

Between Flexibility and Discrimination Against Workers' Rights: Comparing Outsourcing Protection Policies in Indonesia and the Philippines

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ABSTRACT: The practice of outsourcing in Indonesia continues to grow in line with high unemployment rates and demands for labour market flexibility. However, weak legal protections for outsourced workers have led to uncertainty about employment status, inadequate wages, and disparities in treatment between permanent and outsourced workers. This situation requires urgent review, given that outsourcing practices in the field often do not comply with applicable laws. Although regulations allow outsourcing only for certain types of work, in reality, many companies take advantage of it extensively due to lower labour costs and the lack of job security. In this context, it is important to compare Indonesian regulations with those of the Philippines, as the Philippines has a more assertive approach to protecting outsourced workers, including a ban on labour-only contracting and strict institutional standards. This study uses a normative juridical method, with a comparative approach and literature review to analyse the legal frameworks of both countries. The results show that the Philippines has succeeded in creating a more equitable outsourcing system through consistent regulations and strong supervision to protect workers. In contrast, Indonesia still faces inconsistencies in the implementation of regulations, leading to discriminatory treatment of outsourced workers. Therefore, this study recommends strengthening institutional coordination, effective law enforcement, and vocational education reform as part of a more equitable and sustainable labour reform strategy.

KEYWORDS: Employment; Indonesia; Outsourcing; Philippines; Worker Protection.



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I. INTRODUCTION

Outsourcing initially served as a catalyst for opening new opportunities and providing workers with flexibility to develop themselves. By delegating tasks to third parties, companies can focus on their core business activities.¹ Therefore, outsourcing policies such as Law No. 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law) were enacted.² Subsequently, it was repealed by Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law).³ To ensure its implementation, Government Regulation No. 35 of 2021 was issued.⁴ It appears that, normatively speaking, existing regulations have sought to provide legal certainty.⁵ However, practices in the field violate workers' normative rights, including job insecurity, low wages, and weak social security.⁶ The implementation of Fixed-Term Employment Agreements (PKWT) in outsourcing systems further weakens workers' bargaining position by making it easier for companies to terminate employment

¹ Joko Suyono, Miftakhul Huda and Niken Arief Rahayuana, "Analisis Hukum terhadap Fenomena Outsourcing dalam Perspektif Keadilan Sosial dan Hak-Hak Pekerja (Studi Kasus Putusan Mahkamah Agung 517K/ Pdt.Sus-PHI/2019)," (2025) 6:1 *Jurnal Penelitian Hukum Indonesia* 61 – 71.

² Presiden Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Lembaran Negara Tahun 2003 Nomor 39*.

³ Presiden Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, Lembaran Negara Tahun 2020 Nomor 6573*.

⁴ Presiden Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, Lembaran Negara Tahun 2020 Nomor 6573*.

⁵ Julyatika Fitriyaningrum, "Implementasi Sistem Alih Daya atau Outsourcing Dalam Mencapai Kesejahteraan Pekerja Indonesia Ditinjau Dari Undang-Undang Nomor 13 Tahun 2003," (2019) 2:1 *Indonesian State Law Review* 88 – 102.

⁶ BPMPP UMA, "Sistem Outsourcing dalam Hukum Ketenagakerjaan: Implikasi Hukum dan Perlindungan Hak Pekerja," (18 September 2024), online: bpmpp.uma.ac.id <<https://bpmpp.uma.ac.id/2024/09/18/sistem-outsourcing-dalam-hukum-ketenagakerjaan-implikasi-hukum-dan-perlindungan-hak-pekerja/>>.

relationships.⁷ The results of Kurniasari's (2022) research show that outsourced workers face more unstable working conditions than permanent workers, mainly because companies are not subject to sanctions or fines if they fail to provide guarantees to them.⁸ This situation highlights the imbalance between companies' efficiency goals and the state's obligation to protect workers. In addition, weak oversight mechanisms and the low effectiveness of law enforcement agencies in dealing with labour violations exacerbate this problem.⁹ Negligence in supervision is evident when reports made to the police or independent state institutions are rejected on the grounds that they should be resolved through Industrial Relations Dispute Resolution (PPHI).¹⁰ In fact, many countries have successfully modified outsourcing practices in their countries so that they appear to be superior.

