



RESEARCH ARTICLE

**HUMAN RIGHTS AND BUSINESS:
HUMAN RIGHTS VIOLATIONS IN THE
OUTSOURCING INDUSTRY IN MODERN
BUSINESS INDONESIA**

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ABSTRACT

This article analyzes outsourcing job practice in contemporary business activities in Indonesia, focusing on types and factors that contribute to human rights abuse in the outsourcing business, based on academic literature and regulations on business and human rights. In today's Indonesian labor market, outsourcing jobs are a kind of phantom. Laborers risked not receiving adequate wages, work insurance, or equal bargaining power with the outsourcing company under this job recruitment system. Laborers' associations protested almost every May Day moment, demanding that the outsourcing job system be abolished. They also demanded to be hired directly by the company rather than by the outsourcing firm. Unfortunately, the

government responded to the demand by enacting the Workforce Act No. 13 of 2013. This law endorsed outsourcing with specific requirements that provide clear guidance for both employers and employees. However, in practice, companies frequently break outsourcing roles by hiring workers to staff their core business activities. On the other hand, outsourcing corporations also violate the Act's basic rights for outsourcing laborers. As a result, it implies human rights violations. Laborers were frequently threatened with losing their right to a healthy working environment, being fired from their contract without consultation, and having their fundamental rights violated. Human rights violations in outsourcing job activities are primarily caused by a lack of government oversight and law enforcement.

Keywords: outsourcing, worker, company, Act of Workforce, human rights abuses.

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INTRODUCTION

IN TODAY'S INDONESIA, business competition is extremely fierce. It has an impact not only on national businesses, but also on global

business. Every business venture competes in business races to stay ahead of the competition. Human resources that come from outside their core business activities, such as outsourcing, are the new business engine that contributes to race¹. The International Monetary Fund (IMF) introduced this outsourcing system as one of the conditions that Indonesia had to meet in order to obtain a loan during the 1998 economic crisis². A company gains many benefits from this type of human resources system, including the ability to pay less attention to its determinant component. They simply concentrated on the core of their business.

The business enterprise has a golden opportunity, which is in direct opposition to the workers' situation. There is no direct relationship between the company and the workers in the outsourcing system. This new model relationship eliminates the company's responsibility for everything related to workers' rights, including wages, insurance, job security, health, and other fundamental rights. According to several studies, workers' legal protection is weak under the outsourcing system³. Because of the job agreement signed

¹ In the global business, outsourcing contributes significantly to the development of any business and labor market. See Martin Falk & Bertrand M. Koebel, *Outsourcing, Imports, and Labour Demand*, 104 SCANDINAVIAN JOURNAL OF ECONOMICS 567, 567–586 (2002); Sharmila Rudrappa, *Making India the 'Mother Destination': Outsourcing Labor to Indian Surrogates*, RESEARCH IN THE SOCIOLOGY OF WORK (Elsevier, 2010), Robert Feenstr, et.al., *The Impact of Outsourcing to China on Hong Kong's Labor Market*, 95 THE AMERICAN ECONOMIC REVIEW 1673, 1673–1687 (2003).

² Dinar Wahyuni, *Posisi Pekerja Outsourcing dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*, 2 ASPIRASI 137, 137-150 (2012).

³ Uti Ilmu Royen, *Perlindungan Hukum Terhadap Pekerja / Buruh Outsourcing (Studi Kasus di Kabupaten Ketapang)*, THESIS (Universitas Diponegoro, 2009) <http://eprints.undip.ac.id/25014/1/UTI_ILMU_ROYEN.pdf>.

between the job provider and the company⁴, there are no guarantees that workers will receive certain rights from his employer⁵.

The outsourcing system is outlined in Articles 64 to 66 of the Workplace Act No. 13 of 2003⁶. Even the outsourcing model is not clearly stated in the article. However, businesspeople interpret it as an outsourcing model, which leads to the emergence of new outsourcing firms, much like a fungus that grows during the rainy season.

At the time of its introduction, the new bill that legalizes outsourcing posed few problems for the workforce. It creates a large number of jobs for people who are unemployed⁷. The workers require funds to support their families. They are only concerned with getting a job and earning money, not with the type of work they will do, their rights, or the level of job security they will accept. In short, workers are unaware of their rights as employees⁸.

When worker's rights abuses emerge one by one—a wave of a demonstration demanding their rights voiced by a multiple worker's association⁹—those 'honeymoons' no longer happen. Workers demanded that companies respect their rights and that the government abolish the unjust outsourcing system. The outsourcing

⁴ Siti Kunarti, *Perjanjian Pemborongan Pekerjaan (Outsourcing)*, 9 JURNAL DINAMIKA HUKUM 67, 67–76 (2009).

