or exclusions of liability, as long as they do not violate applicable laws or norms. For example, although there is a financial cap on liability, Philippine courts can reduce damages if they deem it unfair. However, this financial limit only applies between the principal and the service contractor governed by DO 174. For claims brought by third parties, such as employees of the contractor, they can sue both the principal and the contractor, so the financial cap does not apply to such claims. Disputes in outsourcing contracts are usually resolved through the courts or relevant agencies in the Philippines, but parties may opt for arbitration if the matter is not excluded from arbitration by law. Each individual is required to act in good faith and show due diligence in fulfilling his or her obligations. If no degree of care is specified in the contract, then the applicable standard is the care expected of a 'good family father.' This principle supports fair and transparent business relationships.

LEGAL PROTECTION OF OUTSOURCED LABOUR IN INDONESIA AND THE PHILIPPINES

1. Legal Relationship in the Implementation of Outsourcing

In the outsourcing system, there are two types of legal relationships that arise from agreements: work contracting agreements and work relationships based on employment agreements. A work contract is different from a work agreement, because in a work contract, the object is a specific job with a clear period of time, whereas in a work agreement, there are no specific details about the job and it can be valid for an unlimited period of time (Suryacandra, 2012). The implementation of outsourcing is regulated in Government Regulation No. 35 of 2021, which refers to the agreement between the company providing the work and the company receiving the work (outsourcing), but does not provide in-depth details about the agreement.

A work contracting agreement involves a party handing over work to a contractor, where the contractor must carry out the work and receive payment (Kunarti, 2009). There are two ways of contracting: with the contractor providing the services while the materials from the employer, or the contractor providing both (Kasim, 2024). This relationship is mutually beneficial, where the employer company wants the work to be done well and the contractor company gets compensation.

The employment relationship in outsourcing according to Sopeomo is defined as a legal relationship between workers and employers, involving work, wages, and orders (Hoesin, 2014). This relationship occurs following a labour agreement that contains various provisions, including the rights and obligations of the parties and how to resolve disputes. The essential elements of the employment relationship include work performed by the worker, orders from the employer, and wages received by the worker.

Work in outsourcing is provided to workers by the contracting company, while work orders can come from the employer company. Wages are the responsibility of the outsourcing company, which must also fulfil workers' rights in accordance with applicable law. In this context, the work agreement also includes a specific time for the performance of work.

The subjects in an employment relationship consist of the worker (who receives wages) and the employer (who provides work). The object in labour relations is the work performed according to the agreement, including the rights and obligations of each party. In the Labour Law Article 66 paragraph 1, a work agreement in outsourcing must be made in writing, either in the form of PKWT (Specified Time Work Agreement) or PKWTT (Indefinite Time Work Agreement), and is a formal requirement for the validity of the agreement.

2. Definition of Legal Protection

Legal protection is defined by several experts in various ways. Satjipto Rahardjo (2000) explains that legal protection is the protection of human rights that are harmed, aimed at enabling people to enjoy their legal rights. C.S.T. Kansil (1989) adds that legal protection includes legal efforts from the apparatus to provide a sense of security both mentally and physically from threats. Philipus M. Hadjon (2011) defines legal protection as an act of protecting legal subjects using legal instruments, and divides legal protection into two categories: preventive and repressive. Preventive legal protection aims to prevent disputes with the application of caution by the government, while repressive protection seeks to resolve existing disputes.

Legal protection is a conscious effort by individuals or institutions to achieve welfare in accordance with Law Number 39 of 1999 concerning human rights that applies to all Indonesian people without distinguishing backgrounds. Based on Pancasila and the 1945 Constitution, every decision must guarantee fair and civilised legal protection. The government plays an important role in legal protection, which can be divided into preventive and repressive protection. Preventive protection gives people the opportunity to file objections before a government decision is made, with the aim of preventing disputes, while repressive protection focuses on resolving disputes that have already occurred.

Preventive legal protection is essential to ensure that the government is cautious in its decision-making. However, preventive means of protection tend to be less developed than repressive ones. For example, in the Netherlands, there is limited preventive legal protection, but the public has the right to object or give an opinion before a government decision is finalised. In general, legal protection serves to regulate and protect the interests of society, as Bronislaw Malinowski stated. In the context of labour protection, the 1945 Constitution includes the right of every citizen to work and a decent life. Further regulations in PP 35/2021 regulate the protection of outsourced workers' rights when there is a change of company. In

conclusion, legal protection is an effort to protect people from arbitrary actions of the authorities, creating order and human dignity.

3. Concept of Regulation for Outsourced Workers

The Unitary State of the Republic of Indonesia is based on the notion of a welfare state, in which the founding fathers emphasised the importance of creating a democratic state that focuses on the welfare of the people, rather than merely overseeing it. This concept of a welfare state is reflected in the 1945 Constitution, especially in articles concerning socio-economic aspects, making it an economic and social constitution. The state is obliged to guarantee welfare, including protection against the risks of unemployment, accidents, illness, old age and death of the breadwinner (Poggi, 1992).

