



International Conference on Law and Social Science

Editorial Office: postgraduate at Riau Islamic University, Universitas Islam Riau, Pekanbaru, Indonesia.

Phone: +62 85234073707, +62 85329106484

E-mail: law_s3@uir.ac.id

Website : <https://pps.uir.ac.id/icls2024/>

Global Outsourcing in Indonesia: Opportunity and Challenge for The Labour

Puti Mayang Seruni¹, Ellydar Chaidir², Thamrin S³

¹*Doctor Of Law, Postgraduate Program, Universitas Islam Riau*

puti_mayang@student.uir.ac.id

²*Doctor Of Law, Postgraduate Program, Universitas Islam Riau*

ellydar@law.uir.ac.id

³*Doctor Of Law, Postgraduate Program, Universitas Islam Riau*

tamrins@law.uir.ac.id

Abstract:

The topic of outsourcing is widely debated around the world. In Indonesia, outsourcing provides few guarantees for employment, work relationships, status, and worker protection. In Europe, it has been proven that outsourcing workers receive low wages and non-standard working hours. Even in France, there were many layoffs because companies decided to outsource. In China, outsourcing is currently used in the agricultural industry. Companies also use global outsourcing, such as France, which collects artificial intelligence data from workers in Madagascar via outsourcing. Companies often use global outsourcing to save costs and typically utilize workers from developing countries whose wages are low. This research aims to examine the opportunities and challenges faced by Indonesia regarding global outsourcing. The research uses a normative method that examines secondary data from statutory regulations, literature, and previous research results. The results will be presented descriptively. This research shows that outsourcing is profitable for companies because it can reduce job risks and obtain human resources at lower wages. Outsourcing also opens up employment opportunities, investment inflow, and transfer of knowledge and technology to advance industrialization in developing countries like Indonesia. However, Indonesia faces some challenges regarding legal substance, law enforcement, and legal culture. The current regulations in Indonesia need to be more robust to become the basis for outsourcing practices, both locally and globally.

Keywords: *global outsourcing; Indonesia; opportunity; challenge.*

I. Introduction

Transferring work to other parties is a common practice. This practice is known as 'Outsourcing'. Outsourcing in Indonesia is currently regulated in Law Number 6 of 2023 concerning the Ratification of government regulation Number 2 of 2022 concerning Job Creation (Job Creation Law of 2023) using the term '*alih daya*.' Outsourcing is a system where the company (user) transfers part of its

work to outsourced workers from the service provider company.

Outsourcing has always been a debated issue regarding its applicability. In Indonesia, the main problem of outsourcing is the need for guaranteed certainty regarding employment, employment relations, status, and workers'

protection.¹ So, it is not surprising that when the 2023 Job Creation Law was enacted, many workers opposed the change in outsourcing. The Job Creation Law of 2023 is considered to downgrade regulations related to outsourcing, which is increasingly detrimental to workers. Two things deemed detrimental are, first, the elimination of limitations related to core business and critical business, thereby encouraging all work sectors to be outsourced.² Second, the option rules are related to choosing a work agreement between outsourced workers and worker service companies in the form of PKWT (fixed-time employment agreement) and PKWTT (permanent employment agreement), so it is feared that employers will use the PKWTT scheme.³ Apart from that, the 2023 Job Creation Law also regulates the transfer of protection of workers' rights if there is a replacement of the outsourcing company, but provided that as long as the object of work is still there. This is a positive breakthrough because one of the fears of outsourced workers is that when the labor service contractor changes, the outsourced worker will automatically lose their job. The debate about outsourcing is not only in Indonesia but also in other countries. In China, for example, outsourcing labor is commonly used today in the agricultural industry. The difficulty in supervising workers so that it is more economical to utilize labor contractors from local villages is why this practice is famous for agrarian capitalism in China.⁴ In France, this practice has been growing since 1980. For example, at the French nuclear and automotive company, apply. The number of layoffs since this system became popular is not due to the

reduced demand for labor but rather due to the increase in outsourcing, which has made many companies choose to make significant layoffs.⁵ Nowadays, France outsources artificial intelligence data collection to local outsourced workers from Madagascar.⁶ This opens up opportunities for the practice of international worker outsourcing or global outsourcing, which sooner or later must affect Indonesia.

Problems related to outsourcing have been studied many times before. The first study, "Outsourcing System in Industrial Relations in Indonesia," was conducted by Prabhaputra and the team. This research resulted in the conclusion that the relationship created between the Workforce and the worker contracting company began to exist when an agreement was reached that was contained in the Work Agreement matter. A working relationship was born as the relationship between employers who are partnerships in this outsourcing system began to be declared valid when reaching an agreement.⁷ The government should ideally revoke the rules related to the outsourcing system that does not guarantee legal certainty, such as those contained in the types of labor supply work, namely, supporting work that is not directly related to the core business and also the work contract system that is limited to PKWT.⁸

Milinium conducted the following research titled "Problems of outsourcing flexibility after law number 11 of 2020 on job creation of employment clusters". This research resulted in the finding that violations of outsourcing practices often occur, especially regarding salaries and social protection guarantees, which can occur due to

¹ Lidia Febrianti, Thamrin Sambah, and Puti Mayang Seruni, "Komparasi Alih Daya Undang-Undang Ketenagakerjaan Dengan Undang-Undang Cipta Kerja Tahun 2023," *USM Law Review* 6, no. 3 (2023): 1193–1209, <https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7965>.