⁵ Barzah Latupono, *Perlindungan Hukum dan Hak Asasi Manusia Terhadap Pekerja Kontrak (Outsourcing) di Kota Ambon*, 17 SASI 59, (2011).

⁶ Kunarti, *supra* note 4.

⁷ Lis Julianti, *Perlindungan Hukum Terhadap Tenaga Kerja Outsourcing Di Indonesia*, 5 JURNAL ADVOKASI FH UNMAS 2-3, (2015).

⁸ Yenita Petreilla, 'Masih Relevankah Sistem Outsourcing Di Tanah Air?', *Bisnis.Com*, 2019 <<https://ekonomi.bisnis.com/read/20190121/12/880788/masih-relevankah-sistem-outsourcing-di-tanah-air>> [accessed 28 September 2020].

⁹ See Royen, *supra* note 3.

system brings many benefits to businesses while also causing misery for workers¹⁰.

According to some studies, the worker and the job provider are not on an equal footing. The agreement they signed mentions the worker's status as an outsourcing employee, but there are no provisions regarding the employee's rights or job security¹¹. Royen¹² goes into great detail about how outsourcing workers are treated unfairly:

- a. There is no clear distinction made by the company between core business and support jobs. This situation is in direct conflict with the outsourcing provisions of Articles 64 to 66 of the Workforce Act of 2003.
- b. There is evidence that in some cases, a venture will share a portion of its business with an unregistered outsourcing firm. This agreement is illegal because it is made with the intent of breaking the law, and this type of business, of course, implies the workers' rights.
- c. Outsourcing workers and their rights to work are not protected under the law. Workers who are directly hired by the company are not included. As a result, the worker's rights and obligations are not stated in any explicit agreement. Furthermore, they are paid less than the company's employees. What's more unfortunate is that agency workers do not provide adequate rest time or work safety.

¹⁰ Andriyanto Adhi Suyanto & Heru Nugroho, *Perlindungan Hukum Terhadap Hak-Hak Pekerja Outsourcing Berdasarkan Asas Keadilan*, 3 JURNAL YURIDIS 61, 61-74 (2016).

¹¹ Amelia Torianto Julianti, *Rasa Aman Pekerja Outsourcing (Studi Fenomenologi Pekerja Outsourcing di Surabaya)*, 3 AGORA 140, 140-147 (2015); Latupono, *supra* note 5; Royen, *supra* note 3.

¹² Royen, *supra* note 3.

The above-mentioned fact reveals a pattern of outsourcing workers being subjected to human rights violations. It connects the outsourcing system's flaws with the government's lack of oversight and enforcement.

The human rights issue that arises in Indonesia's outsourcing workers system will be examined in this article. Following a description of the paper's background, the historical context of the outsourcing workers system from an international model to local adoption will be discussed. The next topic will be a brief discussion of Indonesian outsourcing regulations and their implementation. The next section will critically examine human rights violations in outsourcing jobs and conclude with a conclusion to emphasize the article's main point.

THE OUTSOURCING WORKERS' HISTORICAL BACKGROUND

THERE IS NO concrete evidence of when outsourcing was first used. In his brief notes, Kim¹³ explains that outsourcing is evolving in response to human activities. Troacă & Bodislav¹⁴ attempted to trace the origins of outsourcing after WWII, but only discovered it in 1990 in the United States business practice. The term "*outsourcing*" was coined in the United States by combining two words: "*out and sources*." It refers to obtaining a source from the outside. Later, the term was officially coined in economic jargon to denote the use of external [human] resources to grow a company's internal operations. In an

¹³ Moses Kim, 'The History Of Outsourcing From Carpenters to Accountants,' *Medium.Com*, 2018.

¹⁴ Victor-Adrian Troacă & Dumitru-Alexandru Bodislav, *Outsourcing. The Concept*, 6 THEORETICAL AND APPLIED ECONOMICS 51, 51-58 (2012).

outsourcing system, the company transfers its materials and resources to an external provider within a specified time frame in order to support its internal business.

The outsourcing vendors' competition attracts the company's attention to make a qualified standard, as is the new trend in the business environment today. This standard to process selection criteria is explained by Vaxevanou & Nikolaos¹⁵. The process began with the Preparation phases, then moved on to Vendor Selection, Transition, Relationship Management, and finally Reconsideration. Each of the steps is made up of a large number of separate sub-activities.

The company should ask an exact and philosophical question about why it needs external help to support its core business during the preparation phase. This step also establishes the vendor's qualification in relation to their business. As the fluffing of the criteria, it is a very important step for a business enterprise. It has an impact on the external vendor's expected outcome¹⁶.

After the first phase has been completed successfully, the next step is to provide vendors with a selection. This step is also critical because the company must find vendors who meet the criteria they set while also establishing mutually beneficial relationships¹⁷. Following that, the corporation seeks out the appropriate vendor who meets the defined criteria and adheres to the corporate culture standard.