Despite the principle of welfare in the constitution, Indonesian law does not fully protect workers, especially outsourced workers, so their lives are not yet prosperous. The existing regulations on outsourced workers are very complicated, and need a comprehensive overhaul that covers all aspects of working life, from before employment to after retirement, in order to fulfil the welfare principles promoted by the constitution.

4. Legal Protection of Outsourced Workers in Indonesia

Outsourced workers in Indonesia face vulnerable situations, ranging from adverse employment agreements before they start work to a lack of protection while they are working. There are two types of employment agreements: one between the service provider and the service user, and another between the outsourced worker and the service provider. While there are regulations to protect workers' rights, such as wages and dispute resolution, many agreements do not comply with the law and disadvantage workers. Workers are often not involved in the discussion of agreements that govern their working conditions.

In terms of protection at work, labour law emphasises the importance of occupational safety and health. Employers are required to provide training and protection, but the risk of workplace accidents remains. Social security programmes, such as BPJS, provide a range of benefits for work accidents, old age, retirement and death, aimed at protecting workers in a variety of circumstances.

After the employment period, legal protection for outsourced workers is very weak. They are often denied rights such as severance pay or retirement benefits. There is a Job Loss Guarantee (JKP) programme that is provided to workers who experience termination of employment, offering cash, counselling, and job training to get them back to work. BPJS Ketenagakerjaan is designed to protect workers by providing social security that covers pre-employment, during-employment, and post-employment protection. However, outsourced workers are the most vulnerable group and often do not get the same facilities as permanent workers. There is a push to provide full coverage to outsourced workers through the BPJS programme to ensure they get proper protection.

5. Legal Protection of Outsourced Labour in the Philippines

Legal protection for outsourced labour in the Philippines is seen through the government's support for the industry. In 2001, the government created the Information Technology and Electronic Commerce (ITTEC) Council to develop the country as an e-services centre. Through the launch of the Philippine Cyber Services Corridor in 2005 and the allocation of substantial funds, the government aims to

accelerate the growth of the BPO sector and provide training for aspiring BPO workers. In 2006, a training scholarship programme was launched, with the majority of training certificates awarded to call centres.

The Philippines Labour Code, specifically Sections 106 to 109, and Department Order No. 174 (DO 174) regulate contracting and sub-contracting work, focusing on the trilateral relationship between the principal, the contractor, and the contractor's employees. Contractors must be registered, operate an independent business, and have sufficient capital. DO 174 prohibits the practice of labour-only contracting and establishes the principal as the direct employer if there is evidence of a genuine labour arrangement. Employee transfers in the Philippines are usually related to the incorporation of a company, and employees may be considered employees of the principal in the case of an employment contract with a service contractor. The law does not require disclosure of employee information between related parties, but personal information must comply with the Data Privacy Act 2012. Layoffs can occur due to redundancies, when certain functions are outsourced.

With regard to social security, Social Security Act No. 11199 guarantees equal access to outsourced labour. Updates through Republic Act No. 11548 expanded coverage for workers and provided support for the informal sector as well. All groups of workers, including migrants and the self-employed, are covered. Pension and permanent disability benefits are regulated with clear provisions on contributions and membership.

The law establishes the government's responsibility to ensure the operation of the SSS and exempts contributions and investment returns from taxation. Strict supervision is in place to prevent fraud by employers in depositing contributions. The types of outsourcing transactions are regulated by the banking institutions, which distinguish core functions that cannot be outsourced and certain functions that can, such as IT systems and cheque processing. Finally, all these aspects of the law are expected to help protect employee rights, ensure regulatory compliance, and securely manage personal information.

DOLE explained that the construction industry is excluded from the scope of DO 174 as it is already regulated by the Philippine Contractors Accreditation Board (PCAB). PCAB registers all contractors and regulates the industry through several orders, including the Labour Code of Practice and the Occupational Health and Safety Code. For the security industry, the DOLE issued Department Order No. 150-16 to ensure the right of private security workers to the minimum benefits provided by law. Republic Act No. 10844 established the Department of Information and Communications Technology (DICT) to develop the ICT sector in the Philippines, as well as strengthen data privacy protection with several related laws.

The government can use outsourcing services for various types of work with a maximum contract of one year. Procurement of services is governed by Republic Act No. 9184, including rules on budgeting and accounting. In the financial services sector, there are additional regulations from the Insurance Commission that prohibit insurers from outsourcing critical functions, to ensure direct control over processes that affect insurance industry outcomes.