² Febrianti, Sambah, and Seruni.

³ Febrianti, Sambah, and Seruni.

⁴ Chen Yiyuan, "Land Outsourcing and Labour Contracting: Labour Management in China's Capitalist Farms," *Journal of Agrarian Change* 20, no. 2 (2019): 1–17, <https://doi.org/https://doi.org/10.1111/joac.12353>.

⁵ Clement Le Ludec, Maxime Cornet, and Antonio A Casilli, "The Problem with Annotation. Human Labour and Outsourcing between France and Madagascar," *Sage Journals*, 2023, 1–13, <https://doi.org/https://doi.org/10.1177/205395172311887>.

⁶ Ludec, Cornet, and Casilli.

⁷ Anak Agung Prabhaputra, I Nyoman Putu Budiarta, and I Putu Gde Seputra, "Outsourcing System In Industrial Relation In Indonesia," *Jurnal Analogi Hukum* 1, no. 1 (2019): 22–27, <https://doi.org/https://doi.org/10.22225/ah.1.1.2019.22-27>.

⁸ Prabhaputra, Budiarta, and Seputra.

inadequate regulation and supervision.⁹ Workers need social and employment protection that can ease the burden of life, compared to expanding labor flexibility but making workers more vulnerable, often called 'flexibility with precarity.'¹⁰

These two studies emphasize that outsourcing in Indonesia still needs to improve in terms of regulation and practice. However, outsourcing is still often used by companies because the cost of outsourced workers is lower¹¹ and avoids the demands of labor strikes.¹² The burden on companies that use outsourcing services can be reduced because the outsourcing company has borne the work, responsibility, and risks.¹³

Other research discusses global outsourcing. The research is entitled "The Problem with Annotation. Human Labor and Outsourcing between France and Madagascar". This research examines the phenomenon of outsourcing data collection belonging to artificial intelligence companies from France by workers from low-income countries, one of which is Madagascar. This research shows that artificial intelligence does not replace jobs in the service sector; instead, with the global outsourcing model, the chain of externalization can be extended to southern countries.¹⁴ This study illustrates that data workers in Madagascar, regardless of skill set, are undervalued and underpaid compared to data scientists and software engineers, who are highly paid.¹⁵ With the outsourcing model, artificial intelligence companies benefit from low-cost skilled workers directly supervised by French artificial intelligence companies' employees even

though the work is externalized.¹⁶ This research illustrates that, on the one hand, global outsourcing between France and Madagascar benefits both parties. France can hire skilled workers at a low cost. Data workers in Madagascar get jobs. On the other hand, data workers in Madagascar get lower wages even though they contribute directly to the company.

With the pros and cons of outsourcing and global outsourcing, it is worth reconsidering the fate of the worldwide outsourcing system in Indonesia. Therefore, this study examines and considers the opportunities and challenges of using a global outsourcing system in Indonesia. Especially in the current conditions where cross-border business and open labor markets are increasingly easy to find.

II. Legal Materials and Methods

This research is normative legal research examining secondary data through library materials. The secondary data to be analyzed consists of primary legal materials in the form of outsourcing-related legislation and secondary legal materials obtained from research results, articles, and books. This research is conducted using a comparative approach and a conceptual approach. The comparative approach was chosen because this approach is an activity to compare the law between one country and another or to compare the law from one time to another.¹⁷ The conceptual approach was chosen because it is the right approach used to build legal concepts.

⁹ Sela Nopela Milinum, "Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Klaster Ketenagakerjaan," *Jurnal Hukum Lex Generalis* 3, no. 5 (May 1, 2022): 412–32, <https://doi.org/10.56370/jhlg.v3i5.119>.

¹⁰ Milinum.

¹¹ Nur Putri Hidayah, Quincy R. Cloet, and David Pradhan, "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights," *Bestuur* 9, no. 1 (August 1, 2021): 68–76, <https://doi.org/10.20961/bestuur.v9i1.49252>.

¹² Susilo and Andi Darma, "Kajian Hukum Ketenagakerjaan Terhadap Peraturan Menteri Tenaga Kerja Dan Transmigrasi Nomor 19 Tahun 2012,"

Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 26, no. 2 (2014): 248–59, <https://doi.org/https://doi.org/10.22146/jmh.16041>.

¹³ W Bailey, R Masson, and R Raeside, "Outsourcing in Edinburgh and the Lothians," *European Journal of Purchasing & Supply Management* 8, no. 2 (2002): 83–95, [https://doi.org/https://doi.org/10.1016/S0969-7012\(01\)00008](https://doi.org/https://doi.org/10.1016/S0969-7012(01)00008).

¹⁴ Ludec, Cornet, and Casilli, "The Problem with Annotation. Human Labour and Outsourcing between France and Madagascar."

¹⁵ Ludec, Cornet, and Casilli.

¹⁶ Ludec, Cornet, and Casilli.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Grup, 2010).

The data collected is then analyzed using a qualitative method, which is a way of researching by collecting and then analyzing the data obtained from the literature review results with the problems to be discussed. This qualitative analysis produces descriptive data analysis. The results of the research are then presented descriptively. The material that has been collected is then described logically and systematically, which, in the end, will be linked and analyzed with the results of the literature study to answer the problem. The conclusions in the research to be carried out are drawn together based on inductive logic, which is the drawing of the findings that process from specific things to more general things.