There have been several studies discussing outsourcing. For example, a study by Muhammad Faisal Khadafi et al. highlighted comparisons between legal protection systems for outsourced workers in several countries. The findings of the study show that legal protection for outsourced workers in Indonesia is still inadequate, both in terms of normative standards and implementation in the field. As a result, Khadafi et al. conclude that the regulations in force in Indonesia are still formalistic and procedural in nature.¹¹ In addition, Maisaroh's research shows that unfair regulations are the main reason why the outsourcing system has not yet achieved fairness. Therefore, at the end of her paper, Maisaroh states that comparing outsourcing policies with various countries and filtering

⁷ Wiwin Budi Pratiwi dan Devi Andani, "Perlindungan Hukum Tenaga Kerja Dengan Sistem Outsourcing Di Indonesia," (2022) 29:3 Jurnal Hukum IUS QUIA IUSTUM 652 – 673.

⁸ Tri Widya Kurniasari, "Kepastian Hukum terhadap Perlindungan Pekerja Outsourcing Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," (2022) 5:2 Geuthee: Penelitian Multidisiplin 124 – 136.

⁹ Muhammad Faisal Khadafi dan Ridho Naufal Irfanto, "Kajian Teknis Perlindungan Hukum Bagi Tenaga Kerja Outsourcing Dalam Praktik Industri," (2025) 4:1 MAROSTEK: Jurnal Teknik, Komputer, Agroteknologi dan Sains 59 – 65.

¹⁰ Yenny Silvia Sari Sirait, Muhammad Fadhil Alfathan Nazwar dan Abdan Ramadhani Wijin Florestu, *Buruh Dicekik Pandemi* (DKI Jakarta: Lembaga Bantuan Hukum Jakarta, 2021), 31.

¹¹ Muhammad Faisal Khadafi dan Ridho Naufal Irfanto, "Kajian Teknis Perlindungan Hukum Bagi Tenaga Kerja Outsourcing Dalam Praktik Industri," (2025) 4:1 MAROSTEK: Jurnal Teknik, Komputer, Agroteknologi dan Sains 59 – 65.

their implementation is a way to improve regulations in Indonesia.¹² Furthermore, there is also research conducted by Nugroho et al. which also examines several countries that are considered successful in implementing outsourcing practices based on the 2023 Global Services Location Index, in which the Philippines is one of the sample countries used for comparison with Indonesia. This study recommends revising operational licensing regulations by involving outsourcing company associations in the licensing process to improve oversight, establish clearer boundaries for sectors permitted to use outsourcing systems, and encourage the development of outsourcing workers' skills.¹³

Looking at a series of previous studies, there are still shortcomings in the form of general comparisons with many countries, whereas it is certainly necessary to focus on one country in order to make the review significant. This major limitation makes the understanding of outsourcing practices partial and does not provide alternative solutions based on policy comparisons. In view of this situation, this study aims to address these shortcomings by focusing on a comparison between Indonesia and the Philippines as two developing countries in the ASEAN region. Through this approach, the author hopes to reveal the supervisory strategies, fulfilment of workers' rights, and labour policies implemented in both countries, in order to assess the extent to which each is able to guarantee justice and welfare for workers. Furthermore, this study is expected to offer concrete recommendations for Indonesia to adopt best practices from the outsourcing system in the Philippines in order to strengthen legal protection and improve the quality of the national labour system.¹⁴

¹² Maisaroh Choirotunnisa, "Polemik Perburuhan dan Perbandingan Kebijakan Ketenagakerjaan Indonesia," (2023) 4:1 Progress In Social Development Maisaroh Choirotunnisa, "Polemik Perburuhan dan Perbandingan Kebijakan Ketenagakerjaan Indonesia," (2023) 4:1 Progress In Social Development 7 – 19.

¹³ Nugroho Habibi et al., "Memperkuat Perlindungan Pekerja Outsourcing: Analisis Implementasi Kebijakan," (2024) 1:1 Journal of Social Movements 86 – 97.

¹⁴ Outsource Consultants, "Why the Philippines (Still) Remains a Top Outsourcing Destination," (3 April 2024), online: [outsource-consultants.com <https://www.outsource-consultants.com/blog/why-the-philippines-still-remains-a-top-outsourcing-destination/>](https://www.outsource-consultants.com/blog/why-the-philippines-still-remains-a-top-outsourcing-destination/).

The scientific value of this paper lies in its comparative and analytical approach to examining regulations in order to identify innovative solutions for outsourced workers. This is urgent in terms of fulfilling justice and improving quality of life.¹⁵ In addition, this article draws on the context of the Sustainable Development Goals (SDGs), one of which focuses on improving economic growth and worker welfare in point eight, specifically point 8.8 entitled “Decent Work and Economic Growth”, which emphasises the protection of workers’ rights, including unstable employment (outsourcing).

This paper aims to achieve several objectives, namely comparing outsourcing labour regulations between Indonesia and the Philippines; identifying factors that make the labour system in the Philippines considered superior to that in Indonesia; and proposing strategies and approaches that Indonesia can adopt from outsourcing practices in the Philippines to strengthen worker protection and improve the national labour system. These three objectives are implemented in the structure of this paper.

