

DEVIATIONS IN THE USE OF FIXED-TERM EMPLOYMENT AGREEMENT IN THE OUTSOURCING SYSTEM

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Abstract

Outsourcing has become a choice for companies in dealing with market competition to reduce production costs and increase company flexibility. In practice, outsourcing uses fixed-term employment agreement to form a bond between employers and workers. However, disputes often arise between the two parties regarding rights and obligations that are frequently violated, especially by companies that take advantage of the existence of fixed-term employment agreement to bind outsourced workers. The issues to be examined are the misuse of fixed-term employment agreement in the outsourcing system in The Industrial Relations Court Decision No. 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst. and the application of the principles of protection and legal certainty for outsourced workers in cases of misuse of fixed-term employment agreement in the aforementioned case. The author applies a normative research method with primary legal materials, namely positive labor law and secondary legal materials such as books and legal journals through legal literature study techniques. With a regulatory approach, the data is then analyzed using qualitative methods to compile the data into information. Through the conflict between the law and its implementation, it can be concluded that the form of deviation that occurs is due to the repeated use of agreements and the existence of a pseudo-employment relationship that gives rise to legal consequences for which the company must be held accountable. The application of the principles of legal protection and legal certainty is a form of justice obtained by workers so that the agreement that has been made is binding on both parties. Through the conflict between the law and its implementation, it can be concluded that the form of deviation that occurs is due to the repeated use of agreements and the existence of pseudo-employment relationships that give rise to legal consequences for which the company is liable. The application of the principles of legal protection and legal certainty is a form of justice for workers, so that the agreements that have been made are not merely a formality but provide real protection.

Keywords: Outsourcing, Fixed-Term Employment Agreement, Deviations

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INTRODUCTION

Indonesia is considered a country with an economy that is growing towards a more advanced level of industrialization and continuously strives to pay attention to its economic development, which depends on investors under the existing policies in Indonesia (Pondaag et al., 2017). Thus, capital is very necessary to advance a nation and a country. Usually, investors utilize the facilities available in a company to support business activities in order to obtain good profits. To operate a company, it requires a workforce that has expertise in their fields as well as high work motivation. With competent employees, the company is able to produce optimal products and performance, thereby achieving maximum profits. Workers play an important role in the continuity of the company because they function as drivers of capital and the main executors of production activities. However, as long as companies are still seen as agents of national economic development, entrepreneurs tend to emphasize productivity and worker loyalty more than the fulfillment of the workers' own rights. Therefore, the fulfillment of workers' basic rights is guaranteed and mandated for the state to help realize. At present, providing security must begin with the formation of a bond that can bind workers with employers, which can then serve as a basis for protecting workers.

The legal bond that forms the basis of the relationship between employers and workers is the employment contract, which is explicitly regulated in civil and labor law. A contract is defined as a legal relationship that arises through an agreement made by two or more parties, specifying rights and obligations that then give rise to legal consequences (Hetharie, 2020). According to the provisions of Article 1320 of the Civil Code, for the validity of an agreement to be achieved, four main elements are required: the consent of the parties, legal capacity, a specific object, and a reason that is not contrary to the law. After meeting the requirements for an agreement to form an employment contract, it must fulfill the elements of an employment contract. According to M.G. Rood, an employment relationship can be said to be binding if it fulfills the elements of work, instructions or orders from the employer, a certain period, and compensation in the form of wages. If these elements are not met, the employment contract is considered nonexistent. From the perspective of fairness for workers, such an agreement mechanism has the potential to be exploited by companies with a dominant position, thereby making its application a source of injustice and pressure on the employees. In general, forms of employment relationships can be classified into two main types, namely fixed-term employment agreements and indefinite employment agreements. Both agreements have their own advantages and disadvantages. For companies that implement fixed-term employment agreement, they must adhere to stricter requirements compared to an indefinite-term employment agreement. Unlike fixed-term employment agreement, which has a predetermined duration, an indefinite-term employment agreement is an agreement without a time limit. In practice, a fixed-term employment agreement prohibits probationary periods, whereas an indefinite-term employment agreement requires a probationary period with a maximum of three months.