III. Result and Discussion

Global Outsourcing Opportunity in Indonesia

Outsourcing is defined as the transfer of work to another party. In general practice, outsourced workers will work in the location or place where the company usually does the job. This means they will work with permanent workers in the service user company. In Law 13 of 2003 concerning Manpower (Manpower Law) jo. Regulation of the Minister of Manpower No. 19 of 2012, in conjunction with Regulation of the Minister of Manpower No. 11 of 2019, allows outsourcing with the limitation that it is only done for sectors classified as critical business. The vital business referred to here is limited to cleaning services, catering, security, mining sector supporting services, and worker transportation. If you use the old concept of outsourcing, outsourcing can only be done at the work location of the user company.

The concept has changed since enacting the Job Creation Law of 2023, which removes the boundaries between core and critical business. The forms of outsourcing have become more complex. It is now possible for all work to be done by outsourcing. In addition, the work transferred is done in other

places and even other countries, but the work is still done for the benefit of the user company. It is no wonder this new outsourcing concept is said to be more flexible.

Global outsourcing is delegating business processes, tasks, or operations to external overseas service providers, allowing companies to leverage the expertise, resources, and cost advantages of an offshore team or foreign service provider.¹⁸ Global outsourcing can be done in two ways. The first is outsourcing workers based on a worker service agreement, and the second is outsourcing production based on a contracting agreement. These two models have been accommodated in Article 64 of the workforce law, which reads, “Companies can hand over part of the implementation of work to other companies through work contracting agreements or the provision of worker/labor services made in writing.” However, this article has been amended in the Job Creation Law 2023 to read, “A company may assign part of the work to another company through an outsourcing agreement made in writing.” If you read the entire article related to outsourcing in Job Creation Law 2023, outsourcing is referred to as an agreement for providing worker services. As for outsourcing of production, the basis is in the contracting agreement in Article 1601 b of the Civil Code. These two agreements are undoubtedly different, primarily when the contracting agreement is oriented to the result. At the same time, the agreement to provide work services is oriented to work activities that are oriented to results and the process with the characteristic element of order as in a work agreement.

Outsourcing work to other countries or global outsourcing is familiar. Since the early 1970s, after the development of transportation technology and production management, many companies have shifted their production to developing countries with low-wage workers.¹⁹ This transfer of

¹⁸ Hirewithnear.com, “What Is Global Outsourcing and What Are the Benefits?,” 2023, https://doi.org/https://www.hirewithnear.com/blog/global-outsourcing?__hstc=214307464.46380306b55693f4c

3372901b8f7e9c6.1715268957997.1715268957997.1715268957997.1&__hssc=214307464.1.1715268957997&__hsfp=543639965.

¹⁹ Niels Beerepoot, “Creating a Global Labour Market: The Opportunities and Challenges of Outsourcing and

production was mainly carried out in Southeast Asian countries such as South Korea, Taiwan, Hong Kong, Indonesia, Thailand, and Vietnam. In this case, western capitalist countries are centers of research, innovation, and industrial management. In contrast, third-world countries function as production bases relying on low- to semi-skilled workers (blue-collar labor).²⁰ Developing countries' education and technology skills have increased since this practice became widespread.²¹

The practice of global outsourcing in developing countries brings opportunities for these countries to expand employment, which drives economic growth. For example, India was originally a country with a high poverty rate. Today, India is known as a provider of software used by Microsoft, Oracle, and IBM.²² The IT export industry's low capital and high labor intensity are attractive to low-wage countries with a labor surplus. Similarly, France is outsourcing artificial intelligence data collection to outsourced workers from Madagascar.²³

In Indonesia, many companies outsource production. Among them is Adidas, whose production factory was restored to America as the company center. The advantage is that it can absorb labor, but the problem is low wages. This is not surprising because these investor countries are only interested in outsourcing to developing countries because they offer low wages, so production costs are also lower.

Another advantage of outsourcing for developing countries providing labor services is transferring technology from

developed countries. Technology transfer is usually a process of transferring technological innovations from developers to technology users, and this process is said to be successful if it has been commercialized in a product.²⁴ With global outsourcing, companies can minimize capital by transferring work to be done by workers from low-income countries. In contrast, low-income countries gain experience and transfer technology, essential for technological mastery. In this case, China is one of the most prosperous countries. China has an investment policy in technology, so today, China is a new economic powerhouse that not only produces garments and toys but also electronic devices and transportation with advanced technology.²⁵

For developing countries, industrialization is essential to improve welfare. Thus, foreign investors, including in product outsourcing patterns, are significant. However, every country wants to be independent. With the mastery of technology, industrial development in a country can run without relying on foreign investors as technology owners. This can be realized through technology transfer. Outsourcing in Indonesia has the potential to improve the welfare of workers and can be successful if supported by robust legal instruments. In the 2023 Job Creation Law, several positive things can benefit workers. The first relates to strengthening the "transfer of undertaking protection of employment" (TUPE). Based on the concept of TUPE, when the user company does not provide work to the old outsourcing company and transfers it to a

Reshoring," *Amsterdam: The Broker*, 2014, 1–5, <https://dare.uva.nl/search?identifier=e2377d8c-c10b-4e07-9cad-5938f0046143>.

