

# The Role of Government in Legal Protection Efforts for Employment for Post Enactment of Law Number 6 Of 2023 Concerning the Stipulation of Government Regulation in Lieu Of Law for Power Workers Number 2 of 2022 Concerning Job Creation (Case Study of Pt Sumber Masanda Jaya, Brebes Regency)

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DOI: <https://dx.doi.org/10.47772/IJRISS.2024.803434S>

Received: 19 November 2024; Accepted: 25 November 2024; Published: 27 December 2024

## ABSTRACT

### Purpose:

This study aims to provide insight into the effectiveness of legal protection for outsourced workers and recommend better employment policies in the future. The role of the Brebes Regency Government in protecting outsourced workers at PT Sumber Masanda Jaya shows a commitment to creating a better working environment.

### Method:

Approach descriptive qualitative use in study this, with technique data collection via interviews, observations, and documentation. Data validation was carried out through four stage that is validity face, triangulation, reflection criticality, and validity catalytic.

### Results And Conclusion:

The outsourcing policy is regulated in the Job Creation Law and Law No. 6 of 2023, which emphasizes the responsibility of labor provider companies to provide employment protection for their workers. A case study at PT Sumber Masanda Jaya in Brebes shows low disputes even though the outsourcing issue is controversial. This study examines the role of the Brebes Regency Government in protecting the labor rights of outsourced workers after the implementation of the Job Creation Law. Using the approach of the Rule of Law Theory, John Rawls' Theory of Justice, and Role Theory,

The Rule of Law Theory analyzes the application of laws that emphasize the supremacy of law, protection of human rights, and government accountability. Rawls' Theory of Justice is used to assess social justice for workers, while Role Theory examines the influence of the government on social interactions and worker protection.

**Keywords:** Outsourced labor, legal protection of workers, role of government

## INTRODUCTION

Development investment in Indonesia is experiencing improvement the year. It is recorded that investment realization in Indonesia in the first quarter of 2024 was 401.5 trillion rupiah or an increase of 22.1 percent compared to the first quarter of 2023 which was only 328.9 trillion rupiah (Kominfo, 2024). In the National

Labor Force Survey (Sakernas) in February 2024, the Central Statistics Agency mention that the working population in February 2024 was 142.18 million people. Of the total working population there is Asmany as 58.05 million people (40.83 percent) work in the formal sector, an increase of 0.95 percent compared to February 2023 (BPS, 2024).

Increasing amount workers in the formal sector also become challenge alone for Government and business world. One of interesting issue day This is power Work transfer power (Prawira, S: 2021). Term of transfer Power or the previous one known with outsourcing according to Regulation Financial Services Authority Number: 9 /POJK.03/2016 Concerning the Principle of Prudence for Commercial Banks That Submit Part of the Implementation of Work to Other Parties is the transfer of part of the work to a service provider company through a work contract and/or or through an agreement for the provision of labor services.

In the course of the system Work outsourcing already There is since the determination Constitution Number 13 of 2003 concerning Employment with use term contract for contracting out work or providing worker services/ laborers. Article 65 of Law No. 13 of 2003 explains that there is binding conditions for companies that will deliver part work to other companies including carried out separately from the main activity, carried out on direct or indirect orders from the employer, is a supporting activity for the company as a whole, and does not directly hinder the production process (Mulya, 2013). Reinforced in Article 66 and its explanation that worker / workers from a company providing worker services/ Workers may not be used by employers to carry out main activities or activities directly related to the production process, except for supporting service activities or activities that are not directly related to the production process.

Emergence rule about outsourcing in Law No. 13 of 2003 cause wave protests among organization Union Worker / Union Labor Contract work relationship practices and outsourcing considered tends to be exploitative because with the same work obligations, the same working hours and in the same place as permanent workers, contract and outsourcing workers receive different rights and some workers have to spend money to get work or to maintain their jobs (Tjandraningsih, Herawati, & Suhadmadi, 2010).

In conditions like these, workers' benefits are often Labor is considered not comparable to the profits obtained by the company, so that until now outsourcing is still an interesting phenomenon to discuss in the business world. Companies using outsourced labor previously referred to Article 66 Paragraph (2a) of Law Number 13 of 2003 concerning Employment, which states that there is an employment relationship between workers/ workers and companies providing worker services/ laborers (Sayre W.S, 1998). On the other hand, the laborers are also guided by Article 1 point 15 of Law Number 13 of 2003 which states that an employment relationship is a relationship between an employer and a worker/ workers based on a work agreement, which has the elements of work, wages and orders.

