

# Problems with Providing Compensation for Outsourced Workers Based on Law Number 6 of 2023 concerning Job Creation

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**Abstract.** Law Number 6 of 2023 on Job Creation mandates vendor companies to compensate outsourced workers, but its implementation faces significant challenges. A major issue is the discrepancy between legal requirements and actual practices, with many vendor companies failing to provide compensation due to costs, ambiguous provisions, or inadequate supervision. This results in uncertainty and injustice for agency workers. Additionally, many outsourced workers lack awareness of their rights, leaving them vulnerable to exploitation. To address these issues, legal protections for outsourcing workers must be strengthened through strict enforcement against non-compliant vendor companies. Collaboration between the government, trade unions, and companies is essential to establish effective monitoring and enforcement mechanisms, ensuring the protection of agency workers' rights. Advocacy and outreach are also crucial to educate workers about their rights and support those facing difficulties in claiming compensation. By enhancing enforcement and awareness, a fairer and more just work environment that respects outsourced workers' rights can be achieved, aligning with the spirit of Law Number 6 of 2023 on Job Creation.

**Keywords:** Problematics, Compensation, Outsourcing Labor.

## 1 Introduction

The Republic of Indonesia is a state of law (rechtsstaat), meaning that all actions and behaviors, whether by the government or its citizens, must be based on the law.[1] Indonesian rule of law is founded on Pancasila and the 1945 Constitution of the Republic of Indonesia. It is based on the agreement to build a state government, protect the entire nation from violence, promote the general welfare, and make the nation's life intelligent. Working on the government support of its kin is the public authority's primary task under Indonesia's state-of-the-art law and order. Because of this, the Government Assistance State is another name for the advanced Regulation State.

The rule of law attempts to provide legal protection to the people. Philipus M Hadjon [2] stated that legitimate assurance for individuals against government operations is based on two standards: Basic Freedoms and Law and Order Standard. The primary purpose of the rule of law is to recognize and protect human rights. The rule of law necessitates assurances so that state

institutions can administer the government and citizens have the rights and obligations to obtain promised legal protection. Individuals' legal security for government actions includes both preventative and oppressive legitimate insurance. Individuals are allowed to submit objections (inspraak) or sentiments before an administration decision is made.

"Social Justice for All Indonesian People" is the fifth principle of Pancasila, the life philosophy of the Indonesian people. This signifies that justice for all individuals takes precedence over justice for particular groups.[3] To create a prosperous, just, and equitable society, both materially and spiritually, justice must be upheld in line with the principles of justice.[4] This justice must be experienced by all Indonesian people, including justice for domestic or abroad workers.

Outsourced staffing is just temporary and cannot be prolonged. If the contract duration in the outsourcing workforce system has expired, the workforce must either start over or apply to another outsourcing service provider firm. Management is based on well accepted definitions and standards. Employment is governed by law No. 13 of 2003. This law does not utilize the phrase "outsourcing," but it does use a different term, "work contracting agreement" or "worker or labor service provider," in Article 64, which states:

*"Companies can hand over part of the work implementation to other companies through contracts for contracting work or providing worker/labor services which are made in writing."*

The regulations regarding outsourcing are also addressed in Articles 65 and 66 of Law No. 13 of 2003 concerning Employment. Typically, outsourced labor is provided by service provider companies that manage administration and operational processes based on predefined criteria. Outsourced workers primarily perform supportive tasks or activities not directly related to the production process. Many organizations prefer outsourced labor for such tasks due to cost-effectiveness compared to contract labor. The role of outsourced workers in executing development tasks necessitates the assurance of their rights.

Law Number 6 of 2023 on Job Creation encompasses various employment-related aspects, including the protection and rights of workers, such as outsourced workers. This law connects compensation for outsourced workers, emphasizing the protection and welfare of all workers. Although it does not specifically detail compensation, it provides the foundation for compensation arrangements in work contracts between outsourcing workers and service provider companies. This clarity helps outline the rights and obligations concerning compensation for outsourced workers.

The Job Creation Law emphasizes equal rights for both agency and permanent workers. This principle means that agency workers are entitled to compensation as outlined in company regulations or their work contracts. Additionally, the law introduces mechanisms for monitoring and enforcing workers' rights, including compensation, to ensure that outsourcing companies adhere to the relevant regulations. While the law does not explicitly address compensation for outsourced workers, it provides a legal framework to protect and ensure the welfare of all workers, including their benefits. It is crucial for outsourcing service providers and outsourced workers to ensure compliance with these regulations.