²⁰ Beerepoot.

²¹ Rafiq Dossani and Martin Kenney, "The Next Wave of Globalization: Relocating Service Provision to India," *World Development* 35, no. 5 (2007): 772–91, <https://doi.org/DOI:10.1016/j.worlddev.2006.09.014>.

²² Paul Tjia, "The next India – Outsourcing IT: Challenges and Opportunities," *Thebrokeronline*, 2009, <https://www.thebrokeronline.eu/article/the-next-india-d25/>.

²³ Ludec, Cornet, and Casilli, "The Problem with Annotation. Human Labour and Outsourcing between France and Madagascar."

²⁴ Umi Salama and Sonny Yuliar, "Evaluasi Kebijakan Pengukuran Tingkat Kesiapterapan Teknologi," *Jurnal Studi Pembangunan*, 2015, 1–8, https://www.researchgate.net/profile/Umi-Salama-3/publication/351039273_Evaluasi_Kebijakan_Pengukuran_Tingkat_Kesiapterapan_Teknologi/links/6080d028881fa114b41b72c6/Evaluasi-Kebijakan-Pengukuran-Tingkat-Kesiapterapan-Teknologi.pdf.

²⁵ Muh. Ali Masnun et al., "Politik Hukum Penguasaan Teknologi Di Indonesia," *Jurnal Pandecta* 16, no. 2 (2021): 266–77, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.31458>.

new company, as long as the work still exists, the workers who have previously been employed must continue to be used by the newly appointed outsourcing company without any changes to the terms of the previous work contract unless it is favorable to the workers. In this TUPE, the workers are not counted as new workers, but the length of service is still counted from when they first worked at the user company.²⁶

The concept of TUPE in outsourcing is a mandate from the Constitutional Court in Decision No. 27/PUU-IX/2011, which decided on a judicial review of Articles 59, 64, 65, and 66 of Law 13/2003 on Labor. The judicial review at that time was carried out because it was considered that there was no certainty for workers to be rehired; even if hired, they were usually counted as new workers.²⁷ At that time, the Constitutional Court believed that to avoid the exploitation of workers without regard to the guarantee and protection of the constitutional rights of outsourced workers, there were two models for outsourcing. The first is on a PKWTT basis, and the second may be carried out on a PKWT basis but applies the transfer of workers' rights or "transfer of undertaking protection of employment" (TUPE).

TUPE was used in labor law before the Constitutional Court mandated it. In the Labor Law, if another company takes over a company, the taking over company is obliged to offer to rejoin without reducing the rights and benefits that have been obtained so far. This TUPE concept can solve the uncertainty regarding the working period in outsourcing. Outsourcing workers are afraid to lose their jobs anytime if the agreement between the outsourcing and user companies ends.

Another positive change related to non-permanent contracts in the 2023 Job Creation Law is regarding compensation. In Manpower Law, when the employment relationship is carried out on a PKWT basis,

when the period ends, the employment relationship will also end by law. PKWT workers do not get severance pay when the employment relationship ends; they only get the last salary. However, now through Article 15 Paragraph 1 in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning specific time agreements, outsourcing, working time and rest time, and termination of employment, workers are entitled to compensation when the PKWT relationship ends. The compensation that will be obtained will depend on the length of service. The workers entitled to compensation have a continuous work period of at least one month.

The flexibility offered by the outsourcing concept brought by the 2023 Job Creation Law does have the opportunity to attract a lot of labor. Primarily to support the global outsourcing practice that makes developing countries delegate their work to local vendors. From the company's side, the application is also more accessible, and the risks borne by the company are lighter because the worker service provider company has shouldered them. Outsourcing is considered a company's effort to make the most profit possible and is the most straightforward alternative to avoid various liability claims in a labor dispute.²⁸

Challenge For Global Outsourcing In Indonesia From A Law Perspective

Every opportunity always comes with challenges. This includes outsourcing opportunities for Indonesian industrial relations in the future. The challenges in facing global outsourcing can be seen from a legal perspective. In systems theory, Friedman argues that the legal system is built by three components. These components are legal structure, legal substance, and legal culture.

²⁶ Khairani, *Kepastian Hukum Hak Pekerja Outsourcing: Ditinjau Dari Konsep Hubungan Kerja Antara Pekerja Dengan Pemberi Kerja* (PT RajaGrafindo Persada, 2016).

²⁷ Ahmad Fadlil Sumadi, "Mahkamah Konstitusi Dan Kontrak Outsourcing," *Jurnal Konstitusi* 9, no. 1 (May 20, 2016): 1, <https://doi.org/10.31078/jk911>.

²⁸ Muhamad Ali, Muh Nasir, and Junaedi, "Kepastian Hukum Terhadap Perlindungan Pekerja Dengan Perjanjian Pemborongan," *Jurnal Krakatau* 2, no. 1 (2024): 48–53, <http://jurnal.desantapublisher.com/index.php/krakatau/index>.

The substance of the law is a composition of rules and regulations regarding how institutions should behave.²⁹ In Soerjono Soekanto's theory of law enforcement, this is referred to as the legal factor itself or the law.

³⁰ H.L.A. Hart even argues that the hallmark of a legal system is a multiple set of rules. The society acts based on these predetermined rules.