Thus, an employment agreement becomes the starting point for the establishment of a bond between the employer and the employee, containing rights and obligations during the term of the contract. An employment relationship is created due to the connection between the parties formed on the basis of mutual agreement. Within this relationship, there are several crucial aspects to consider, namely the rights of the employer which place them in a higher position compared to the employee, the employer's obligation to provide wages as compensation for the work performed, and the type of work that forms part of the agreement subject to the employee's responsibility (Nurachmad, 2009). In a working relationship, clarity is needed to avoid causing losses to either party, and it is required to comply with the agreed-upon provisions. This clarity represents a positive effort to build worker participation in maintaining order, supporting the company's progress, and realizing shared welfare for both employers and workers. What often causes disputes between the two is the lack of concern from employers towards workers, which triggers injustice against workers, leading to conflicts that can result in demonstrations or strikes (Tampone et al., 2024).

However, in practice, employment relationships do not always run harmoniously because the imbalance of positions between employers and workers often raises issues regarding the fulfillment of rights. Disputes that arise often trigger less harmonious employment relationships accompanied by conflicts in the implementation of the production process between workers and employers, which can result in suboptimal production outcomes. This is certainly caused by the interests of employers as the highest authority. Workers want to obtain decent jobs commensurate with the results they receive, while employers want to provide standard wages with high workloads to gain substantial profits. With the level of competition being tight, employers naturally seek ways with more flexible demands to meet market

requirements. For some of them, using an outsourcing system with flexibility is something that must be considered. The presence of this system becomes a bridge in overcoming business risk reduction, and the main focus of the company lies in the core business activities or operations, while supporting activities that were previously considered an additional burden can be outsourced or handed over to another company. Thus, this approach allows the company to carry out the production process in a more efficient and optimal way to achieve the company's main objectives. The benefit of this strategy is to create broader development, not only in terms of the number of transactions but also in the production activities carried out. Contract workers involved in supporting activities such as cleaning services, catering, security, and the like, or jobs that do not require special expertise from the service provider, were initially a form of non-strategic outsourcing. However, over time, outsourcing practices have shifted towards a more strategic approach when the employing company delegates some of its core activities to the vendor. (Laode, 2017).



Figure 1. Scheme of outsourcing formation (*joingenius.com*)

This condition encourages companies to seek work systems that are considered more efficient and flexible, one of which is through outsourcing mechanisms. Provisions regarding outsourcing in Indonesia are terminologically regulated according to Article 1601 letter b of the Civil Code, which explains the rules regarding work contracting agreements. The outsourcing system is an integral part of labor aspects, so the government has established its regulation firmly through Law Number 13 of 2003 concerning Manpower (Law 13/2003), Law Number 6 of 2023 concerning the Establishment of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation (Law 6/2023) (Sitorus et al., 2023). The understanding of outsourcing is regulated in Article 64 of Law No. 13/2003, which emphasizes that outsourcing is a form of employment agreement between an employer and a worker, where some work activities are transferred to a third party based on an agreement set out in written form. The practice of outsourcing and protection. In line with this, Article 65 paragraph 7 of Law No. 13/2003 explains that the employment agreement made between the employer and the worker is based on a fixed-term employment contract. Thus, this regulation provides companies with the opportunity to use a contract system for outsourcing workers. The existence of this contract system will provide a sense of fairness expected by workers because the employment relationship formed has its own characteristics. The relationship referred to in outsourcing involves three parties, namely the service provider, the user company, and the worker (Laode, 2017).