The latest Job Creation Law, specifically Law Number 6 of 2023, reflects the ongoing efforts to improve the protection of outsourced workers' rights in Indonesia. Historically, agency workers faced uncertainty regarding wages, benefits, and social security due to their vulnerable status. The new law aims to enhance protection for these workers by mandating that vendor

companies provide fair compensation according to the applicable regulations. Despite this, challenges remain in implementing these provisions. Some vendor companies struggle to meet these obligations due to various factors such as costs, ambiguous regulations, or inadequate supervision. This underscores the need for stricter enforcement and effective monitoring mechanisms to ensure agency workers' rights are upheld.

In light of the above, the provision of fair compensation for outsourced workers under the latest Job Creation Law highlights the ongoing efforts to enhance worker protection in Indonesia. Effective implementation of these provisions requires collaboration among the government, companies, trade unions, and other relevant parties. This collaborative effort is essential to foster a fairer work environment that respects the rights of outsourced workers, as stipulated in Law Number 6 of 2023 concerning Job Creation.

## **2 Problem Formulation**

This paper's issue concerns the provision of special compensation for outsourced workers. According to Law Number 6 of 2023 regarding Job Creation, are outsourced workers entitled to compensation?

## **3 Method**

The methodology employed in this paper is a descriptive-analytical approach. This involves using data to clearly depict problems observed directly in the field, followed by analysis and drawing conclusions to address the issues identified. Data collection was conducted through observation and literature review to find solutions pertinent to the paper's preparation. Given the research objectives, this study falls within the qualitative research domain, thus a qualitative approach is utilized. As Petrus Soerjowinoto et al. explain, the qualitative method emphasizes the researcher's understanding of the problem formulation process to construct a complex and holistic view of the legal phenomenon.[5]

This paper used the normative juridical approach involves examining issues from the perspective of law and statutory regulations. It includes the statute approach, which analyzes the problems using legal regulations, considering optional information as essential, auxiliary, and tertiary legal materials.[6] This approach applied to certain statutory regulations or written laws, relating to the rights of outsourced workers to receive compensation by regulations from Law Number 6 of 2023 concerning Job Creation[7] The research describes the situation of the object under study, namely focusing on the rights of outsourced workers to receive compensation by regulations from Law Number 6 of 2023 concerning Job Creation in practice.

## **4 Result and Discussion**

### **4.1 Legal Protection for Outsourced Workers Based on Law Number 6 of 2023 concerning Job Creation.**

Law 11 of 2021 amends 39 provisions of the old Prosecutor's Law, updating Law 16 of 2004 concerning the Indonesian Prosecutor's Office. For example, only Article 1 modifies Chapter I's General Provisions. The Prosecutor's Office is a government institution whose functions are related to judicial authority, exercising state power in prosecution and other legal authorities. Discussions about legal protection for outsourced workers in Indonesia need to clarify the definitions of worker protection and outsourcing. The 1945 Constitution contains articles that guarantee protection for workers/laborers:

- 1) Article 28 D section (1) of the 1945 Constitution, specifically that each individual has the option to acknowledgment, ensures, insurance, and fair legitimate sureness as well as equivalent treatment under the steady gaze of the law.
- 2) Article 28 D passage (2) of the 1945 Constitution "Everybody has the option to work and get fair and suitable remuneration and treatment in business connections.

Legal protection for workers is also stated in Article 4 letter c of the Employment Law which states that "employment development seeks to protect workers in realizing prosperity". Furthermore, the articles in the Employment Law that regulate protection, wages, and welfare are contained in Chapter X in Article 67-101.

Outsourcing involves transferring part or all of the work and authority to another party to support the client's strategy, whether it be an individual, company, department, or unit within the company. [8] Article 64 of the Employment Law allows businesses to delegate a portion of work execution to third parties through written work contracts or labor service providers. This process is further regulated by Pemenakertrans No. 19 of 2012, which outlines the terms and conditions for delegating work to another company.

In outsourcing arrangements, workers maintain a working relationship solely with the outsourcing company, not with the employing (user) company. Article 65(2)(b) specifies that work can be delegated to another company and carried out under direct or indirect orders from the employer. This provision has faced criticism, as it raises questions about how a company that has outsourced work to another entity still retains the authority to issue direct or indirect orders regarding the outsourced tasks.[9]

Article 64 and Article 65 of Law No. 13 of 2003, which dealt with employment, have been removed from Law No. 6 of 2023, which deals with the creation of jobs. The provisions of Article 66 of Law No. 11 of 2020:

- (1) The working relationship between the outsourcing company and the workers/laborers it employs is based on a work agreement for a certain time (PKWT) or a work agreement for a certain time (PKWTT).
- (2) The protection of workers/laborers, wages and welfare, working conditions, and disputes that arise are the responsibility of the outsourcing company.
- (3) The outsourcing company as intended in paragraph (2) is in the form of a legal entity and is required to fulfill Business Licensing.
- (4) Further provisions regarding the protection of workers/laborers as intended in paragraph (2) and Business Licensing as intended in paragraph (3) are regulated by Government Regulation.