The success of global outsourcing for a country depends on the substance of its law. If the substance of the law can fulfill the needs of and, at the same time, lead to benefits for industrial relations actors, then this practice will be successful. Especially in this case, the state or government is the actor that will play a role in formulating the concept of outsourcing, which must be formulated by considering the interests of employers/investors and workers in a balanced manner. The balance referred to here is that, on the one hand, the interests of employers are fulfilled, and on the other hand, the interests of workers are protected.³¹ In addition, this is also true of the functions and objectives of labor law in Indonesia, namely, to achieve or implement social justice in the field of labor.³²

In the Labor Law, articles regulating work transfer in both contractor and worker service provider agreements are outlined in Articles 64, 65, and 66. Among the three articles in the 2023 Job Creation Law, Articles 64 and 66 were amended, and Article 65 was abolished. These changes and deletions then change the concept of the enforceability of outsourcing or what has been known as outsourcing.

Core and critical business are the essential things that changed the whole concept of outsourcing in Indonesia. In Manpower Law jo. Regulation of the Minister of Manpower No. 19 of 2012, in conjunction with Regulation of the Minister of Manpower No.

11 of 2019, allows the outsourcing system but with restrictions. The limitation is on the type of work that can become a sector in outsourcing, which is limited to cleaning services, catering, security, supporting services in mining and petroleum, and providing transportation for workers. So before the birth of the Job Creation Law, work classified as core business or core work could not be the object of outsourcing work. This limitation has been eliminated in the Job Creation Law, so outsourcing in Indonesia is currently more flexible. This means that all types of work can be outsourced.

However, reflecting on what happened in France a few decades ago after the increase in the number of outsourcing, at that time, there were mass layoffs because many companies chose the outsourcing concept compared to permanent employees.³³ Outsourcing in Indonesia must still be restricted based on the core and critical business. What can be outsourced is work outside the core business. This means that work classified as a core business must still be carried out and borne by the company.

In addition to outsourcing provisions, regulations related to technology transfer also determine the success of outsourcing in Indonesia. It has been discussed previously that global outsourcing is not only beneficial for the provision of employment but is also related to the transfer of technology. With the employment of Indonesian workers either through labor services or outsourcing services to foreign companies, they are expected to master knowledge and technology. This mastery related to technology transfer will increase the mastery of technology needed for the pace of industrialization in developing countries, namely accelerating the production of goods and services in the industrial sector.³⁴ Industry and the entry of foreign appropriate

²⁹ Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial* (bandung: Penerbit Nusa Media, 2009).

³⁰ Friedman.

³¹ Khairani, *Kepastian Hukum Hak Pekerja Outsourcing: Ditinjau Dari Konsep Hubungan Kerja Antara Pekerja Dengan Pemberi Kerja*.

³² Manulang Sendjun, *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia* (Jakarta: Penerbit Rineka Cipta, 1995).

³³ Ludec, Cornet, and Casilli, "The Problem with Annotation. Human Labour and Outsourcing between France and Madagascar."

³⁴ Muchtar Anshary Hamid Labetubun, Rory Jeff Akyuwen, and Theresia Nolda Agnes Narwadan, "Legal Implications of Foreign Investment Relating to Technology Transfer in the Patent Regime," *Sasi* 28, no. 1 (2022): 89–109, <https://doi.org/10.47268/sasi.v28i1.829>.

technology into the country on terms, conditions, and prices favorable to national interests will increase the role of science and technology in the industrial life of the Indonesian nation.³⁵ To achieve this, there need to be regulations that require foreign companies to transfer technology to the host country because the success of technology transfer depends on how the host country is regulated.³⁶

Technology transfer regulations in Indonesia have previously been expressly regulated in Article 20, paragraph 2 of Law Number 13 of 2016 concerning patents. The article emphasizes that “making products or using processes as referred to in paragraph 1 must support technology transfer, investment absorption and provision of employment”. This regulation is a breath of fresh air for Indonesia because it can release Indonesia from dependence on imported machinery and technology from abroad. However, this provision reaped pros and cons, especially for foreign investors, until the government issued Minister of Law and Human Rights Regulation No. 15/2018 on Patent Implementation by Patent Holders.³⁷ The content material of the Permenkumham Patent tends to have weaknesses. The Permenkumham patent (negates) the provisions of Article 20 of the Patent Law 2016 because of a delay.³⁸ There is no legal certainty regarding the limit of delay in not carrying out the obligations of patent holders.³⁹ Then implicitly, the formulation of

the provisions is more pro-foreign interests than domestic interests.⁴⁰ Article 20, paragraph 2 of the Patent Law, has been amended through the 2023 Job Creation Law. In the 2023 Job Creation Law, there is no longer an obligation to transfer technology. Government intervention in implementing technology transfer in Indonesia is very influential in developing the Indonesian economy and benefiting society.⁴¹ The state must play a role in forcing technology transfer through the rule of law, both sui generis regulations and spreading to other related regulations,⁴² with the regulation of technology transfer in sui generis receiving special attention from the government regarding this condition will provide benefits and advantages for the host country to manage the transfer of technology it obtains.⁴³

Satjipto Rahardjo argues that the law is for humans.⁴⁴ Therefore, regulations to support the effectiveness of global outsourcing must also consider industrial relations actors. If regulations only favor investors or entrepreneurs, there will be no harmonious industrial relations, as is the ideal in Pancasila industrial relations. To achieve harmony, workers take the route of demonstrations and strikes to fulfill their wishes. On the other hand, for investors or employers, demonstrations or strikes reflect disharmonious industrial relations. Suppose labor demonstrations and strikes should be appropriately handled. In that case, Indonesia

³⁵ Labetubun, Akyuwen, and Narwadan.