II. METHODS

This study uses a normative research method to analyse the systematic protection of outsourced workers' rights through the legal umbrella of policies outlined in the Job Creation Law. According to Peter Mahmud Marzuki, normative legal research is conducted to discover legal rules, principles, and doctrines to address legal issues faced by contemporary society.¹⁶ This study also uses a statute approach, a comparative approach, and library research. First, the statute approach is an approach that involves reviewing regulations such as Law No. 13 of 2003 concerning Manpower and the Job Creation Law.¹⁷ Second, the comparative approach compares

¹⁵ Anggi Rizkina Sari Siregar et al., “Pentingnya Pemerataan Pembangunan Ekonomi dalam Meningkatkan Kesejahteraan Masyarakat Indonesia,” (2025) 5:1 Cemerlang: Jurnal Managemen dan Ekonomi Bisnis 52 – 64.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Pranada Group, 2007), 35.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Bandung: PT Kharisma Putra Utama, 2015), 133.

legal systems or parts of the law to analyse differences in responses across countries. In this study, comparisons were made between outsourcing regulations in Indonesia and the Philippines. Third, library research involves analysing reliable sources such as books, journal articles, and online articles related to law.

III. COMPARISON OF OUTSOURCING LABOUR REGULATIONS BETWEEN INDONESIA AND THE PHILIPPINES

Comparing outsourcing workers in Indonesia and the Philippines must begin with an understanding of the characteristics of these two countries. Both countries are still developing countries in Southeast Asia, which has a strategic position in regional labour dynamics. Both countries have adopted a civil law system based on codification as the basis for regulation. However, the difference is that the Philippines also implements a mixed legal system with a strong influence from common law from the American colonial period. In addition, they have different approaches to formulating and implementing labour policies. In Indonesia itself, regulations must be in line with applicable laws.¹⁸ The same thing happened in the Philippines. The similarities can also be seen in the form of the state, which is also a unitary state based on the separation of powers and a presidential system.¹⁹ This introduction shows that there are many similarities between Indonesia and the Philippines in terms of legal regulations. This certainly also applies to employment, which is regulated by law.

The labour study discussed outsourcing. In Indonesia, outsourcing practices have various legal bases. Law No. 13 of 2003 on Labour is the initial regulation governing outsourcing in Indonesia, particularly in Articles 64-66.²⁰ Under this provision, companies may delegate part of their work to

¹⁸ Wahyu Safitri, "Ruang Lingkup dan Karakteristik Hukum" (2024) 1:6 *Konsensus: Jurnal Hukum Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 208 – 217.

¹⁹ Ibnu Kuncoro & Ninuk Wijiningsih, "Perbandingan Sistem Parlemen Bikameral di Indonesia dan Filipina" (2024) 6:1 *Jurnal Reformasi Hukum Trisakti* 351 – 363.

²⁰ Presiden Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Lembaran Negara Tahun 2003 Nomor 39*.

service providers for workers/labourers, provided that it is not directly related to their main activities or core business. However, this provision was subsequently updated by Law No. 11 of 2020 on Job Creation, which revised Article 66, thereby opening the door to expanding the types of work that can be outsourced.²¹ The technical provisions of this amendment are further explained in Government Regulation (PP) Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment, which states that outsourcing may only be conducted for supporting work and activities not directly related to core production processes, such as cleaning, security, transportation, logistics, catering, and other supporting work.²² In addition, Article 81, paragraph 20 of Law Number 11 of 2020 concerning Job Creation has amended the provisions of Article 66 of Law Number 13 of 2003 concerning Manpower.²³ These changes include removing provisions on the types of work that can be transferred to outsourcing companies, so that the regulations are no longer specifically limited. Furthermore, there are additional provisions that protect workers in the event of a change in outsourcing companies, as well as new regulations on licensing requirements for companies that provide outsourcing services.²⁴

The regulatory framework in Indonesia appears to be adequate, but the policy has been criticised for prioritising labour market flexibility over guaranteeing workers' rights.²⁵ Buyono (2021) also emphasises that workers are not in an equal position but rather in a subordinate position to employers, who are the party providing work. This imbalance in position

²¹ Presiden Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, Lembaran Negara Tahun 2020 Nomor 6573*.

²² Presiden Republik Indonesia, *Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan pekerjaan, Lembaran Negara Tahun 2021 Nomor 45*.

²³ Presiden Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, Lembaran Negara Tahun 2020 Nomor 6573*.