The existence of contract work agreements within the outsourcing system provides companies with the opportunity to focus on their core production, enabling them to compete in product marketing. Professional activities within the company are transferred to external parties who have a higher level of expertise and skills in the directed field. The implementation of such cooperation agreements ultimately provides greater benefits for the company as it allows for efficiency and improved performance quality, but it also raises some frequently discussed issues concerning the rights of workers in outsourcing companies. In its implementation, protection for workers regarding the problems they face still does not meet marketing targets. This can be seen in practices that do not comply with labor laws, with some companies still implementing work policies based solely on the company's interests, without giving proportional attention to workers who have the right to obtain legitimacy and protection based on the norms established in labor law (Parinduri, 2019). One example of a case is the misuse of the fixed-term employment agreement with outsourced workers, which was submitted to the Industrial Relations Court and filed by AS as a worker against BSS as the director of CV. AB and Defendant I, ES as the owner of CV. AB and Defendant II, PT. SBS as Defendant III, and PT. KP as Defendant IV. While working as a truck driver from 2011 to 2021 with the Defendants, the Plaintiff did not have clear job security, the duration of employment during which the employment relationship was conducted through a fixed-term employment agreement that was continuously extended without interruption, and the nature of the work caused injustice and a lack of legal protection.

Referring to the description above serves as a basis for the author in selecting the research topic entitled “Deviations in the Use of Fixed-Term Employment Agreements in the Outsourcing System in The Industrial Relations Court Ruling No. 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst,” which aims to provide a more comprehensive discussion focusing on the deviations often carried out by outsourcing companies to avoid obligations, create legal uncertainty for workers, and undermine the principles of protection and justice in industrial relations.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that Indonesia is a state based on law (Diana et al., 2024). Consequently, all aspects of the life of the Indonesian people are governed by prevailing laws and regulations, which require citizens to comply with and implement such rules. Because the law holds the highest position, the administration of the state and governmental actions must always be grounded in legal norms. Furthermore, the 1945 Constitution also regulates the principle of equality before the law and the principle of justice, which are reflected in the Indonesian Criminal Code and the Criminal Procedure Code.

According to Soedarto, criminal law is a set of legal rules applicable to conduct that meets particular criteria and results in the imposition of a criminal sanction (Purwoleksono, 2014). Criminal law is divided into two branches: substantive criminal law and procedural criminal law. Substantive criminal law determines which acts are punishable, who may be held criminally liable, and what types of punishment may be imposed—exemplified by the Indonesian Criminal Code. Meanwhile, procedural criminal law governs the procedures or steps to be taken when substantive criminal law is violated, is in the process of being violated, or has been violated, as reflected in the Criminal Procedure Code.

Moeljatno defines procedural law as the body of legal norms governing the methods of enforcing substantive law (Moeljatno, 2008). Criminal procedure law, therefore, regulates the procedures for enforcing or safeguarding substantive criminal law. The Criminal Procedure Code does not explicitly define the meaning of criminal procedure law. Article 1 of the Criminal Procedure Code sets forth definitions of investigators and investigation, preliminary investigators and preliminary investigation, court decisions, legal remedies, arrest, detention, and other related matters. The function of criminal procedure law is to implement substantive criminal law by providing rules on how the state exercises its authority to impose punishment or to release a person from punishment (Sofyan & Asis, 2014).

The term “criminal act” is derived from the Dutch phrase *strafbaar feit*. The term *straf* means punishment, *baar* means capable of, and *feit* refers to an act, deed, or event. Two major schools of thought exist regarding *strafbaar feit*, namely the monistic and dualistic perspectives (Sudarto, 2018). According to the monistic view, as proposed by Wirjono Prodjodikoro, a criminal act is conduct for which the perpetrator may be subjected to punishment (Sudarto, 2018). Meanwhile, the dualistic view advocated by Moeljatno holds that a criminal act is conduct prohibited by law and punishable for anyone who violates such prohibition. A criminal act may be committed with intent (*dolus*) and/or negligence (*culpa*). Intentional acts indicate that the perpetrator has the will or desire to commit the prohibited conduct and is aware of the potential consequences. Wirjono Prodjodikoro classifies intent into three forms: purposeful intent, knowledge-based certainty intent, and awareness-of-possibility intent (Prodjodikoro, 2008). In addition to intentional acts, criminal acts may also arise from negligence, which refers to punishable conduct committed without intent but due to carelessness or lack of caution.

