



Comparative Study of Outsourcing in Indonesia: What Can Indonesia Learn from Outsourcing in Japan

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Abstract. Outsourcing in Indonesia is carried out based on the provisions of Act Number 11 of 2020 on Job Creation. This provision results in opening up opportunities for the proliferation of outsourcing types of work relationships, even though it has been proven that this form of a triangular outsourcing relationship is harmful to local workers. This study aims to identify outsourcing policies in enacted Japan that can be a role model for outsourcing policies in Indonesia. This research is normative research with a comparative method. From the analysis, it can be concluded that Indonesia can implement an outsourcing system in developed countries such as Japan, where the outsourcing system is mostly applied to part-time and not full-time jobs, providing benefits for part-time job seekers and contracting companies. It is important for the Indonesian government to have a specific law on the outsourcing system that can clearly regulate legal protection for local workers by strictly clarifying both rights and obligations of workers, service providers, and service providers, as well as sanctions that can be implemented. Protecting personal data for workers and companies is also an important thing that needs to be regulated in the outsourcing system in Indonesia.

Keywords: Outsourcing · Labor Law · Comparative Method

1 Introduction

The enactment of Act Number 11 of 2020 on Job Creation drastically changes the labour regulations, especially regulations of outsourcing. The provisions of Act Number 11 of 2020 on Job Creation which abolish Articles 64 and 65 of Act Number 13 of 2003 on Manpower and retain Article 66, indicate that outsourcing provisions are still permitted by law. This indicates that the provision of outsourcing is still permitted by law which results in the opening of opportunities for the proliferation of outsourcing types of work relationships, even though this form of triangular relationship like outsourcing is very unprofitable for workers [1].

Prior studies on outsourcing in Indonesia have shown results that the implementation of an outsourcing system, in fact, does not guarantee legal certainty regarding the types of jobs and working relationships between outsourced employees or employers [2]. Outsourcing in Indonesia has the problem that workers being placed in the company's

main activities or the production process [3]. Outsourcing implementation in Indonesia has not provided adequate and sufficient protection for outsourced employees [4]. Many problems that often occur in Indonesia's outsourcing systems are; one-sided employment termination, the rights of outsourcing employees are not guaranteed, and no guarantee of employment continuity by the company [5].

Outsourcing regulation in Indonesia with the implementation of Act Number 11 of 2020 on Job Creation still provides space for exploitation. Furthermore, from a humanitarian perspective, those provisions are considered to marginalize many workers because the scope of the type of work is no longer limited to a specific type of work [6]. Unfortunately, the outsourcing system in Indonesia is still popular and implemented by many employers and companies because this system enables to significantly reduced worker costs even though protection and work conditions provided cause disadvantages and harm to employees [7].

Some sectors in Japan limit their outsourcing system; specific rules may apply to outsourcing as financial services, medical services, utility services, debt collection, and local government function, which has specific rules that apply to outsourcing implementation. This article will describe a comparative study of outsourcing in Indonesia and Japan. Therefore, this article explores the following research questions; what can Indonesia learn from the outsourcing system in Japan?

2 Method

Type of research is normative with a comparative method. In this study, researchers used secondary data. Primary legal materials include Act Number 13 of 2003 on Manpower Act Number 11 of 2020 on Job Creation, and Government Regulation Number 35 of 2021 on Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. Secondary legal materials in this study are legal materials which include various books, journals, papers, research results, and opinions of legal experts who can provide explanations about primary legal materials. In this study, data analysis was carried out in a qualitative descriptive manner. Data analysis aims to simplify the processed results of qualitative data [8].

3 Discussion and Analysis

3.1 Outsourcing

Outsourcing in Indonesian labor law is defined as the chartering of work and the provision of labor services [9]. Outsourcing is the delivery of certain work of a company to a third party which is carried out to share the risk and reduce the burden on the company. The practice of outsourcing in the Indonesian manpower sector is defined as the use of labor to produce or carry out a job by a company through a labor service provider [10]. In present times, employers focus on the core of the business to reduce risks to the work implementation process as well as reduce labor cost budgets and then hand over certain jobs to third parties through contracting companies or Worker Service Providers [11]. Based on the provisions in Article 1 Number 14 Government Regulation Number 35

of 2021 on Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time and Termination of Employment, “Companies that provide outsourcing services are business entities in the form of legal entity that is eligible for carrying out certain jobs based on the agreement entered with the company employer.