³⁶ Sok Gee Chan et al., “Country-of-Origin Effects on Technology Transfer in Foreign Direct Investment,” *The Journal of International Trade & Economic Development*, 2023, 1–26, <https://doi.org/https://doi.org/10.1080/09638199.2023.2262615>.

³⁷ Masnun et al., “Politik Hukum Penguasaan Teknologi Di Indonesia.”

³⁸ Masnun et al.

³⁹ Masnun et al.

⁴⁰ Muh Ali Masnun, “Persoalan Pengaturan Kewajiban Pemegang Paten Untuk Membuat Produk Atau Menggunakan Proses Di Indonesia,” *Jurnal Hukum IUS Quia Iustum* 26, no. 2 (2019): 326–48, <https://doi.org/https://doi.org/10.20885/iustum.vol26.iss2.art6>.

⁴¹ Niken Sari Dewi and Suteki, “Obstruksi Pelaksanaan Lisensi Wajib Paten Dalam Rangka Alih Teknologi Pada Perusahaan Farmasi Di Indonesia,”

Law Reform 13, no. 1 (2017): 1–17, <https://doi.org/https://doi.org/10.14710/lr.v13i1.15947>.

⁴² Andra Irawan, “Pengaturan Alih Teknologi Pada Kegiatan Penanaman Modal Untuk Percepatan Penguasaan Teknologi Di Indonesia,” *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 1 (2019): 71–82, <https://doi.org/https://doi.org/10.33369/jsh.28.1.71-82>.

⁴³ Reinardus Budi Prasetyo, “Perkembangan Aspek Hukum Alih Teknologi Di Indonesia,” *PROGRESIF: Jurnal Hukum* 15, no. 2 (2020): 108–35, <https://doi.org/https://doi.org/10.33019/progresif.v15i2.1822>.

⁴⁴ Gde Made Swardana, “Pergulatan Hukum Positivistik Menuju Paradigma Hukum Progresif,” *Jurnal Masalah-Masalah Hukum* 39, no. 4 (2010): 378–84, <https://doi.org/10.14710/mmh.39.4.2010.378-384>.

will lose investors because there are at least two conditions for investors to enter Indonesia: low wages and harmonious industrial relations conditions. Regulations that favor investors or entrepreneurs will potentially eliminate investors or entrepreneurs themselves.

The second component in Friedman's system theory, namely the structure referred to here, is an essential and fundamental element of the legal system.⁴⁵ This structure refers to law enforcement institutions and apparatus. Friedman gives the example that the structure of a judicial system is envisioned when talking about the number of judges, the jurisdiction of courts, how higher courts are above lower courts, and the people associated with different types of courts.⁴⁶

The challenge of law enforcement in the field of labor comes from the aspect of supervision or regulation. The Job Creation Law 2023, in conjunction with the Labor Law, has emphasized the criteria for outsourcing, including administrative completeness for employers, the obligation to implement TUPE, and the provision of compensation for workers whose contracts end. Such supervision is the responsibility of labor inspectors. The main things are the number of employees in each agency and the integrity of labor inspectors.

The legal system will not run properly if there are only two elements above. Friedman discusses it: "A legal system described solely as formal structure and substance is like an enchanted courtroom, frozen and stagnant under the spell of an odd immortality."⁴⁷ Friedman's point is that the legal system cannot operate without 'external social' influences. This external social force is what he later referred to as legal culture, which is the third component of the legal system. Legal culture is an element of social attitudes and values related to the general culture of customs, habits, opinions, ways of acting,

and thinking that direct social forces towards or away from the law in specific ways.⁴⁸

Companies are interested in outsourcing in Indonesia because wages are low, and work and labor risks can also be transferred. As a result, many outsourced workers in Indonesia need higher qualifications. These workers are unable to compete with workers with high qualifications. As a result, the bargaining position of workers needs to be more profound. On the one hand, workers need income, but on the other hand, their qualifications cannot compete. Ultimately, workers with low qualifications are willing to become outsourced workers with low wages and minimal protection to fulfill their needs. In the implementation of global outsourcing, it is essential for industrial relations actors to be aware of the implementation of relevant regulations, even if the workers are in a condition where there is no other choice.

In Indonesia and Europe, research shows that those with lower or medium qualifications are especially at risk of not working directly for a company but instead providing services through other companies or temporary employment agencies. This means they are providing services and working on an employer's premises that is not their own. Domestic outsourcing is associated with relatively lower wages and poorer working conditions - less secure contracts and more non-standard working hours.⁴⁹

This condition is exacerbated by Indonesia's tight job search competition, especially in 2023. Based on the Talent Acquisition Insight 2024 report by Mercer Mettl, 69% of companies in Indonesia did not recruit workers to prevent layoffs. Of the remaining companies that did recruitment in 2023, 77% chose freelancers or contract workers.⁵⁰

Based on the analysis of the three legal systems above, Indonesia's most significant problem about the effectiveness of global outsourcing is regulation. Currently, the

⁴⁵ Friedman, *Sistem Hukum Perspektif Ilmu Sosial*.