Article 44 paragraph (1) of the Indonesian Criminal Code stipulates that a person suffering from a mental disorder cannot be subjected to criminal punishment because such a person is incapable of being held criminally responsible for his or her actions. Article 44 paragraph (2) further provides that if criminal responsibility cannot be attributed to a perpetrator due to defective mental development (*gebrekkige ontwikkeling*) or mental disorder resulting from illness (*ziekelijke storing*), the court may order the person to be placed in a mental hospital for up to one year as a probationary period. Mental disorders may arise from various biological, psychological, or social factors (King, 2017). Individuals with mental disorders often experience abnormalities in thought, emotion, behavior, and interpersonal relations. Schizophrenia is one of the more severe mental disorders. Individuals with schizophrenia may see or hear things that are not real, speak irrationally, experience sudden emotional shifts, or display unusual bodily movements.

In District Court Decision No. 150/Pid.B/2024/PN.Jkt.Br, the defendant, Andi Andoyo, committed the criminal act of homicide and was charged with two alternative indictments by the public prosecutor: premeditated murder under Article 340 of the Indonesian Criminal Code and intentional murder under Article 338 of the Indonesian Criminal Code. Initially, the defendant sought assistance from the victim because he believed he was being disturbed or subjected to witchcraft by someone else. However, after four meetings, the victim continued to dismiss the defendant's requests, causing the defendant to feel hurt and develop the intention to end the victim's life. On 26 September 2023, the defendant waited for the victim near the latter's apartment for approximately one hour. After the victim had walked about

20 meters, the defendant followed him, took a knife from his bag, and covered the victim's mouth from behind. The defendant then slit the victim's throat, causing the victim to collapse and die. The defendant subsequently fled the scene. Based on expert testimony, the defendant was diagnosed with Paranoid Schizophrenia, which affected his perception, mood, and interpretation of the victim's actions. The expert explained that the defendant suffered from impaired mental functioning and was unable to distinguish between reality and non-reality. The defendant submitted a Visum et Repertum Psychiatricum as evidence of his mental condition.

In the district court's judgment, the panel of judges found the defendant legally and convincingly guilty of premeditated murder and imposed a prison sentence of sixteen (16) years. The defendant's counsel filed an appeal with the Jakarta High Court, registered as Decision No. 181/Pid/2024/PT DKI, arguing, among other points, that the district court failed to properly consider expert testimony and the Visum et Repertum Psychiatricum. The appeal was accepted but upheld the district court's ruling. The defendant's counsel subsequently filed a cassation petition against the High Court's decision, but the Supreme Court rejected the petition. Article 44 of the Indonesian Criminal Code explicitly provides that a person suffering from mental disorder due to defective development or illness cannot be subjected to criminal punishment.

Based on the foregoing background, the research questions in this study are: (1) what legal grounds and juridical considerations were relied upon by the judges in rendering judgment against a defendant suffering from Paranoid Schizophrenia in Supreme Court Decision No. 1675 K/Pid/2024; and (2) how Article 44 paragraph (1) of the Indonesian Criminal Code was applied in the decision. This study focuses on a juridical analysis of the judges' reasoning and the application of substantive criminal law norms to perpetrators with mental disorders, particularly in the context of criminal responsibility.

RESEARCH METHODS

This study uses a normative legal research method that focuses on the analysis of legislation, legal principles, and legal doctrines in solving a legal problem. The data obtained consists of primary legal materials, including the Civil Code, Law Number 13 of 2003 concerning Manpower, Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment, as well as secondary legal materials that include legal books, legal journals, and jurisprudence. The technique for collecting legal materials was carried out through library studies by gathering legal sources and legal theories related to the issues to be resolved. The method applied is based on a statutory approach, where the author systematically analyzes various legal products related to labor aspects. In analyzing the data, qualitative analysis is used by transforming the obtained data into information that is organized in an easily understandable narrative form.

RESULT AND DISCUSSIONS

Forms of Irregularities in the Use of Fixed-Term Employment Agreement Within the outsourcing System in The Industrial Relations Court Decision No. 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst.