Following these two phases, the transition has been completed. Establish intensive communication among the parties at this stage. Its

¹⁵ Anthi Vaxevanou and Nikolaos Konstantopoulos, *Basic Principles the Philosophy of Outsourcing*, 175 *PROCEDIA - SOCIAL AND BEHAVIORAL SCIENCES* 567, 567–571 (2015).

¹⁶ *Id.*

¹⁷ *Id.*

goal is to determine whether the vendor has fully implemented the contract. This step has a big impact on the company's and vendor's management relationships when it comes to putting their agreement into action¹⁸.

Reconsideration is the final stage of the outsourcing process. The company conducts assessments to work resulting from the agreement with vendors during this phase. The vendor evaluation refers to the criteria that the company established at the outset¹⁹.

OUTSOURCING WORKERS IN INDONESIA

EXCEPT FOR THE CONTENT of government policy, there is no official source that can be seen in Indonesia's outsourcing system. In 1989, the Indonesian government issued Decree of the Minister of Trade of the Republic of Indonesia No.264 / KP / 1989 concerning Sub-Contract Work for Processing Companies in Bonded Zones, which was issued by the Ministry of Trade. According to the decree, Sub-Contract Work has characteristics that are similar to those of the outsourcing system.

Under the Decree of the Minister of Trade of the Republic of Indonesia Number 135 / KP/ VI1993 on the Entry and Release of Goods to and from Bonded Zones, the government issued a new regulation in the form of a Minister Decree in 1993 to determine the type of business that can use the outsourcing system. The garment companies in bonded zones are the target of this decree. The export market is industrial, allowing the company to outsource some of its processing products to other companies, reducing production costs

¹⁸ *Id.*

¹⁹ *Id.*

and time. This strategy was devised in order to meet the deadline for export market demand. Similarly, Indonesia's outsourcing work system was initially restricted to specific production models aimed solely at the export market. In a nutshell, trade and industry policies include policies on outsourcing work systems²⁰.

The growth of outsourcing in business activities has been overseen by the government. Another government policy aimed at protecting outsourcing workers demonstrates this. Through the Minister of Manpower of the Republic of Indonesia's Circular Letter Number SE/08/MEN/1990 concerning the Responsibility of Contracting Companies for the Protection and Welfare of Contractor Company Workers, the policy becomes the starting point for officially recognizing the outsourcing work system as a labor policy.

The Ministry of Manpower intended for outsourcing workers and company employees to have equal wage rights. Regrettably, the outsourcing firm was against this policy. They claim that paying equal wages to outsourced workers and company employees was difficult for their company. The government issued Minister of Manpower Regulation No. Per-02/Men/1993 concerning Fixed Time Work Agreements in order to accommodate the outsourcing company. Outsourcing workers' rights are safeguarded under this legal policy.

After implementing a technical regulation on outsourcing workers ten years ago, the government has given the outsourcing system a lot more attention. It is demonstrated by the passage of Acts Number 13 of the Year 2003 on Workforce, which legalized the outsourcing system. In Indonesia, the law recognizes outsourcing as a new business model. The corporation can ask an outside party to participate in the business process that supports its core business under Articles 64 to 66.

²⁰ Gematriwira, 'Sejarah Kebijakan Outsourcing di Indonesia,' *WordPress*, 2016.

OUTSOURCING WORKERS POLICY IMPLEMENTATION

OUTSOURCING REGULATION was enacted under Law 13 of 2003, which adopted some rules from the previous legal policy relating to some substance modifications. Outsourcing is defined in this law as the transfer of part of a company's work implementation to another company through a written agreement, which can take two forms: a work contract agreement or the provision of worker/labor services, as regulated in Article 64 of Law Number 13 of 2003²¹.

It must comply with the provisions of Article 65 of Law No. 13 of 2003 in order to convey the implementation of work through a work contract agreement:

- a. Jobs submitted to other companies are performed separately from the main activity; performed on direct or indirect orders from the employer; is a company-wide supporting activity; and do not directly interfere with the production process.
- b. The company that receives the contract for work must be a legal entity.
- c. They provide protection and working conditions, at the very least in collaboration with the employer or in accordance with legal requirements.

In reality, some studies show that the core company and outsourcing company are abusing those regulations. Husein²²,

²¹ I Nyoman Putu Budiarta, *HUKUM OUTSOURCING: KONSEP ALIH DAYA, BENTUK PERLINDUNGAN, DAN KEPASTIAN HUKUM*, Setara Press, November (Malang: Cita Intrans Selaras, 2016).