⁴⁶ Friedman.

⁴⁷ Friedman.

⁴⁸ Friedman.

⁴⁹ Wouter Zwysen, "Working Apart: Domestic Outsourcing in Europe," *European Journal of*

Industrial Relations 30, no. 2 (2024): 221–41, <https://doi.org/10.1177/09596801241227966>.

⁵⁰ Mercer, "Laporan Talent Acquisition Insights 2024 - Indonesia," Mercer.com, 2024.

existing rules are more inclined to the interests of investors or entrepreneurs. This is the reason for creating the Job Creation Law to smooth investment in Indonesia. As a result, workers bear the challenges or impacts of global outsourcing. Indonesian regulations

IV. Conclusion and Suggestion

Global outsourcing has been popular since 1970, when companies outsource their work to low-wage workers from developing countries. This pattern is profitable for companies because they can be free from employment risks and get human resources with lower wages. Meanwhile, for developing countries such as Indonesia, this scheme opens up opportunities for employment, investment, and the transfer of knowledge and technology to advance industrialization. Global outsourcing in Indonesia can be implemented in two ways. The first is with an agreement scheme to provide worker services for outsourcing workers, and the second is with a contracting agreement for outsourcing products. The Labor Copyright Law 2023 accommodates regulations related to the transfer of undertaking protection of employment (TUPE) and compensation to address uncertainty about the future of outsourced workers.

There are several challenges in implementing global outsourcing in Indonesia. Regarding the legal substance that regulates outsourcing, the problem is the elimination of the boundaries between core and critical business. So, currently, all types of work can be outsourced. Reflecting on what happened in France a few decades ago after the increase in the number of outsourcing, at that time, there were mass layoffs because many companies chose the outsourcing concept compared to permanent employees. Then, technology transfer, one of the benefits of global outsourcing, is also not required in the 2023 Job Creation Law. Regarding law enforcement, labor supervision for outsourcing practices needs to be considered. Regarding legal culture, the most influential factor is the economic condition of workers, which means that they have a low bargaining

still need to be more robust in order to underlie the practice of outsourcing in local and international forms.

point. Thus, workers with medium-low qualifications are willing to work as outsourced workers even though their wages and welfare are below those of workers who work directly in companies. Indonesian regulations still need to be more robust in order to underlie the practice of local and global outsourcing.

References

- Ali, Muhamad, Muh Nasir, and Junaedi. "Kepastian Hukum Terhadap Perlindungan Pekerja Dengan Perjanjian Pemborongan." *Jurnal Krakatau* 2, no. 1 (2024): 48–53. <http://jurnal.desantapublisher.com/index.php/krakatau/index>.
- Bailey, W, R Masson, and R Raeside. "Outsourcing in Edinburgh and the Lothians." *European Journal of Purchasing & Supply Management* 8, no. 2 (2002): 83–95. [https://doi.org/https://doi.org/10.1016/S0969-7012\(01\)00008](https://doi.org/https://doi.org/10.1016/S0969-7012(01)00008).
- Beerepoot, Niels. "Creating a Global Labour Market: The Opportunities and Challenges of Outsourcing and Reshoring." *Amsterdam: The Broker*, 2014, 1–5. <https://dare.uva.nl/search?identifier=2377d8c-c10b-4e07-9cad-5938f0046143>.
- Chan, Sok Gee, Wai Mun Har, Kanagi Kanapathy, Saban Celik, and Bora Aktan. "Country-of-Origin Effects on Technology Transfer in Foreign Direct Investment." *The Journal of International Trade & Economic Development*, 2023, 1–26. <https://doi.org/https://doi.org/10.1080/09638199.2023.2262615>.
- Dewi, Niken Sari, and Suteki. "Obstruksi