Figure 2. Workflow scheme of outsourcing (joingenius.com)

In outsourcing, the basic working system is that a company entrusts certain tasks to an external party (vendor) based on clauses and provisions agreed upon in the employment contract. In the implementation of the outsourcing system, if there is a discrepancy, it often results in the company's desired production targets for goods or services not being achieved due to actions that harm workers. Therefore, a balance between employers and workers is required to fulfill their respective rights and obligations without any conflicting interests that could result in harm to either party. Thus, in practice, it must comply with the fundamental rules used as guidelines in decision-making (Manullang, 1998). If the activities of the company and the workers do not align with the basic guidelines, it may disrupt the implementation of the outsourcing system in protecting basic rights, which could be compromised if there is an inconsistency between values and the applicable legal norms.

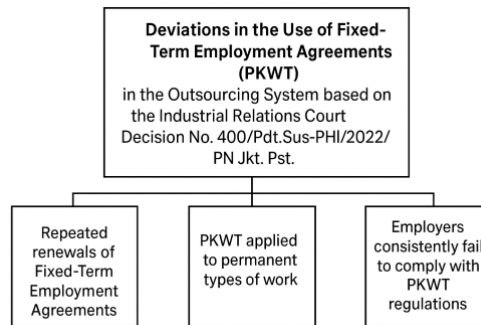


Figure 3. Diagram of the form of deviation in the implementation of fixed-term employment agreement

The implementation of fixed-term employment agreement in Indonesian employment practices is essentially regulated strictly through Law No. 13/2003 as amended by Law No. 6/2023, and further elaborated in Government Regulation No. 35/2021. Fixed-term employment agreement is intended for forms of work with a temporary nature, such as non-continuous jobs, short-term employment, or work related to new innovative products that are still in the trial phase. However, in practice, many companies use fixed-term employment agreement not according to the spirit of the intended law, but rather as a tool to avoid obligations to permanent employees, such as severance pay, social security, and long-service awards. Based on the ruling, it has been shown that there have been deviations in the use of fixed-term employment agreement within the outsourcing system carried out by outsourcing companies, reflected in the practice of continuously using fixed-term contract status for work that is permanent in nature (core business), as well as the existence of fictitious transfer of employment relationships between companies with the intent to evade legal obligations towards workers. In this case, AS has been employed since 2011 by CV. AB, a bottled water distribution company (Nestlé Pure Life), as a truck driver, a position that is an integral part of the distribution business activities. The workers were then repeatedly transferred in terms of their contract status to other companies, namely PT. SGS and PT. KP, under the direct orders of CV. AB, without going through a formal recruitment process, job application, or interview. All these agreements were in the form of fixed-term employment agreement, even though the nature of the distribution driver job is permanent, ongoing, and not seasonal as stipulated in Article 59 paragraph (2) of Law No. 13/2003. Such practices constitute a form of deviation because the user company exploits the outsourcing mechanism to avoid establishing a direct and permanent employment relationship and to evade the obligation of providing remuneration or benefits to employees. The transfer of employment relationships between companies without changes in the substance of the work also violates the provisions of Article 65 of Law No. 13/2003, which explicitly limits outsourcing activities only to supporting services and not to the main activities of the company.

The Industrial Relations Court judges then assessed that employment relationships carried out repeatedly through several different business entities but under the same orders and supervision from CV. AB indicate the existence of a constructive employment relationship, namely an employment relationship that is substantively permanent even though formally divided into fixed-term employment agreement with third parties. Therefore, the court stated that the employment relationship between AS and CV. AB legally changed to an indefinite-term employment contract, and ordered the payment of compensation in accordance with the provisions of Government Regulation 35/2021. From a normative perspective, this deviation reflects a violation of the principle of legal protection for workers as affirmed in Article 27 paragraph (2) of the 1945 Constitution and Article 59 of Law 13/2003, which emphasize the principle of employment certainty and the prohibition of misuse of fixed-term contracts. Practically, this case highlights the weak oversight of outsourcing practices and fixed-term employment agreement, which are often used as cost-efficiency instruments by employers at the expense of workers' rights. The Industrial Relations Court's ruling emphasizes that deviations in the use of fixed-term employment agreement are not only related to the duration of the agreement but also to the legal intent behind the transfer of employment relationships aimed at avoiding responsibilities as the primary employer. Thus, this case has become an important jurisprudence for the application of the principle of substance over form in industrial relations, where judges not only assess the formal aspects of a contract but also examine the substance in the assignment of the primary work. Academically, this case reaffirms the relevance of the labor relations theory proposed by Ingrid Simler Q.C., who views employment agreements as the main rules outlining the reciprocal relationship between workers and employers in exercising rights and fulfilling obligations, whether in writing or verbally. In this context, the actual collaboration between AS and CV. AB demonstrates that the legal substance is more important than