Use term transfer Power This appear in Constitution Number 11 of 2020 concerning Job Creation which changes part articles in the Employment Law. Law Number 11 of 2020 concerning Job Creation removes restrictions on the types of work that can be outsourced. Despite the unclear restrictions on the types of work that can be outsourced, become the object of outsourcing, Law No. 6 of 2023 and Regulations Government No. 35/ 2021 brings a bright spot with the regulation of the burden of responsibility for outsourcing workers entirely on the outsourcing service provider company. In addition, the Job Creation Law also begins to regulate efforts to guarantee employment (job security) for outsourcing workers as regulated in the amendment to Article 66 paragraph (3) of Law Number 6 of 2023 concerning the Stipulation of the Replacement Government Regulation.

From here it becomes clear that the agreement in the form of a PKWT for outsourced workers must include a TUPE clause (transfer of undertaking protection of employment / transfer of rights protection for workers). Constitutional Court (MK) Decision No. 168/PUU-XXI/2023 stated that the provisions related to outsourcing in the Job Creation Law remain constitutional, but emphasized the importance of protecting the rights of outsourced workers. With this decision, the Brebes Regency Government needs to take a proactive role to ensure that PT Sumber Masanda Jaya and the outsourcing providers used meet employment

protection standards in accordance with applicable regulations. One of the companies in Brebes Regency with a large number of workers, around 14,500 workers, is PT. Sumber Masanda Jaya. The company is engaged in the footwear industry with the shoe brand sport famous brand Nike. PT. Sumber Masanda Jaya is a user of outsourced labor, especially for security personnel. PT Sumber Masanda Jaya outsources the work to PT Ray Mitra Perkasa. Based on data available at the Department of Industry and Manpower Brebes Regency The large number of workers plus outsourcing workers but not many cases of disputes make it interesting to study further.

## RESEARCH METHOD

Study uses a qualitative descriptive research approach. The qualitative approach has unique characteristics in understanding social phenomena. This research is descriptive and interpretive in nature, which means that the researcher seeks to understand the meaning behind the actions, interactions, and experiences of the research subjects in the natural context of the objects being studied (Moleong, 2017).

The type of research used in this study is non- doctrinal research or empirical legal research that focuses on how the law is applied and practiced in the field. This research involves collecting empirical data through interviews, observations, and document analysis to understand the impact and implementation of law in society (Denzin & Lincoln, 2005, hlm. 3). This research not only analyzes applicable laws and regulations, but also observes and analyzes their application in the field (Patton, 2002, p. 14). In the context of this research, a legal approach is used to analyze Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022. on Job Creation, especially articles related to Legal Protection for outsourced workers. While empirical research involves collecting data directly from the field to understand how the law is applied and perceived by the parties involved (Adi, 2021). In this study, empirical data was obtained through interviews with outsourced workers, management of PT Sumber Masanda Jaya, and government officials related to the implementation of laws in the field of Manpower.

Interview done with related parties, such as power transfer power, management of PT Sumber Masanda Jaya, and representatives from agency Government related in Brebes Regency (Maarif, 2003, p.135). Secondary data researcher gets through studies literature and also documentation in which consists of from ingredients primary, secondary and tertiary laws that have relatedness with Topic research discussed in thesis This (Karniawati, Rahmadani 2011).

## RESULTS AND DISCUSSION

### **The role of the Brebes Regency Government in providing protection for outsourced workers at PT Sumber Masanda Jaya, Brebes Regency**

The Job Creation Law, which aims to improve the investment climate and ease of doing business, has brought about various changes in employment regulations, including the regulation about power transfer power. Case study on PT Sumber This Masanda Jaya will dig How implementation policy transfer power in the company the after-implementation Constitution Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.