Article 66 of Law Number 6 of 2023 concerning Job Creation has removed restrictions on tasks that outsourced workers are prohibited from performing. This amendment to the

outsourcing system allows companies providing labor services to employ workers for a wide range of tasks that are not specifically regulated under Law Number 6 of 2023. Previously, Article 65(2) of Regulation Number 13 of 2003 concerning Labor stipulated conditions for outsourcing work, requiring tasks to be independent from the core activities of the employer, carried out under direct or indirect supervision, supportive of the organization as a whole, and not directly hindering the production process. This provision also did not impose a time limit on outsourced work, allowing for indefinite outsourcing arrangements. These changes enable companies to use outsourcing across various sectors without restrictions, potentially affecting the widespread utilization of outsourced labor in the absence of specific regulations derived from Law Number 6 of 2023 concerning Job Creation.

A Work Agreement for a Certain Time (PKWT) is the foundation of the employment relationship between contract employees and employers. Its provisions refer to Article 81, point 15, of Law Number 6 of 2023 Concerning Job Creation (the "Job Creation Law"), which amends Article 59, paragraph 1, of Law Number 13 of 2003 Concerning Employment, which reads as follows:

(1) A work agreement for a specific amount of time can only be made for specific tasks that, based on their type, nature, or activity, will be completed within a certain amount of time, such as the following:

- a. work that is finished once or that is impermanent in nature;
- b. work that is assessed to be finished inside a brief period;
- c. seasonal jobs;
- d. work on new products, new activities, or other products that are still being tested or investigated; or
- e. work that is not permanent in scope or character.

Therefore, PKWT or contracts can only be agreed upon for specific work that, depending on its type, nature, or activity, will be completed within a predetermined amount of time.

Religious Compensation (compensation) is a right for all workers/laborers, both contract employees (PKWT) and employees with a Work Agreement for an Indefinite Time (PKWTT), who have worked continuously for one month or more. So, contract employees who have worked for six months are also entitled to compensation. What is meant by a worker here is anyone who works and receives wages or other forms of compensation. Because contract workers are also included in this definition, contract workers are also entitled to compensation. Apart from that, this provision also indicates that employers provide compensation based on the employee's length of service, non-worker's status.[10]

#### **4.2 Outsourced Workers' Rights to Receive Compensation Based on Law Number 6 of 2023 concerning Job Creation.**

Although compensation is the right of all workers, including contract workers, the status of workers will have an impact on differences regarding the emergence of compensation rights when the employment relationship is terminated or terminated, namely:

1. A PKWTT worker/laborer who experiences termination of employment ("PHK") starting 30 days before the Religious Holiday, is still entitled to compensation. It means that if the employment relationship ends within 30 days before the Religious Holiday

(D-day), then the worker/laborer concerned is still entitled to compensation (normatively). However, if the employment relationship lasts longer than 30 days, then the right to compensation is lost.

2. Meanwhile, for contract workers/laborers (PKWT), even though their "contract" employment relationship ends within 30 days before the Religious Holiday (D-day), they are still not entitled to compensation. It means that for PKWT, there is no tolerance for provisions regarding a 30-day time limit. PKWT workers/laborers are only entitled to compensation if they are still working in an employment relationship until the day of the Religious Holiday of the worker/laborer concerned.

In practice, as explained by the Difference between Contracting Work and Providing Worker Services, the term outsourcing is known as the outsourcing system. Regarding employees with an outsourcing work system, in essence, they are workers/laborers from outsourcing companies, who are employed based on a written work agreement, either PKWT or PKWTT. As explained above, those entitled to compensation are every person who works and receives wages or other forms of remuneration, whose rights are given based on the employee's length of service. So, outsourced employees are also entitled to compensation, if they have worked for one month or more. In other words, compensation is based on length of work, not employee status, even if employees are outsourced. However, please note that the outsourcing company that is obliged to pay compensation for outsourcing workers. Since the business relationship happens is a business connection between the specialist and the rethinking organization [10].