the formal type of contract used. Thus, the misuse of fixed-term employment agreement in the outsourcing system is not merely an administrative violation, but a deviation from the principles of justice, certainty, and legal utility that should form the foundation of the national employment system.

From these deviations, legal consequences will arise that should be accounted for by the company, namely by changing the legal employment relationship status to become an indefinite-term employment agreement, as stipulated in Article 59 paragraph (7) of Law No. 13/2003 and Article 15 of Government Regulation No. 35/2021. It states that if a fixed-term employment agreement is intended for work of a permanent nature, or if it is extended beyond the stipulated time limit, or renewed in a manner that conflicts with the law, the agreement is declared invalid. Consequently, the worker is considered never to have been bound by a permanent employment relationship. This status change brings legal consequences regarding the realization of fundamental rights, which consist of components such as severance pay, recognition for length of service, and compensation for replacement rights as regulated in Article 156 of Law No. 13/2003 (Wibowo & Matheus, 2023); the right to compensation for fixed-term employment as regulated in Article 17 of Government Regulation 35/2021 if the employment relationship between the employer and the worker ends; as well as the right to social security for employment and Regional Minimum Wage protection. In its considerations, The Industrial Relations Court panel of judges assessed that CV. AB, as the user company, had utilized the outsourcing scheme to avoid legal obligations as the primary employer. Since the employment relationship between AS and CV. AB is direct and meets the criteria of work, wages, and orders, the judge stated that the relationship is, in substance, an indefinite-term employment agreement.

In addition to the change in employment relationship status, the subsequent legal consequence is the emergence of joint liability in the outsourcing system, involving both the user company and the labor service provider company. According to the provisions of Article 66 paragraph (4) of Law No. 13/2003, if the labor service provider fails to fulfill its normative obligations to the workers, the user company remains jointly responsible for all the workers' rights arising from the employment relationship. In this case, PT. SGS and PT. KP acted as outsourcing companies that administratively signed contracts with the workers, but in reality, all orders and supervision came from CV. AB. The panel of judges considered this pattern as a form of pseudo outsourcing, in which the vendor merely acts as an administrative intermediary. As a result, CV. AB and the vendor company are jointly considered responsible for all employee rights, including unpaid wages and severance pay. This reinforces the principle that outsourcing cannot be used as a means to escape labor law responsibilities. Furthermore, violations of the provisions regarding fixed-term employment agreement and outsourcing may also trigger administrative sanctions as regulated in Article 61A of Law No. 13/2003, including written warnings, limitations on the scope of business activities, temporary suspension of some or all operational activities, up to the revocation of business licenses. From another perspective, the company has also committed violations of civil provisions which can be sanctioned with civil penalties in the form of compensation, namely by paying all the rights of employees that were neglected during the period of employment. In the context of the US case, the company is required to pay overdue wages, work compensation, and long-service awards in accordance with positive law provisions. The imposition of this sanction also has a dual meaning: first, as a form of restitution for the disadvantaged employees; and second, as a deterrent effect for other companies to prevent the misuse of employment contract schemes for the sake of labor cost efficiency.

The application of the Principles of Protection and Legal Certainty for Outsourced Workers in Cases of Misuse of Fixed-Term Employment Agreement in The Industrial Relations Court Decision No. 400/Pdt.Sus-PHI/2022/PN.Jkt.Pst.