²⁴ Suyoko & Mohammad Ghufon AZ, "Tinjauan Yuridis terhadap Sistem Alih Daya (Outsourcing) pada Pekerja di Indonesia" (2021) 12 (1) *Jurnal Cakrawala Hukum* 99 –109.

²⁵ Muhammad Faisal Khadafi and Ridho Naufal Irfanto, "Kajian Teknis Perlindungan Hukum bagi Tenaga Kerja Outsourcing dalam Praktik Industri" (2025) 4:1 *MAROSTEK: Jurnal Teknik, Komputer, Agroteknologi, dan Sains* 59 – 65.

becomes more apparent and prone to marginalising workers, especially those bound by Fixed Term Employment Agreements (PKWT) and outsourced workers.²⁶ The wages received by outsourced workers are approximately 27% lower than those of permanent workers. The long-term impact of this issue affects the investment climate and job sustainability nationwide. In addition, employment is affected, with implications for the community's welfare and happiness. It is also evident that legal loopholes in labour regulations are often exploited by companies to continuously employ contract workers or outsourced labour. As a result, outsourced workers frequently experience job insecurity due to the fear of losing their jobs.²⁷ Workers often face unilateral changes in their employment status and contract periods, and are even transferred to internship positions. In addition, issues such as wage cuts and unpaid allowances can lead to conflicts over workers' rights.²⁸ In fact, the purpose of legal protection for workers is to guarantee the fulfilment of their fundamental rights, while ensuring equal opportunities and treatment without discrimination of any kind, in order to improve the standard of living of workers and their families.²⁹

In accordance with Indonesian regulations, outsourced workers may be employed only for support services under Article 66 of the Manpower Act.³⁰ However, in its implementation in Indonesia, there are several cases

²⁶ Tri Budoyono, "Perlindungan Hukum Tenaga Kerja Kontrak dan Outsourcing, serta Problematika Implementasinya" (2021) 5:1 Refleksi Hukum: Jurnal Ilmu Hukum 150-151.

²⁷ Tio Theresia Sitanggang, R.A. Hotmartua Simanullang, dan Viony Ferencia, "Implementasi Praktik Outsourcing dalam Undang-Undang Cipta Kerja terhadap Aspek Hukum dan Psikologis Pekerja/Buruh" (2024) 8:1 Jurnal Legislatif 39 –52.

²⁸ Rakhmat Nur Adhi, "Eksklusi Sosial Pekerja Prekariat (Studi Kasus Pekerja Kontrak dan Outsourcing di Kawasan Industri Makassar" (2023) Tesis Universitas Hasanuddin.

²⁹ Muhammad Wakhfidh Alfauzan Ginting & Jasman Nazar, "Perlindungan Hukum terhadap Pekerja yang Tidak Terdaftar dalam Jaminan Sosial pada Program BPJS Ketenagakerjaan Menurut Undang-Undang Cipta Kerja" (2024) 4:5 INNOVATIVE: Journal of Social Science Research 5998-6019.

³⁰ Andre Febrian Dwiudanta, Deva Syafiyo Analin, Muhammad Arvin Wicaksono, dan Osarina Mega Safira, "Analisis Kasus Pelanggaran PLN terhadap Buruh Outsourcing" (2022) Skripsi Universitas Pancasila.

in which outsourced workers are assigned tasks not included in their job descriptions. An example of this can be seen at PT PLN (Persero), where the Infrastructure Provision Cooperation (KSPI) workers are employed by a vendor, but their work is sourced from PLN. Overtime and additional working hours are not added, for example, installing cables for more than 8 hours.³¹ This case indicates that outsourced workers have not obtained their rights as stipulated in the regulations, or even that the regulations are not yet capable of protecting all the rights and authorities of outsourced workers in Indonesia.

A review of the regulations governing outsourced workers and human rights is needed. According to Article 5 of the Manpower Act, every person has equal opportunities and should therefore be free from discrimination in fulfilling their work.³² In the context of outsourcing systems, this provision is particularly important given that outsourced workers often experience unequal treatment compared to permanent workers in terms of wages, social security, and legal protection. Such discriminatory practices not only violate the principle of equality enshrined in the law but also potentially infringe upon human rights in the workplace.

Unlike Indonesia, the Philippines has become a hub for outsourcing key call centre operations and virtual assistance.³³ The Philippines has a fairly strict legal framework governing outsourcing practices, known as the 'Labor Code of the Philippines' and Department Order No. 174. The main regulations governing the employment system in the Philippines are the Labor Code of the Philippines, specifically Book III and Book VI, supported by Department Order No. 174, Series of 2017, issued by the

³¹ Kiki Safitri & Ambaranie Nadia Kemala Movanita, "KSPI Ungkap Dugaan Pelanggaran PLN terhadap Outsourcing" (15 June 2021), online: Money Kompas <<https://money.kompas.com/read/2021/06/10/155828126/kspi-ungkap-dugaan-pelanggaran-pln-terhadap-buruh-outsourcing>>.