- Pelaksanaan Lisensi Wajib Paten Dalam Rangka Alih Teknologi Pada Perusahaan Farmasi Di Indonesia.” *Law Reform* 13, no. 1 (2017): 1–17. <https://doi.org/https://doi.org/10.14710/lr.v13i1.15947>.
- Dossani, Rafiq, and Martin Kenney. “The Next Wave of Globalization: Relocating Service Provision to India.” *World Development* 35, no. 5 (2007): 772–91. <https://doi.org/DOI:10.1016/j.worlddev.2006.09.014>.
- Febrianti, Lidia, Thamrin Sambah, and Puti Mayang Seruni. “Komparasi Alih Daya Undang-Undang Ketenagakerjaan Dengan Undang-Undang Cipta Kerja Tahun 2023.” *USM Law Review* 6, no. 3 (2023): 1193–1209. <https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7965>.
- Friedman, Lawrence M. *Sistem Hukum Perspektif Ilmu Sosial*. Bandung: Penerbit Nusa Media, 2009.
- Hidayah, Nur Putri, Quincy R. Cloet, and David Pradhan. “The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights.” *Bestuur* 9, no. 1 (August 1, 2021): 68–76. <https://doi.org/10.20961/bestuur.v9i1.49252>.
- Hirewithnear.com. “What Is Global Outsourcing and What Are the Benefits?,” 2023. https://doi.org/https://www.hirewithnear.com/blog/global-outsourcing?__hstc=214307464.46380306b55693f4c3372901b8f7e9c6.1715268957997.1715268957997.1715268957997.1&__hssc=214307464.1.1715268957997&__hsfp=543639965.
- Irawan, Andra. “Pengaturan Alih Teknologi Pada Kegiatan Penanaman Modal Untuk Percepatan Penguasaan Teknologi Di Indonesia.” *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 1 (2019): 71–82. <https://doi.org/https://doi.org/10.33369/jsh.28.1.71-82>.
- Khairani. *Kepastian Hukum Hak Pekerja Outsourcing: Ditinjau Dari Konsep Hubungan Kerja Antara Pekerja Dengan Pemberi Kerja*. PT RajaGrafindo Persada, 2016.
- Labetubun, Muchtar Anshary Hamid, Rory Jeff Akyuwen, and Theresia Nolda Agnes Narwadan. “Legal Implications of Foreign Investment Relating to Technology Transfer in the Patent Regime.” *Sasi* 28, no. 1 (2022): 89–109. <https://doi.org/10.47268/sasi.v28i1.829>.
- Ludec, Clement Le, Maxime Cornet, and Antonio A Casilli. “The Problem with Annotation. Human Labour and Outsourcing between France and Madagascar.” *Sage Journals*, 2023, 1–13. <https://doi.org/https://doi.org/10.1177/205395172311887>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Grup, 2010.
- Masnun, Muh. Ali, Mahendra Wardhana, Dita Perwitasari, Intan Lovisonnya, and Astrid Amidiaputri Hasyiyati. “Politik Hukum Penguasaan Teknologi Di Indonesia.” *Jurnal Pandecta* 16, no. 2 (2021): 266–77. <https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.31458>.
- Masnun, Muh Ali. “Persoalan Pengaturan Kewajiban Pemegang Paten Untuk Membuat Produk Atau Menggunakan Proses Di Indonesia.” *Jurnal Hukum IUS Quia Iustum* 26, no. 2 (2019): 326–48. <https://doi.org/https://doi.org/10.20885/iustum.vol26.iss2.art6>.
- Mercer. “Laporan Talent Acquisition Insights 2024 - Indonesia.” Mercer.com, 2024.
- Milinum, Sela Nopela. “Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Klaster Ketenagakerjaan.” *Jurnal Hukum Lex Generalis* 3, no. 5 (May 1, 2022): 412–32. <https://doi.org/10.56370/jhlg.v3i5.119>.
- Prabhaputra, Anak Agung, I Nyoman Putu

- Budiartha, and I Putu Gde Seputra. "Outsourcing System In Industrial Relation In Indonesia." *Jurnal Analogi Hukum* 1, no. 1 (2019): 22–27. <https://doi.org/https://doi.org/10.22225/ah.1.1.2019.22-27>.
- Prasetyo, Reinardus Budi. "Perkembangan Aspek Hukum Alih Teknologi Di Indonesia." *PROGRESIF: Jurnal Hukum* 15, no. 2 (2020): 108–35. <https://doi.org/https://doi.org/10.33019/progresif.v15i2.1822>.
- Salama, Umi, and Sonny Yuliar. "Evaluasi Kebijakan Pengukuran Tingkat Kesiapterapan Teknologi." *Jurnal Studi Pembangunan*, 2015, 1–8. https://www.researchgate.net/profile/Umi-Salama-3/publication/351039273_Evaluasi_Kebijakan_Pengukuran_Tingkat_Kesiapterapan_Teknologi/links/6080d028881fa114b41b72c6/Evaluasi-Kebijakan-Pengukuran-Tingkat-Kesiapterapan-Teknologi.pdf.
- Sendjun, Manulang. *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia*. Jakarta: Penerbit Rineka Cipta, 1995.
- Sumadi, Ahmad Fadlil. "Mahkamah Konstitusi Dan Kontrak Outsourcing." *Jurnal Konstitusi* 9, no. 1 (May 20, 2016): 1. <https://doi.org/10.31078/jk911>.
- Susilo, and Andi Darma. "Kajian Hukum Ketenagakerjaan Terhadap Peraturan Menteri Tenaga Kerja Dan Transmigrasi Nomor 19 Tahun 2012." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (2014): 248–59. <https://doi.org/https://doi.org/10.22146/jmh.16041>.
- Swardana, Gde Made. "Pergulatan Hukum Positivistik Menuju Paradigma Hukum Progresif." *Jurnal Masalah-Masalah Hukum* 39, no. 4 (2010): 378–84. <https://doi.org/10.14710/mmh.39.4.2010.378-384>.
- Tjia, Paul. "The next India – Outsourcing IT: Challenges and Opportunities." *Thebrokeronline*, 2009. <https://www.thebrokeronline.eu/article/the-next-india-d25/>.
- Yiyuan, Chen. "Land Outsourcing and Labour Contracting: Labour Management in China's Capitalist Farms." *Journal of Agrarian Change* 20, no. 2 (2019): 1–17. <https://doi.org/https://doi.org/10.1111/joac.12353>.
- Zwysen, Wouter. "Working Apart: Domestic Outsourcing in Europe." *European Journal of Industrial Relations* 30, no. 2 (2024): 221–41. <https://doi.org/10.1177/09596801241227966>.