Outsourcing is also known in Japan. An outsourcing system in this country is defined as the implementation of the functions of the company with the assistance of a trusted third party. Outsourcing agents in Japan exist to meet the needs of young and growing companies [12]. Cost-effective, easy to control, experienced employees, flexibility, lower risk, and high employee productivity are reasons that underlie this outsourcing system was chosen.

3.2 Outsourcing in Indonesia

The outsourcing policy by the Indonesian government is given to increase the opportunity to get a job [13, 14]. The application of outsourcing in Indonesia currently refers to the provisions stipulated in Act Number 11 of 2020 on Job Creation, in which controversial provisions remove several rules that govern outsourcing. The implementation of this outsourcing was previously regulated in Act Number 13 of 2003 on Manpower [15, 16]. Based on prior law, there are rules that regulate the limits of the types of activities that can be carried out by workers with the outsourcing system. These provisions clearly agree that some types of jobs prohibited in the outsourcing system are; the first are types of jobs that directly main activities or deal directly with the production process, carrying out activities that are supporting or not directly related to the production process. But, based on the new law, the provisions regarding the type of work activity limitation in Act Number 11 of 2020 on Job Creation are removed. Furthermore, based on this provision, there is no limit on the types of work that can be outsourced in the outsourcing system, outsourcing now that can be involved for core work or company production [7].

The implementation of outsourcing in Indonesia is based on the provisions of Act Number 11 of 2020 on Job Creation. There is a stipulation that workers with an outsourcing system in carrying out their work based on a Specific Time Work Agreement (PKWT) or an Indefinite Work Agreement (PKWTT) which can be made in writing. Workers with an outsourcing system whose work implementation are based on a Specific Time Work Agreement (PKWT) must implement the provisions stipulated in Act Number 11 of 2020 on Job Creation and Government Regulation Number 35 of 2021 on Work Agreements for Certain Time, Outsourcing, Time Work and Time Rest and Termination of Employment regulate that PKWT is based on a period and completion of a certain job and PKWT not can be held for work of a permanent nature. These provisions limit work carried out with an outsourcing system that, based on a Specific Time Work Agreement (PKWT), cannot be carried out on work that is permanent [17].

Provisions regulated in Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Time Rest and Termination of Employment regarding outsourcing it is determined that the Protection of Workers/Labourers, Wages, welfare, working conditions, and disputes that arise are carried out in accordance with the provisions of laws and regulations and are the responsibility of the Company. In the event that the Company employs Worker based on a

Specific Time Work Agreement, the Agreement The work must require transfer protection of rights for Workers in the event of a change of Company and as long as the object the job is still there.

The terms of the transfer of protection of rights are a guarantee of continuity of work for Workers who are working relationship based on a Specific Time Employment Agreement in the Company. In the event that the Worker does not receive a guarantee for the continuity of work, the Company is responsible for the fulfillment of workers' rights. The important points regulated in Government Regulation No. 35 of 2021 regarding outsourcing are the expansion related to the type of work, protection for workers, which is emphasized on the aspect of the employment relationship, and there is a Transfer of Undertaking Protection of Employment (TUPE) mechanism.

Regulations regarding outsourcing in Indonesia are still generally integrated into regulations related to employment in Indonesia which are regulated in Act Number 11 of 2020 on Job Creation. Because no formal arrangement regulates outsourcing, its implementation depends solely on the practice level. Based Special regulations are needed as guidelines to emphasize aspects of legal protection for workers in labor service provider companies and employers against outsourced workers [18].

3.3 Outsourcing in Japan

Outsourcing system, also known in Japan, assurance, protection for outsourced workers get protection in accordance with applicable regulations [19]. In Japan, many kinds of outsourcing take place in production and operation in manufacturing industries, call centre services, information and technology, property management outsourcing, security, programming, and content production [20]. The existence of workers with the outsourcing system applied in Japan focuses on supporting work, not on the main work in Japanese companies. Outsourcing in Japan is provided by a trusted third-party company. The outsourcing system in Japan is widely used by companies. The system is often used to strengthen internal control. Outsourcing to a professional firm allows the professional worker and team to handle important functions requiring specific technical skills. Moreover, it contributes more to production and cost-effectiveness [12].