³² Faridha Ath Thooriq, "Perlindungan Hukum dan Hak Asasi Manusia terhadap Pekerja Kontrak di Indonesia (Implementasi Berdasarkan Undang-Undang Ketenagakerjaan)" (2023) 10 (2) Jurnal Gema Keadilan 153 – 169.

³³ Nugroho Habibi, M. Dio Rhiza Amrizal, Irkham Syahrul Rozikin, & Iqbal Faza Ahmad, "Memperkuat Perlindungan Pekerja Outsourcing: Analisis Implementasi Kebijakan" (2024) 1:1 Journal of Social Movement 85 –97.

Department of Labor and Employment (DOLE).³⁴ This regulation strictly prohibits employment contracts that place workers without managerial control with the service provider, and requires labour supply companies to have capital, their own equipment, and to be responsible for the welfare of their workers. This regulation clarifies the line between legitimate contractors and exploitative labour-only contracting practices.

One of the main advantages of the outsourcing system in the Philippines is the strong legal protection of outsourcing workers' rights. Through DO 174/2017, the Philippine government ensures that outsourcing companies must meet the same labour standards as main companies, including the right to minimum wages, social security, leave, and a decent working environment. Furthermore, the government implements a certification and routine audit system for labour-providing companies, thereby preventing violations or evasion of responsibility towards workers. This approach creates a fairer working ecosystem for outsourced workers without compromising the flexibility of the business world. A summary of the differences between outsourcing in Indonesia and the Philippines is provided in the following table:

Table 1. Comparison of Outsourcing in Indonesia and the Philippines

Criteria	Indonesia	Philippines
State System	Republic, presidential, unitary.	Republic, presidential, unitary, influenced by US common law.
Legal Basis	<ol style="list-style-type: none"> 1. Manpower Law No. 13/2003 (Arts. 64–66). 2. Gov. Reg. No. 35/2021 (Job Creation Law). 	<ol style="list-style-type: none"> 1. Labor Code (PD 442/1974). 2. DOLE Dept. Order No. 174/2017.

³⁴ Isabel L. Guidote, “Labor-Only Contracting: Examining The Legal Complexities of Subrogacy in The Phillipine Context” (2017) HeinOnline 328.

Employment Relation	Contract with outsourcing company. User company not directly liable.	Contract with contractor. Principal jointly liable for violations.
Worker Protection	Equal rights with permanent workers (wages, social security). Often unequal in practice.	Equal pay and rights with direct workers. Joint liability applies.

IV. FACTORS THAT MAKE THE LABOUR SYSTEM IN THE PHILIPPINES CONSIDERED SUPERIOR TO THAT OF INDONESIA

The comparison between the Philippine and Indonesian labour systems is becoming increasingly relevant, especially in the economic and labour fields. Although both countries are classified as developing countries in the Southeast Asian region and have large populations, there are several factors that make the Philippine labour system considered superior to Indonesia's, namely:

A. Regulatory Implementation

One of the main strengths of the Philippines lies in its well-coordinated labour regulatory and institutional structure. The Philippines has had the Labour Code as its main labour law framework since 1974, which has been continuously updated. Meanwhile, Indonesia still faces serious challenges in this area. Although Indonesia has enacted Law No. 13 of 2003 on Labour and Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (PPMI), the implementation and coordination between institutions are still not optimal. For example, the Coordinating Ministry for Political, Legal, and Security Affairs continues to coordinate the collection of data and input related to migrant worker protection with the Ministry of Labour and the Indonesian Migrant Workers Protection Agency (BP2MI), but there are still difficulties in synchronising data and

handling cases in a coordinated manner.³⁵ Cases of corruption and maladministration in the Ministry of Manpower, particularly those related to the processing of foreign worker permits, also demonstrate weak internal coordination and inter-agency oversight, which could potentially harm workers and hinder law enforcement.³⁶

B. More Regular Protection and Management of Workers

The second factor that makes the Philippine labour system superior is the government's success in managing and protecting migrant workers, known as Overseas Filipino Workers (OFWs). The Philippine government has long established a strong framework for regulating the placement of workers abroad, namely through institutions such as the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA), which are two main institutions that complement each other in the system of protecting Filipino migrant workers.