²² Mohammad Zaki Hussein, 'Sistem Kerja Kontrak Dan Outsourcing Dalam Perspektif HAM,' *Indoprogess.com*, 2012, 2–6
<<https://indoprogess.com/2012/12/sistem-kerja-kontrak-dan-outsourcing->

Hussein, a Work Society Party member, insisted that outsourcing, for example, is widely used in jobs that are central to a company's operations. He went on to say that the various distribution companies channel different types of labor. Furthermore, outsourcing workers face wage discrimination. For the same work in the same place with the same working hours, discrimination occurred between three types of labor: permanent workers, contract workers, and outsourced workers.

Hussein²³ goes on to say that, in terms of basic wages, the average basic wage for contract workers is 14% lower than the average basic wage for permanent workers. In comparison, the basic wages of outsourcing workers are 17.45 percent lower than those of regular workers. The average total wage of contract workers is 16.71 percent lower than the average total wage of permanent workers. At the same time, outsourcing workers' total wages are 26% lower than permanent employees' total wages. Furthermore, many outsourcing companies, according to Petriella²⁴, do not make contractual agreements or provide specific information about the types of work available, so workers are forced to work whatever is required. Worse, many outsourcing firms are unlicensed, making it difficult for the government to keep track of them.

dalam-perspektif-ham/> [accessed 25 September 2020]. See also Petreilla, *supra* note 8.

²³ *Id.*

²⁴ Petreilla, *supra* note 8.

HUMAN RIGHTS VIOLATIONS IN THE OUTSOURCING INDUSTRY

INDONESIA IS COMMITTED to the implementation of human rights. It can be seen in the enactment of Law Number 39 on Human Rights in the year 1999. The 1945 Constitution also guarantees some basic human rights. In addition, in 2005, Indonesia ratified two fundamental human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Cultural Rights (ICECR). These legal foundations for human rights are the guiding principles for human rights implementation in all social, economic, and cultural activities.

In terms of outsourcing worker issues, the aforementioned human rights violations can be found in two sectors. They are wage discrimination against outsourcing workers, as well as a lack of job security, health benefits, vacation time, and worker exploitation. From the standpoint of human rights, this discrimination is in violation of Article 38 paragraph (3) of Law No. 39 of 1999 on Human Rights, which states that "everyone, whether male or female, who performs the same, comparable, equal, or similar work, is entitled to the same wages and terms of employment agreement." Discrimination like this violates Article 7 of the International Covenant on Economic, Social, and Cultural Rights, which was ratified by Law Number 11 of 2005. Workers have the right to "equal remuneration for equal value work without distinction".

According to Hussein²⁵, this discrimination occurs as a result of contract workers' and outsourcing workers' weak bargaining positions. Contract labor and outsourcing are difficult to organize because of their temporary and vulnerable employment relationship.

²⁵ *Id.*

Outsourced workers' working relationships, which are with the supplier company rather than the company they work for, exacerbate the problem. It is recommended that core companies that respect human rights obligations choose business partners who are well-managed, dependable, and ethical²⁶. As a result, the company should consider its business interests as well as the track record of its business partners. In this context, the human rights obligation must be included in the determination of the outsourcing vendor's criteria at the start of the preparation phase.

McPhail²⁷, offers three pieces of advice for the state as the primary bearer of responsibility for respecting, implementing, and protecting human rights. For starters, states are seen as having an absolute responsibility to ensure that corporations do not violate human rights, whether these violations occur within or outside their borders. Second, the state's human rights obligations are assumed to extend to all of its interactions with corporations, including procurement of goods and services, public/private finance initiatives, and support from government agencies such as Export Credit Agencies. Finally, the Guiding Principles state that corporations are responsible for respecting human rights in addition to, but not in lieu of, the state's responsibilities.

²⁶ Barcelona Panda, *Multinational Corporations and Human Rights Violations: Call for Rebuilding the Laws of Twenty-First Century*, 20 JOURNAL OF FINANCIAL CRIME 422, 422–432 (2013).

²⁷ Ken McPhail & Carol A. Adams, *Corporate Respect for Human Rights: Meaning, Scope, and the Shifting Order of Discourse*, 29 ACCOUNTING, AUDITING, AND ACCOUNTABILITY JOURNAL 650, 650–678 (2016).

CONCLUSION

THE COMPANIES' IGNORANCE of outsourcing guidelines leads to human rights violations in Indonesia's outsourcing job practice. The outsourcing system's concept is not well understood by the companies. They see outsourcing as a boon because it allows them to force their economic advantages by hiring low-wage workers without having to fill out the usual paperwork. While the government pays less attention to the activities of the companies, this situation has become widespread. Laborers, on the other hand, are weak as a result of their desire for a job that will provide them with financial benefits. This circle of outsourcing abuses entails systemic human rights violations. The government should thoughtfully plan and implement law enforcement management, according to this article. On the other hand, it is critical to clearly communicate outsourcing to businesses and workers.

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