While Philippine law provides freedom of choice of law to settle outsourcing transactions, if there is no agreement, the law of the country with the strongest

relationship will prevail. Transactions that fall under the scope of DO 174 must follow local regulations. In this way, the Philippines seeks to strike a balance between flexibility in outsourcing and the protection of essential functions in sectors vital to the public interest.

CONCLUSION

Based on the research, it is concluded that the legal arrangements of outsourcing in Indonesia and the Philippines have important similarities and differences. In Indonesia, the outsourcing system is regulated by Law No. 13 Year 2003 on Labour, providing a clear legal basis for the employment relationship. The Philippines regulates outsourcing through DOLE 174 and Republic Act No. 11058, focusing more on the protection of occupational safety and health. While both countries have basic outsourcing arrangements, Indonesia has more complex regulations on industrial relations, while the Philippines emphasises on occupational safety. In terms of legal protection of outsourced labour, each country has its strengths and weaknesses. In Indonesia, there are some provisions in the Labour Law, but issues of uncertainty over employment status, wages, and social security still exist. In the Philippines, protection focuses more on basic rights and safety, with policies to ensure protection according to national standards. However, in both Indonesia and the Philippines, challenges in implementation and oversight of labour supply companies still need to be addressed. Overall, both countries have legal frameworks for outsourcing, but further work is needed to improve the protection of outsourced workers' rights.

SUGGESTION

Some suggestions for improving the legal arrangements and protection of outsourced labour in Indonesia and the Philippines include: First, there is a need to increase supervision and enforcement of outsourcing companies so that workers receive their rights according to regulations. Second, the Indonesian government should revise its regulations on outsourcing, especially on labour relations status and social protection, including social security and wages, while the Philippines could expand legal protection for outsourced workers on welfare and benefits. Third, there needs to be increased education and socialisation on the rights of outsourced workers, so that both workers and employers understand the regulations and how to report violations. Fourth, collaboration between the government, employers, and trade unions should be closer to create a fair and transparent outsourcing system. With these measures, legal regulation and protection of outsourced labour in both countries is expected to be more effective and provide greater benefits to workers and service providers.

REFERENCES

Books:

- Abdul Khakim, *Aspek Hukum Perjanjian Kerja, Peraturan Perusahaan, dan Perjanjian Kerja Bersama (PKB)*, PT Citra Aditya Bakti, Bandung, 2017
- C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989
- Gianfranco Poggi, *The Development of the Modern State "Sociological Introduction"*, California, Stamford University Press, 1992
- Hardijan Rusli, *Hukum Ketenagakerjaan*, Ghalia Indonesia, Jakarta, 2003.

- Iftida Yasar, *Merancang Perjanjian Kerja Outsourcing*, Gramedia Digital, Jakarta, 2013.
- Iftida Yasar, *Outsourcing Tidak Akan Pernah Bisa Dihapus*, Jakarta : Pelita Fikir Indonesia, Cet.I, 2012
- Ike Farida, *Hukum Kerja Outsourcing di Indonesia*, UI Press, Jakarta, 2017
- Imam Soepomo dalam Siti Hajati Hoesin, "*Hubungan Kerja*" dalam *Asas-Asas Hukum Perburuhan*, Rajagrafindo Persada, Depok, 2014
- John W. Creswell, *Research Design: Qualitative and Quantitative Approach*, Sage Publication Inc., 1994
- Komang Priambada & Agus Eka Maharta, *Outsourcing Versus Serikat Pekerja*, Alihdaya Publishing, Jakarta, 2008
- Muchsin, *Perlindungan Hukum bagi Investor di Indonesia*, Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta, 2003
- Otje Salman dan Eddy Damian, *Konsep-Konsep Hukum dalam Pembangunan*, Alumni, Bandung, 2002.
- Peter Mahmud Marzuki, *Penelitian Hukum cet. 11*, Kencana, Jakarta, 2011
- Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, 2011
- Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Bina Ilmu, Surabaya, 1987
- Richardus Eko Indrajit dan Richardus Djokopranoto, *Proses Bisnis Outsourcing*, Grasindo, Jakarta, 2006.
- Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000
- Satjipto Rahardjo, *Permasalahan Hukum di Indonesia*, Alumni, Bandung, 1983
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, 2010.
- Sri Mamudji, *et.al.*, *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, 2005
- Suryacandra Editor: Guus Heerma van Voss Surya Tjandra, *Bab-Bab Tentang Hukum Perburuhan Indonesia*, Pustaka Larasan, Bali, 2012

Journals:

- M. Fauzi, *Aspek Hukum Penyerahan Sebagian Pelaksanaan Pekerjaan Kepada Perusahaan Lain (outsourcing)*, Risalah Hukum Fakultas Hukum Unmul, Desember 2006.
- Siti Kunarti, "*Perjanjian Pemborongan Pekerjaan (Outsourcing) Dalam Hukum Ketenagakerjaan*", Jurnal Dinamika Hukum (Vol. 9 No. 1 Januari 2009)

Laws and Regulations:

- Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang No. 14 Tahun 1969 tentang Ketentuan Pokok Ketenagakerjaan.
- Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia.
- Undang-Undang No. 13 Tahun 2003 tentang Ketenagakerjaan.
- Undang-Undang No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang.
- Kitab Undang-Undang Hukum Perdata.