Law Number 6 of 2023 concerning Job Creation outlines the entitlements of outsourced workers to receive compensation. According to this law, outsourced workers are guaranteed compensation as specified in company regulations or agreements between the outsourcing service provider and the workers themselves. Companies offering outsourcing services are mandated to adhere to these regulations and ensure that outsourced workers receive their compensation accordingly. The specifics of compensation amounts and payment schedules can be defined within the employment agreements or company policies..

The Job Creation Law emphasizes the principle of equal rights between agency workers and permanent workers in terms of receiving compensation. This aims to ensure that agency workers receive fair and equal treatment in terms of receiving these benefits. This law also establishes a monitoring and law enforcement mechanism for the implementation of workers' rights, including the right to compensation for agency workers. It aims to ensure that the company complies with applicable regulations regarding the provision of compensation. Thus, the Job Creation Law provides a legal basis that regulates the rights of outsourced workers to receive compensation by applicable regulations. It is critical for companies providing outsourcing services and agency workers to understand and comply with these provisions to maintain the welfare and protection of workers' rights.

As for sanctions for vendor companies that do not provide compensation rights to outsourced workers based on the Job Creation Law, the sanctions may include several provisions as follows:

1. Article 94 Paragraph (2) of the Job Creation Law.  
This article states that companies providing outsourced labor services are obliged to provide adequate wages to their outsourced workers, including providing compensation by applicable regulations.

2. Section 1 of Article 100 of the Job Creation Law.  
According to the provisions of this article, business owners who fail to properly pay compensation may be subject to administrative penalties in the form of fines..
3. Article 100 Paragraph (2) of the Job Creation Law  
This article explains that administrative sanctions in the form of fines imposed on entrepreneurs who do not fulfill their obligations to pay compensation cannot be replaced with criminal sanctions.
4. Article 100 Paragraph (3) of the Job Creation Law.  
This article states that the amount of fines resulting from violations of compensation payments will be further regulated in statutory regulations.

Thus, the Job Creation Law provides a clear legal basis regarding the obligations of vendor companies to provide compensation to outsourced workers and the sanctions that can be imposed if these obligations are not fulfilled. Vendor companies need to understand and comply with these provisions to maintain legal compliance and the welfare of outsourced workers.

To overcome vendor companies that are reluctant to pay compensation to outsourced workers, the following steps can be taken:

1. Consult with the Trade Union or Worker Organization.  
Outsourced workers can consult on this issue with the relevant trade union or worker organization. They can provide advice and assistance in resolving these disputes.
2. Do Mediation or Negotiation.  
Try to mediate or negotiate with the vendor company directly. Discuss the issue clearly and present evidence that supports your claim.
3. File a Complaint with the Employment Service.  
If mediation or negotiation is unsuccessful, agency workers can file a complaint with the local Manpower Department to resolve the issue. The Manpower Service will conduct an investigation and can impose sanctions on vendor companies that violate the provisions.
4. File a lawsuit in court.  
If the previous steps do not result in a settlement, the agency worker can consider filing a lawsuit in court to claim the COMPENSATION rights they should receive. In this case, it is advisable to get help from a lawyer experienced in employment matters.
5. Protect Your Rights.  
During the dispute resolution process, be sure to protect your rights as an agency worker. Save evidence that supports your claims and consult with the authorities if necessary.

By taking these steps, it is expected that outsourcing workers can resolve the problem of not receiving compensation from the vendor company and obtain the rights they should receive following appropriate legal provisions.

## **5 Conclusion**

The issue of giving pay to reevaluated laborers in light of Regulation Number 6 of 2023 concerning Position Creation mirrors the intricacy and difficulties in safeguarding the privileges of rethought laborers in Indonesia. Although the Law provides a clear legal basis regarding the rights of agency workers, its implementation often faces various obstacles and uncertainties.

One of the main conclusions from this problem is the need for stronger and more effective law enforcement in ensuring fair compensation for agency workers. Vendor companies need to comply with legal provisions regarding wages, benefits, and other rights by Law Number 6 of 2023. The government, labor inspection agencies, and related agencies need to increase supervision and law enforcement against violations committed by vendor companies.

Awareness of the rights of agency workers is also key in resolving this problem. Outsourced workers need to be given better access to information about their rights, as well as support in fighting for those rights. Education and outreach regarding the rights of workers, including agency workers, need to be improved so that workers are better able to protect themselves. Thus, the conclusion of the problem of providing compensation for outsourced workers is the need for cooperation between the government, companies, labor unions, and various other stakeholders to create a fair, transparent, and just work environment for all workers, including outsourced workers. Right enactment of Law Number 6 of 2023 concerning Job Creation will have a positive impact on protecting the rights of outsourced workers and creating more sustainable employment in Indonesia.

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