Interestingly, in Japan there are no special rules regulating the outsourcing system. Legal issues relating to outsourcing system arrangements by the Japan Civil Code and other relevant laws. However, some sector-specific rules may apply to outsourcing. Specific regulations governing outsourcing services in Japan, among others, are in the field of financial services [20]. In the field of financial services, The Financial Service Agency (FSA) will conduct inspections related to the implementation of outsourcing in financial services. This service is obliged to inspect the following; how to plan and implement outsourcing and control and resolve internal issues. For example, in the outsourcing system that applies to financial services, the institution must comply and ensure that the outsourcing agent complies with these rules. Financial services and financial institutions must submit control reports over outsourcing suppliers Act Number 25 of 1948 on Financial Instruments and Exchange Act.

Managers at the hospital comply with the provisions of the Ministry of Health, Labor, and Welfare of Japan (MHLW) when hospitals take action to outsource medical services, such as examination of samples, sterilization of medical equipment, food services, patient

pick-up service, cleaning facilities, cleaning beds (Act Number 205 of 1948 on Medical Care). Violation of the provisions contained in the Medical Care Act there has been no application of criminal sanctions [20]. Water supply in Japan is under the operation of government agencies that have the authority to supply water to the public. Based on the provisions of the Water Supply Act in Japan, water suppliers can outsource related to water supply management which has certain conditions. The policy regarding outsourcing also applies in the field of debt collection related to debt collection. The policy regarding outsourcing in the field of debt collection can be implemented with the approval of the government as regulated in Act on Special Measures Concerning Claim Management and Collection Businesses [20].

While implementing the outsourcing system, the public sector can comply with the provision set out in the Civil Code. The provisions Act No. 67 of 1947 on Local Autonomy Act open up opportunities to outsource the administrative activities of public facilities to private parties. Provisions regarding outsourcing agencies acting as outsourced suppliers are regulated Act Number 118 of 2003 on Local Incorporated Administrative Agency Act. The provisions in the Act Number 51 of 2006 on Reform of Public Services by Introduction of Competitive Bidding regulate the types of work previously carried out by local public institutions that can be done by outsourcing [21]. Outsourcing provisions in waste disposal are regulated in the Act Number 137 of 1970 on Waste Management and Public Cleansing Act.

Many Japanese companies make straightforward outsourcing contracts with outsourcing agents in Japan. Implementation of outsourcing contracts in Japanese companies, companies carry out strict supervision regarding handling personal data for handling information. This provision regarding personal data protection refers to the following Personal Information Protection Act. To provide protection, in the outsourcing agreement, several items are included to protect personal data, such as the right to monitor how the outsourcing agent handles personal data and provisions so that the outsourcing agent can comply with the rules that have been set. In the banking sector, insurance companies, and in the securities sector, The Financial Service Agency (FSA) has the authority to carry out inspections related to outsourcing activities at these institutions.

Financial institutions in Japan that outsource agents to Japan to carry out outsourcing agreements include clauses in the agreement such as a clear scope of work, a clear contract period, the services to be provided, and provisions on how supervision and inspection related to the field of work will be carried out, obtained security. To provide legal protection for workers with an outsourcing system in Japan, Japanese companies supervise outsourcing companies in handling personal data. Applicability related to outsourcing in Japan also refers to the protection of personal data, which is regulated in the Act Number 57 of 2003 on Personal Information Protection Act (PIPA. This law governs the protection of information, especially personal information).

Based on PIPA, related to the handling of information, there is a prohibition against providing personal data to third parties, including other companies in the group, unless approval is available. The one who is responsible for managing the personal data is left to the outsourcing agent [20]. To provide legal protection for workers, the outsourcing agreement contains provisions regarding the protection of personal data, including the outsourcing agent prohibits workers from divulging personal information and processing

personal data outside the scope of outsourcing without consent. Outsourcing agents are prohibited from copying or duplicating personal data unless for emergency backup or outsourcing business purposes that have been determined prior.