In a country of law, the principle of the rule of law affirms that all government actions must be subject to the law, not merely to the power or will of the holder of power (Moh. Mahfud, MD, 2006, p.8). This principle underlies the obligation of the government, including the Brebes Regency Government, to act within the limits of the law to protect workers' rights, including outsourced workers in companies such as PT Sumber Masanda Jaya. Based on the theory of the rule of law, the government has an obligation to enforce applicable laws, including providing protection for workers' rights as regulated in laws and regulations. In this context, the role of the Brebes Regency Government can be seen as an embodiment of the principle of the rule of law in the practice of a state of law. The supervision carried out by the local government on PT Sumber Masanda

Jaya shows that the government is trying to carry out social and legal control functions to ensure a balance between the interests of the company and the rights of workers (Setiono, 2004, p.3).

The principle of Human Rights Protection in the theory of the rule of law underlines the state's obligation to guarantee and protect the basic rights of all citizens, including workers (Hadjon, 1987, p. 10). In this context, the Brebes Regency Government has an important role in ensuring that outsourced workers at PT Sumber Masanda Jaya receive proper protection and in accordance with human rights standards. This principle aims for the government to actively protect the dignity, basic rights, and welfare of outsourced workers who are vulnerable to rights violations.

The principle of legal certainty in the theory of the rule of law underlines the importance of clear, consistent, and enforceable rules so that all parties clearly understand their rights and obligations (Robbins & Judge, 2017, p. 45). In the context of employment relations, especially outsourcing, legal certainty is key so that workers, companies, and the government have clear guidelines regarding the rights, obligations, and protections provided within the framework of employment law (R.&Kahar, 2019). In the role of the Brebes Regency Government to protect outsourcing workers at PT Sumber Masanda Jaya, legal certainty is reflected in the implementation of strict regulations, including Law No. 6 of 2023 which regulates outsourcing. The local government has an obligation to ensure that this policy is understood and implemented by PT Sumber Masanda Jaya correctly, so that outsourcing workers are not harmed and receive appropriate protection (Anggra, et.al: 2020).

The principle of Justice and Equality in the theory of the rule of law emphasizes fair and equal treatment for all citizens before the law, including in terms of employment rights (Atmaja, 2015). This principle requires the government to ensure that every worker, including outsourced workers who may be more vulnerable, receive equal protection and equal rights without discrimination (Triwulan, 2017, p. 62). The Brebes Regency Government, as a representative of the state, plays an important role in realizing justice and equality for outsourced workers at PT Sumber Masanda Jaya. The principle of justice and equality in the theory of the rule of law is closely related to the role of the Brebes Regency Government in protecting outsourced workers at PT Sumber Masanda Jaya. Through the function of supervision and implementation of equal rules, the government seeks to ensure that outsourced workers obtain fair rights without discrimination, thus creating a more equitable work environment for all workers. (Husen & Qamar, 2022).

The principle of Accountability and Transparency in the theory of the rule of law emphasizes the importance of responsibility and openness in every government action. In the context of protecting outsourced workers at PT Sumber Masanda Jaya, this principle requires the Brebes Regency Government to carry out clear, accountable, and open supervision of all processes and decisions related to protecting outsourced workers.

### **John Rawl's Theory of Justice**

The Difference Principle in John Rawls' theory of justice states that social or economic inequalities are justified only if they benefit the least advantaged. This principle requires that resources or policies be distributed in a way that prioritizes the welfare of vulnerable and marginalized groups, provided that the inequalities benefit them. The principle of Fair Equality of Opportunity in John Rawls' theory of justice emphasizes that every individual should have an equal opportunity to access advantageous social and economic positions without being hindered by factors such as social background, race, gender, or economic status (Sutrisno, S, et.al: 2023). The implementation of this principle by the Brebes Regency Government includes:

1. Providing Equal Access to Training and Career Development: Ensuring that outsourced workers have equal opportunities to develop skills and advance in the workforce.
2. Elimination of Discrimination in Recruitment and Promotion: Ensure that recruitment and promotion policies do not discriminate against agency workers on the basis of contract status.

3. Improving Access to Social and Health Security: Providing outsourced workers with equal access to social and health protection.
4. Outsourcing Worker Protection Regulation: Ensure policies that support the rights of outsourcing workers, such as clear contract arrangements and monitoring of fair working conditions.