Peraturan Menteri Ketenagakerjaan No. 19 Tahun 2012 tentang Syarat-Syarat Penyerahan Sebagian Pelaksanaan Pekerjaan Kepada Perusahaan Lain.
 Peraturan Pemerintah No. 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.
 Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2022 tentang Cipta Kerja.
 Labor Code of the Philippine Year 1974 Department of Labor and Employment, Department Order No. 174 Series of 2017.
 Republic Act No. 11199, An Act Rationalizing and Expanding the Powers and Duties of the Social Security Commission to Ensure the Long-Term Viability of the Social Security System, Repealing for the Purpose Republic Act No. 1161, as Amended by Republic Act No. 8282, Otherwise Known as the "Social Security Act of 1997"

Electronic:

Ditas Lopez, "Bloomberg News: Philippine Allows Call Centers to Fully Implement Remote Working While Keeping Tax Perks", 2022, <https://www.bnnbloomberg.ca/philippine-allows-callcenters-to-fully-implement-remote-working-while-keeping-tax-perks-1.1820555>, [Accessed on 9 December 2023].

Estomihi FP Simatupang, *Philippines Legal System*, <https://berandahukum.com/a/Philippines-Legal-System>, accessed December 2024.

Nabiyla Rista Izzati, *Improving Outsourcing System In Indonesia: Fixing The Gap Of Labour Regulation*, Mimbar Hukum, 2017, hlm. 531. Oxford Business Group, "The Philippines' Business Process Outsourcing Sector Expands Into High-Value Services", <https://oxfordbusinessgroup.com/overview/strength-strength-sectorcontinues-expand-higher-value-services>, 2023, [Accessed on 9 December 2023].

Oxford Business Group, *The Philippines: IT outsourcing earmarked for growth*, http://www.oxfordbusinessgroup.com/economic_updates/philippines-it-outsourcing-earmarkedgrowth, accessed 15 December 2023.

Phillippine Board of Investement, Industry Profiles, <http://boi.gov.ph/pdf/industryprofiles/IT%20and%20BPO/IT%20and%20BPO.pdf>, diakses 15 Desember 2023

Purbadi Hardjoprajitno, Saefulloh, dan Purwaningdyah, *Hukum Ketenagakerjaan*, Universitas Terbuka, Jakarta, 2014.

The World Bank, "Services, value added (% of GDP) – Philippines", 2022, <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=PH>, [Accessed on 9 December 2023]

Umar Kasim, "Korelasi Pemborongan Pekerjaan (BW) Dengan Outsourcing Dan Pelaksanaan Sebagian Pekerjaan Kepada Pihak Lain", artikel pada https://jdih.kemnaker.go.id/asset/data_artikel/2012-4-2.pdf, accessed on 13 April 2024.

Wiji Nurhayat, "Cak Imin: Ada 6.239 Perusahaan Outsourcing di Indonesia", dalam <http://finance.detik.com/read/2012/10/22/133431/2069130/4/Cak-Imin-Ada-6239-Perusahaan-Outsourcing-Di-Indonesia>, accessed on 17 December 2023

World Economic Forum, *The Future of Job Report 2018*. World Economic Forum, 2018, hlm. 13 Sofjan Wanandi, “Global Business Guide Indonesia: Solutions for the Outsourcing System in Indonesia”, [http://www.gbgingonesia.com/en/main/partners_updates/apindo/solutions_for_the_outsourcing_sy stem_in_indonesia.php](http://www.gbgingonesia.com/en/main/partners_updates/apindo/solutions_for_the_outsourcing_system_in_indonesia.php), [Accessed on 9 December 2023].

Others:

Aloysius Uwiyono, “*Ketidakpastian Hukum Pengauran Outsourcing dalam Undang-Undang Nomor 13 Tahun 2003*”, dalam Himpunan Artikel Ketenagakerjaan, Rajagrafindo Persada, Jakarta, 2018.

M.J.Mol. *Outsourcing: Design, Process, and Performance*. (Cambridge, UK: Cambridge University Press, 2007). Lihat juga, R. McIvor. *The Outsourcing Process*. (Cambridge, UK:Cambridge University Press, 2005)

Rene Ofreneo, Assesment Report Series No. 6, *Informal Sector: Labour Laws and Industrial Relations*, Interdepartmental Project on the Urban Informal Sector Philippines, ILO Manila, page 2.