The principle of legal protection in labor law is a manifestation of the function of law to protect parties who are socially and economically in a weaker position, namely workers. This protection is not only related to occupational safety or social security but also concerns the certainty of the employment relationship status and the realization of workers' fundamental rights. In the context of outsourcing employment relationships, the principle of protection becomes very important because there is a separation between the party with the authority to give instructions (user company) and the party that is formally bound by the employment contract (vendor company). This condition clearly indicates a form of deviation in the implementation of the outsourcing system to evade the legal obligations of the user company, particularly regarding the appointment of permanent employees. Thus, the employment relationship that occurs is direct and substantive between the worker and the hiring company. In its considerations, the judge assessed that legal protection is provided for binding employment relationships, hence the worker's status should be permanent in accordance with the provisions of Article 59 paragraph (7) of Law No. 13/2003 and Article 15 of Government Regulation No. 35/2021. The

application of the principle of legal protection in this ruling reinforces the principle of “substance over form,” meaning that the law must protect the actual conditions experienced by the worker, not merely the formal aspects of the contract made. The judge not only assessed the agreement documents but also the factual relationship in the field, which demonstrated elements of work, wages, and directives from CV. AB. In this way, legal protection is provided substantively so that workers are not harmed by contract formalization practices intended to eliminate their rights. In addition, the responsibility of the user company towards outsourced workers in this case is also recognized under Article 66 paragraph (4) of Law No. 13/2003, which stipulates that if the labor service provider company fails to fulfill its normative obligations, the user company is jointly responsible along with the involved company. This means that legal protection for outsourced workers cannot be waived merely because of a tripartite agreement. The state, through the courts, positions workers as legal subjects whose welfare must be safeguarded to prevent outsourcing practices from becoming a form of concealed exploitation.

Thus, legal protection for workers is a complex issue related to aspects of occupational health and safety, wages, welfare, and employment social security. In principle, there are two types of legal protection, namely preventive and repressive (Budiarta, 2016). The purpose of preventive legal protection is to reduce dispute triggers through legal regulations enacted by the state in providing protection for the normative rights of workers. The form of repressive legal protection is aimed at providing justice guarantees for outsourced workers who experience labor disputes. This protection serves as a means for workers to claim and enforce their rights through a fair and balanced legal resolution process. This concept originates from the position of entrepreneurs having a higher or stronger status, while workers have a lower or weaker status, thus necessitating legal protection from the state through applicable legal regulations. As previously explained, the protection provided is absolute in granting part of the work to another company. This provision is regulated in Article 65 paragraph (4) of Law 13/2003, which emphasizes that protection and provisions regarding working conditions for workers employed in other companies must be provided equally with the protection and working conditions applied in the employer company. This provision must also comply with applicable regulations to ensure the fulfillment of workers' rights.

The principle of legal certainty in the field of employment aims to provide clarity regarding the status, rights, and responsibilities of the parties involved. Legal certainty ensures that every action within an employment agreement is carried out in accordance with legal instruments and does not create uncertainty for the parties involved. In the context of fixed-term employment agreement and outsourcing, this principle is implemented through the provisions of Article 59 of Law No. 13/2003 in conjunction with Government Regulation No. 35/2021, which explicitly restricts the use of fixed-term employment agreement to work that is temporary, seasonal, or for a specific project whose completion can be determined within a set period. The application of the principle of legal certainty in this ruling is clearly evident when the panel of judges considers that an employment relationship lasting ten years without interruption, carried out in permanent types of work, constitutes a violation of positive legal provisions. Therefore, the judge declared that the fixed-term employment agreement becomes void by law and the employment relationship is converted into an indefinite-term employment agreement. This step not only enforces legal certainty formally but also ensures substantive certainty for workers so that their rights are no longer dependent on the company's unilateral interpretation. Furthermore, legal certainty is also related to the principle of equal treatment before the law, where the existence of outsourced workers should be treated equally to permanent employees, especially regarding employment status and welfare guarantees. In this case, the Industrial Relations Court emphasized that the law cannot justify the existence of a fixed-term employment agreement designed to conceal a permanent employment relationship, as this contradicts the principles of justice and social protection in accordance with Article 27 paragraph (2) of the 1945 Constitution and the values of the Fifth Principle of Pancasila.