The protection of personal data in the practice of outsourcing activities in Japan is of particular concern. Ministry of Health, Labor and Welfare the Ministry of Health, Labor and Welfare of Japan (MHLW) makes policies regarding the protection of personal data, such as the Guidelines for Handling of Personal Information in the medical field, Guidelines for the protection of personal data in the Employment Management Industry. The same is true in the field of financial services. The Financial Services Agency of Japan (FSA) issued guidelines for protecting personal information in financial services. These guidelines must be adhered to within the scope of outsourcing practice in Japan [20]. The security requirements applied in the outsourcing process in Japan are implemented based on the Guidelines on the Protection of Personal Information in the Field of Finance. This includes the steps that can be taken by company management to be able to choose the right outsourcing agent vendor. This security management must be written in the outsourcing agreement to protect the parties [21].

Japan's outsourcing law also respects the voices of workers. As seen in the practice of outsourcing in Japan, if there is a supplier change, the worker will not be automatically transferred according to the applicable law on the supplier. Approval from the worker is also required. If there is a company separation, the worker can move from the old outsourcing company to the new outsourcing company [21]. Dispute resolution that applies in Japan related to disputes in outsourcing agreements is carried out by civil litigation, although it is indeed expensive and takes a long time. Alternative Dispute Resolution (ADR) is rarely applied. In practice, if a dispute occurs, it is resolved through discussion by both parties to find a solution to the problem [21].

3.4 What Can Indonesia Learn from Outsourcing in Japan

Based on the previous studies, it is found that Indonesia's outsourcing system is problematic; from the outsourcing company side, it is still lacking in providing protection and its responsibilities in the event of termination of employment for workers [22]. There are obstacles to providing welfare to outsourced workers in terms of unfair wages for workers who are distinguished by the type of worker's work [23]. Outsourcing workers are the most disadvantaged party in a work agreement [18].

This is different from the existence of an outsourcing system in Japan which has developed rapidly. This is proven by research conducted by Matsuno dan Tagawa that Information System in Japan and outsourcing are considered the most effective approaches to business strategy [24]. Software progress in China is mostly made by outsourcing cooperation with Japan [25]. Outsourcing in Japan has a significant impact on upgrading workers' skills [26]. According to Yano Research Institute Ltd, outsourcing in Japan since 2012 has experienced an increase in services, especially in the field of outsourcing services in the field of Information Technology [20]. Outsourcing applied to patent examinations can improve the quality of the examinations and time resources [27].

While the implementation of outsourcing in Indonesia still sparks controversies, scholars consider it impartial to workers. Act Number 11 of 2020 on Job Creation and

Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Time Work, and Time Rest and Termination of Employment provides the latest regulations in the outsourcing field. In this provision, work that can be carried out with a broader outsourcing system is no longer limited to company support activities. This provision is the same as the existence of outsourcing in Japan which has been widely applied in various lines of work, but the practice of outsourcing in Japan has specific guidelines related to regulations that must be complied with in every field of outsourcing services, such as in the field of financial services, medical services, utility services, debt collection which have guidelines for outsourcing. This provision does not yet exist in the outsourcing arrangements that apply in Indonesia.

Outsourcing companies must also follow the rules for implementing the outsourcing system in Japan, which include legal protection for personal data. Among them are the rules governing the protection of personal data, which require the outsourcing agent to adhere to the security and compliance standards established, as well as prohibitions on providing any data, including personal data, to third parties. Companies in Japan are required to comply and include these rules in the outsourcing agreement. This is a critical factor for protecting personal data for companies that use outsourcing agents to avoid misuse and misconduct that can cause harm for the workers.

4 Conclusion

Outsourcing implementation in Indonesia is based on the provisions of Act Number 11 of 2020 on Job Creation, which regulates the outsourcing system that provides a broader scope of outsourcing work. Provisions for outsourcing policies in Indonesia remain broad, with specific arrangements for outsourcing policies in each line of work carried out with an outsourcing system. Based on the author's research, Indonesia can adopt a policy of outsourcing in Japan by establishing special rules for outsourcing policies. Indonesia can also enforce personal data protection measures in the outsourcing mechanism for workers and companies that use outsourcing services.

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