POEA is tasked with regulating, facilitating, and protecting Filipino migrant workers working abroad. POEA plays a role in supervising the recruitment process by licensing official agencies, verifying employment contracts, and conducting pre-departure training to ensure the readiness and protection of workers before they depart. Additionally, POEA is involved in promoting overseas labour markets, bilateral cooperation, and resolving labour disputes through adjudication mechanisms and legal assistance. With a standardised governance system and collaboration with

³⁵ Polkam RI, "Kemenko Polkam Koordinasikan Pengumpulan Masukan untuk Jawaban Laporan Konvensi Hak Pekerja Migran", (2025), online: *Kemenko Polkam RI* <<https://polkam.go.id/kemenko-polkam-koordinasikan-pengumpulan-masukan-untuk-jawaban-laporan-konvensi-hak-pekerja-migran/>>.

³⁶ Danu Damarjati, "Kasus Korupsi Izin TKA, KPK Buka Peluang Koordinasi dengan Imigrasi", (2025), online: *KOMPAScom* <<https://nasional.kompas.com/read/2025/05/29/13070791/kasus-korupsi-izin-tka-kpk-buka-peluang-koordinasi-dengan-imigrasi>>.

other institutions such as OWWA, POEA serves as a model institution in achieving a safe, structured, and sustainable labour migration system.³⁷

Meanwhile, OWWA is a Philippine government agency with a specific mandate to design and implement welfare programmes for Filipino migrant workers (Overseas Filipino Workers/OFWs) and their families. Established as the managing body for migrant worker welfare funds, OWWA is responsible for administering membership funds (OWWA Fund) and providing social protection services, including insurance, scholarships, skills training, and reintegration assistance upon return. With a vision to become a global leader in migrant worker welfare protection by 2030, OWWA upholds the values of professionalism, accountability, integrity, and service-oriented responsiveness. This institution plays a crucial role in ensuring that Filipino migrant workers are not only protected while working abroad but also receive adequate ongoing support for their social and economic sustainability, as well as that of their families.

The functional collaboration between POEA and OWWA has resulted in a comprehensive migrant worker protection system, covering all stages from recruitment, orientation, employment, to post-placement. With a clear division of roles and structured coordination, these two agencies have established a responsive, adaptive, and effective protection mechanism, making the Philippine migrant worker protection system one of the best models globally.

Through Department Order No. 174 of 2017, the Philippine government explicitly prohibits labour-only contracting and stipulates that outsourcing companies must have minimum capital, provide job security, and not merely function as labour intermediaries. The Philippines also takes an active role in labour-related mediation and law enforcement. This regulatory approach emphasises that the responsibility for protecting workers lies with the state and employers.

In contrast, Indonesia still faces many challenges in managing its workforce. Data from BP2MI show an upward trend in the placement of

³⁷ POEA, "POEA - Philippine Overseas Employment Administration", (2016), online: *dmw.govph* <<https://dmw.gov.ph/archives/programs/programs&services.html>>.

Indonesian workers (TKI) since the pandemic. During the period from January to June 2025, the number of placements increased by 8.19% compared to the same period in the previous year.³⁸ However, illegal placement practices and cases of exploitation are still found, indicating that supervision and protection mechanisms for migrant workers still need significant strengthening.

Weak supervision of recruitment agencies and suboptimal inter-agency coordination have resulted in inadequate protection for Indonesian migrant workers, leaving them at high risk of rights violations and violence. Based on these comparisons, it is clear that Indonesia has yet to match the effectiveness of the supervision system and accountability mechanisms implemented by the Philippines.

C. Human Resource Education

TESDA (Technical Education and Skills Development Authority) in the Philippines is a successful example of a vocational training institution because it has a centralised, integrated institutional structure that is directly linked to industry needs. Through TESDA, the Philippine government actively provides skills training tailored to global market needs. TESDA is a Philippine government agency established under Republic Act No. 7796 of 1994, with the aim of integrating and coordinating the development of national workforce skills. The establishment of TESDA resulted from the merger of three entities: the National Manpower and Youth Council (NMYC), the Bureau of Technical and Vocational Education (BTVE), and the apprenticeship programme of the Bureau of Local Employment (BLE). TESDA not only sets competency standards, but also conducts training, organises certification, and establishes strategic partnerships with the private sector. Its main strength lies in its holistic approach from upstream to downstream, so that the skills development process is truly tailored to labour market demand. In addition, TESDA regularly monitors

³⁸ BP2MI, "Data Penempatan dan Pelindungan Pekerja Migran Indonesia Periode Januari - Juni 2025", (2025), online: *KP2MI* <<https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-januari-juni-2025>>.

graduates' absorption into the workforce and uses this data to update its curriculum and training methods. On the other hand, the vocational training system in Indonesia remains fragmented; regulatory, implementation and certification functions are spread across various institutions such as BNSP (National Professional Certification Agency), LSP (Professional Certification Agency), Kemendikbudristek (Ministry of Education, Culture, Research and Technology) and other ministries, resulting in weak coordination and inconsistent competency standards. The lack of active industry involvement, varying instructor quality, uneven facilities, and weak post-training evaluation mean that vocational institutions in Indonesia are not yet able to respond effectively to the challenges of the world of work. While TESDA has succeeded in creating an integrated and adaptive training ecosystem, Indonesia still faces structural and bureaucratic problems that hinder the comprehensive transformation of the vocational system.