Legal certainty has an essence that concerns the issue of protection from acts of deviation by companies towards workers. Legal certainty is a fundamental value that plays an important role in efforts to provide protection to society by offering guarantees to avoid unlawful actions. This principle implies that the law places a commitment on the state and individuals to uphold and enforce applicable legal provisions. Therefore, this principle cannot be separated from the concept of a state governed by law (*rechtsstaat*), in which the implementation and enforcement of the law are the duties of the state in creating order and social justice. According to Scheltema, there are several key elements that constitute legal certainty, namely: (1) the principle of legality, which ensures that every action is based on valid law; (2) the existence of regulations that clearly govern the authority and actions of the government so that the public can understand the limits and expectations of the law; (3) the prohibition of retroactive application of laws; and (4) the presence of oversight mechanisms that are not influenced by those in

power (Budiarta, 2016). Based on these components, legal certainty can be understood as: first, certainty regarding the legal norms that govern general government issues; second, certainty regarding the juridical position between subjects and objects in the administration of law; and third, efforts to prevent the emergence of arbitrary actions (*eigenrichting*) by both individuals and state officials. In the context of industrial relations, this principle, when providing protection for outsourced workers, needs to be examined from several crucial aspects, including clarity of employment status, the type of work being outsourced, the legal form of the company providing the services, as well as the fulfillment of the normative rights of outsourced workers, particularly when disputes arise with the user company.

CONCLUSION

Forms of deviation in the use of fixed-term employment agreement within the outsourcing system in the decision are reviewed through the practice of continuously using employment contracts for work that is of a permanent nature, as well as the fictitious employment relationship status created by the user company with the vendor company that uses the outsourcing system to avoid legal responsibilities that should be provided by the company to the workers. Based on labor law provisions, this company has violated Article 59 paragraph (2), Article 65 of Law No. 13/2003, Minister of Manpower Regulation No. 19/2012, as well as Article 27 paragraph (2) of the 1945 Constitution, which essentially prohibits the misuse of fixed-term employment agreement in the outsourcing system. The presence of this deviation has resulted in legal consequences that should rightfully be the responsibility of the company, such as changes in employment relationship status, joint responsibility by the user company and the vendor company, as well as administrative responsibilities as outlined in Article 61A of Law No. 13/2003. The ruling reaffirmed the importance of applying the principle of substance over form in labor law, that justice and legal certainty must side with the substance of the actual employment relationship, rather than merely the formal form of the agreement, and it serves as an important precedent in strengthening law enforcement efforts for outsourced workers in Indonesia.

In the application of the principles of protection and legal certainty based on the case, the law must serve as a real protection and not merely a written agreement in formal form. The principle of protection places workers as subjects who must be safeguarded from the abuse of employment contracts. In this way, workers who are in a weaker position while the company is in a stronger position must still be considered fairly by the law in the event of a dispute in the employment relationship. Meanwhile, the principle of legal certainty stands firmly in ensuring the clarity of the status and rights of workers so that they are not disadvantaged by arbitrary actions of the company. In its implementation, legal certainty is closely related to the principle of equal treatment before the law, ensuring equality before the law without any discriminatory behavior. These two principles, as reflected in court decisions, demonstrate that labor law not only assesses the formalities of a contract but prioritizes the substance of the actual employment relationship, thereby allowing the principles of justice, certainty, and humanity to be concretely realized in the protection of outsourced workers in Indonesia.

Companies should adhere to the principle of good faith in employment relationships by using the principles of protection and legal certainty as the basis for labor policies. The implementation of fixed-term employment contracts should be carried out proportionally, only for work that is truly temporary or seasonal. Employers also need to ensure that every employment agreement is officially registered with the Labor Office to ensure legal transparency and accountability.

The government needs to strengthen supervision and law enforcement mechanisms in labor, particularly regarding outsourcing practices and the use of fixed-term employment agreement. Effective supervision must be accompanied by an electronic reporting system and strict sanctions for companies found to repeatedly enter into employment agreements for permanent positions.

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