### **Role Theory (1971)**

The principle of Traditional Legitimacy in role theory refers to the recognition and acceptance of authority or power derived from long-standing traditions, customs, and structures in society. In the role of the Brebes Regency Government to provide protection to outsourced workers at PT Sumber Masanda Jaya, the principle of traditional legitimacy can be seen from the extent to which government policies are in accordance with norms accepted by the community. The government will be more accepted if the outsourced worker protection policy is consistent with local social and cultural values (Tanera, L., & Lie, G: 2023).  
Implementation of the Principle of Traditional Legitimacy in the Protection of Outsourced Workers:

### **Sustainability and Policy Acceptance**

The Brebes government can gain legitimacy by implementing outsourcing worker protection policies that are in accordance with the principles of social justice and workers' rights that are respected by the local community.

### **Recognition of the Role of Government**

Brebes residents likely believe that the government has an obligation to protect its citizens, including outsourced workers. Policies that recognize and protect workers' rights will support the government's legitimacy as a protector of the community.

### **Socially Acceptable Law Implementation**

Policies that are in line with local social norms and traditions will be more easily accepted by the community. If government policies are in line with local values such as justice and social welfare, then the policies will be considered legitimate.

### **Involvement in Supervision Received;**

The Brebes government can strengthen its legitimacy by involving community groups or traditional institutions in the supervision and implementation of outsourcing worker protection policies, so that these policies receive broad support (Pratiwi, et.al: 2023).

The Charismatic Legitimacy Principle in role theory focuses on authority gained through leadership full of charm and personal influence. Brebes Regency Government and protection of outsourcing workers at PT Sumber Masanda Jaya, charismatic legitimacy can be achieved if regional leaders have the ability to inspire the community and mobilize them to support outsourcing worker protection policies. Leaders who are able to create real change, show concern for worker welfare, and manage crises with assertiveness will gain greater support. Analysis of the Principle of Legal-Rational Legitimacy in the Brebes Regency Government in the Protection of Outsourcing Workers:

1. Legitimate Legal Recognition and Implementation: The Brebes Regency Government obtains legal-rational legitimacy by implementing policies that comply with applicable labor laws and regulations, such as Law No. 6 of 2023 concerning outsourcing. The policies taken must comply with legitimate legal procedures, so that government policies are considered legitimate by the community.
2. Implementation of the Principle of Rational Justice: The policy of protecting outsourced workers must be fair and equal, ensuring that outsourced workers receive the same rights as permanent

workers, in accordance with existing regulations. Implementation of this principle of justice strengthens the legitimacy of the government in the eyes of the public.

3. **Supervision and Law Enforcement:** The government must be able to carry out consistent and firm supervision to ensure that outsourcing worker protection policies are implemented properly. Law enforcement against companies that violate will strengthen the legitimacy of the policy in the eyes of the
4. **Clear and Transparent Administrative Procedures:** It is important for the government to have clear and transparent administrative procedures regarding the protection of outsourced workers. These procedures must be easily understood by the public and workers, so that they feel that their rights are protected and can be enforced rationally.
5. **Commitment to Consistent Legal Compliance:** Legal-rational legitimacy depends on the government's consistency in complying with the law. If the Brebes government is consistent in implementing outsourcing worker protection policies in accordance with applicable laws, the public will increasingly believe that the policy is legitimate and fair.

Max Weber's role theory of legal-rational legitimacy provides a relevant framework in analyzing the role of the Brebes Regency Government in providing protection for outsourced workers at PT Sumber Masanda Jaya. In this context, legal-rational legitimacy helps explain the basis of government authority in carrying out supervisory and protective actions.

### **Obstacles of the Brebes Regency Government in providing protection to outsourced workers at PT Sumber Masanda Jaya Brebes Regency after the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation**

The Brebes Regency Government in providing protection to outsourced workers at PT Sumber Masanda Jaya after the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation has constraints, is a complex and multidimensional issue. Based on the results of interviews with various related parties, there are several main constraints that need to be analyzed further.