This agency was designed to streamline the implementation of vocational training, which was previously scattered across various agencies and sectors, while also providing national policy direction for the technical and vocational education and training (TVET) system. TESDA has the mandate to develop mid-level workforce development plans, establish competency standards, regulate the accreditation system, support training programmes, and encourage industry involvement in skills training. Additionally, TESDA plays a role in decentralising training to local governments, reforming the apprenticeship system, and managing training incentives and funds. As an evolving institution, TESDA is now recognised as a responsive and strategic institution in developing human resource quality, particularly in the industrial and vocational sectors.³⁹

Indonesia has vocational schools and job training institutions, but it still faces challenges in curriculum relevance, teacher quality, and limited facilities and infrastructure. Vocational education graduates are not immediately absorbed by industry due to a mismatch between the skills taught in formal education and those needed in the workplace. This will

³⁹ TESDA, "Brief History of TESDA - TESDA", (2023), online: [www.tesda.gov.ph](http://www.tesda.gov.ph/About/TESDA/10) <<https://www.tesda.gov.ph/About/TESDA/10>>.

certainly have an impact on high unemployment rates, especially among young graduates.

Based on this comparison, the Philippine labour system is considered superior to Indonesia's because it has strong regulations, structured protection for migrant workers, and vocational training that aligns with global market needs. Meanwhile, Indonesia still faces challenges in implementing regulations, protecting migrant workers, and ensuring the relevance of vocational education to the job market.

V. STRATEGIES AND APPROACHES THAT INDONESIA CAN ADOPT FROM THE PHILIPPINES' OUTSOURCING PRACTICES TO STRENGTHEN WORKER PROTECTION AND IMPROVE THE NATIONAL LABOUR SYSTEM

Outsourcing practices have become part of the modern employment system in various countries.⁴⁰ Indonesia and the Philippines, as two developing countries in Southeast Asia, face similar challenges in regulating and supervising outsourcing practices. However, there are significant differences in how the two countries respond to the issues that arise. The Philippines is known to have a more protective approach towards outsourced workers than Indonesia, as described above.⁴¹ In response to outsourcing practices in Indonesia, there has been discussion about eliminating outsourced workers due to the many rights they are denied, such as fair wages, BPJS Health insurance, and vulnerability to termination of employment (PHK). In addition, several experts have proposed limiting outsourcing practices in line with the statement by Mirah Sumirat, President of the All-Indonesia Workers Union Association (Aspirasi). According to her, outsourcing practices should be limited to the catering,

⁴⁰ Nofiyanto et al., "Regulasi Ketenagakerjaan yang Adaptif: Tantangan dan Implikasi bagi Praktik Manajemen SDM Kontemporer," (2025) 6:4 *International Journal of Social Policy and Law (IJOSPL)* 32 – 38.

⁴¹ Singadimedja, Hollynness N. "Resensi Buku: Hukum Ketenagakerjaan: Hakikat Cita Keadilan Dalam Sistem Ketenagakerjaan." (2020) 4: 2 *Jurnal Bina Mulia Hukum* 369 – 379.

cleaning, and mining sectors.⁴² However, basically, the number of outsourced workers in Indonesia has been successful in filling vacancies and providing a breath of fresh air for people who are struggling to find work.⁴³ Therefore, Indonesia can make improvements by adopting strategies that have proven successful in the Philippines.

A. The Prohibition of Labour-Only Contracting

One of the Philippines' progressive steps in reforming outsourcing practices was the issuance of Department Order No. 174, Series of 2017 (DO 174), which explicitly prohibits labour-only contracting practices.⁴⁴ Labor-only contracting refers to a situation where an outsourcing company acts solely as a labour supplier without controlling the work and without owning the equipment used for the work.⁴⁵ In this system, workers lack clear industrial relations protections and are vulnerable to exploitation. For this reason, the Philippine government initiated DO 174 to protect outsourced workers. In addition, DO 174 requires every outsourcing company to be registered and certified by the government, meet minimum standards related to employment contracts, minimum wages, social security, and union rights. Through routine audits and the threat of revoking business licences, DO 174 strengthens the position of outsourced workers and encourages companies to comply with fair labour principles.