First, the uneven and incomplete socialization of the details of the implementation of the new Law is one of the significant obstacles. Second, the limited human resources and budget to carry out comprehensive supervision are the next obstacles. These resource limitations have the potential to hinder the fulfillment of other principles of the rule of law, namely government based on law. According to AV Dicey, one of the elements of the Rule of Law is the supremacy of legal rules and the absence of arbitrary power (Asshiddiqie, 2006: 152). When the Government does not have adequate resources to oversee the implementation of the Law, there is a risk that the rule of law cannot be enforced effectively, which in turn can result in injustice for outsourced workers (Fransetyo, A, et.al: 2023). Third, the complexity of Law No. 6 of 2023 and the incompleteness of the derivative regulations are the next obstacles. In the context of John Rawls' Theory of Justice, the complexity and incompleteness of these regulations can be seen as potential violations of the principle of fair equality of opportunity. Rawls emphasized the importance of fair social institutions in distributing basic rights and obligations (Rawls, 1971: 60). Fourth, coordination between the Regional and Central Governments which sometimes gives rise to different interpretations is the next obstacle Saiya, et.al: 2021).

Fifth, the gap in understanding between various parties (Workers, Companies, and Government Officials) regarding the details of the Law. In the context of John Rawls' Theory of Justice, this gap in understanding can be seen as a challenge to the principle of justice as fairness. Rawls emphasized the importance of an equal initial condition (original position) where all parties have the same information to make fair decisions (Rawls, 1971: 12). In the perspective of the Theory of the Rule of Law, the speed of regulatory change can be seen as a challenge to the principle of legal certainty. Friedrich Julius Stahl emphasized the importance of legal certainty as one of the characteristics of a rule of law (Asshiddiqie, 2006: 154). To overcome these obstacles, a comprehensive and systematic approach is needed. First, the Government needs to increase the

intensity and quality of socialization of Law No. 6 of 2023 to all relevant parties. This can be done through various media, including seminars, workshops, and digital platforms. Effective socialization will help reduce the gap in understanding and increase legal certainty.

### **Brebes Regency Government's Strategy to Provide Legal Protection for Outsourced Workers at PT. Sumber Masanda Jaya Brebes Regency after the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation**

Outsourcing workers in Indonesia, including in Brebes Regency, often face challenges in terms of Legal Protection and welfare. With the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the regional government is expected to provide better protection to outsourcing workers. The strategy implemented by the Brebes Regency Government in protecting outsourcing workers is important to reduce the potential for violations of workers' rights. The Brebes Regency Government's strategy in providing legal protection to outsourcing workers at PT Sumber Masanda Jaya includes various steps such as increasing supervision, providing legal assistance, and facilitating dialogue between workers and companies. These strategies are in line with John Rawls' Theory of Justice, where the government seeks to realize justice for vulnerable groups such as outsourcing workers by ensuring equal access to rights and protection (Amania, N: 2020).

In the perspective of Role Theory, the district government carries out its functions and responsibilities as a proactive supervisor, protector, and mediator in implementing fair worker protection policies (Munawar& et.al: 2021). By carrying out these roles, the Brebes District Government is expected to create a fairer work environment and protect the basic rights of outsourced workers (Al Hafizd, et.al: 2023). The chart below illustrates the Brebes District Government's strategy in overcoming the obstacles that arise regarding employment protection for outsourced workers, especially at PT Sumber Masanda Jaya. Brebes Regency (Hanifah, I: 2021). The steps taken include improving coordination between the Central and Regional Governments, improving socialization related to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, and preparing more comprehensive derivative regulations. In addition, this strategy also includes improving the understanding of all stakeholders and accelerating adaptation to new regulations, in order to ensure the rights outsourced workers are well protected (Thalib, et.al: 2021).

## **CONCLUSION**

The Brebes Regency Government, in this case the Brebes Regency Industry and Manpower Office, has an important role in fostering, supervising and enforcing the rights of outsourced workers at PT Sumber Masanda Jaya. This role includes monitoring working conditions, ensuring that wages are met according to standards, and providing protection for the rights of workers in outsourced employment relationships.

The Brebes Regency Government, in this case the Brebes Regency Industry and Manpower Office, faces several obstacles in implementing this protection, including limited resources and personnel in fostering and supervising employment, especially outsourcing. Lack of understanding of workers and companies regarding the rights in the new regulations, as well as resistance from companies in implementing the protection mandated by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. In addition, the coordination factor between agencies is also an obstacle in ensuring optimal implementation of the regulations. To overcome these obstacles, the Brebes Regency Government, in this case the Brebes Regency Industry and Manpower Office, has implemented several strategies. This includes increasing the socialization of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to companies and workers, strengthening coordination between related agencies to accelerate the handling of cases of employment violations, and increasing the number of personnel who focus on coaching and supervising outsourcing practices.

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