In practice, the implementation of DO 174 has increased transparency and oversight of labour service providers in the Philippines. The government

⁴² Ady Thea Dian Achmad, "Wacana Hapus Outsourcing, Serikat Buruh: Batasi untuk 3 Jenis Pekerjaan," *Hukum online*, diakses pada 11 Juli 2025, <https://www.hukumonline.com/berita/a/wacana-hapus-outsourcing--serikat-buruh--batasi-untuk-3-jenis-pekerjaan-lt68232f243917e/>.

⁴³ Shofwatun Hasna, "Analisis Terhadap Hak Buruh dan Praktik Outsourcing sesuai Kebijakan Undang-Undang Ketenagakerjaan," (2021) 15:2 *Journal of Communication Education* 92 – 111.

⁴⁴ Mira Sonia Seba Liawati et al., "Comparative Analysis of Outsourcing Regulation in Indonesia and the Philippines," (2025) 6:1 *International Journal of Social Policy and Law* 11–26.

⁴⁵ Alburo dan Associates Law Offices, "Job Contracting Vs. Labor-Only Contracting," (Juni 2022), online: [alburolaw.com <https://www.alburolaw.com/job-contracting-vs-labor-only-contracting/>](https://www.alburolaw.com/job-contracting-vs-labor-only-contracting/).

actively inspects and takes action against companies that violate the law, including establishing direct employment relationships between workers and service-user companies when serious violations are found. DO 174 shows that the state has a crucial role in balancing labour market flexibility with the protection of workers' rights.

The comparison between the situation in the Philippines with DO 174 has increased transparency and oversight of labour service providers in the Philippines. The government actively conducts inspections and takes action against companies that violate regulations, including establishing a direct employment relationship between workers and service-user companies when serious violations are found. In relation to this, Indonesia itself has Government Regulation (PP) Number 35 of 2021 and various Minister of Manpower Regulations (Permenaker) that also regulate outsourcing. Law and Government Regulation Number 35 of 2021 has a number of shortcomings that make it ineffective in minimising the practice of labour-only contracting.⁴⁶

One of the main weaknesses is that these regulations do not adopt the principle of substantive employment relationships, namely that workers who are under the direct command and supervision of the user should be recognised as employees of the user company, not merely as employees of the service provider. In practice, the limited number of supervisors, budget constraints, and lack of firmness in enforcing sanctions mean that many violations go unpunished. As a result, outsourced workers often experience wage deductions, do not receive social security, or are dismissed unilaterally without severance pay, and they find it difficult to access justice because their employment status is often obscured. In practice, Article 66(1) of Law No. 13 of 2003 on Manpower states that labour supply companies may only be used to carry out work that is “supporting and not directly related to the main production process”.⁴⁷ The effectiveness of Article 66(1) of Law No. 13 of 2003 on Manpower is weakened by the absence of technical

⁴⁶ Ismail Koto & Ida Hanifah, “Aspek Hukum Pekerjaan Pokok oleh Tenaga Kerja Outsourcing di Indonesia,” (2022) 14:2 *Legalitas: Jurnal Hukum* 193–199.

⁴⁷ Presiden Republik Indonesia, Pasal 66 Ayat (1) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Lembaran Negara Tahun 2003 Nomor 39.

regulations specifying the types of work considered supporting work. Without a clear, detailed list, companies remain free to classify almost all work as supporting work, allowing outsourcing practices to continue widely, including for core work. The flexibility afforded to employers in contract and outsourcing systems also tends to sacrifice job security, leaving workers trapped in precarious working conditions with no career progression.⁴⁸ DO 174 shows that the state has a crucial role in balancing labour market flexibility with the protection of workers' rights.

The absence of implementing regulations that classify work that may be outsourced makes it difficult to consistently enforce oversight of outsourcing practices. As a result, there is a legal loophole that allows labour-only contracting. This situation is very different from the Philippines, which through DO 174 has established a strict ban on labour-only contracting, set standards for the registration of outsourcing companies, and imposed administrative sanctions for violations. Thus, although Indonesia still has a legal basis that limits outsourcing practices, the weakness of implementation and oversight means that protection for outsourced workers is not yet optimal.⁴⁹ Therefore, Indonesia can adopt a firm approach as done by the Philippines by strictly defining the categories of work that are prohibited from being outsourced. In addition, as a form of strict prohibition, ideally administrative and criminal sanctions should also be imposed on companies proven to have engaged in labour-only contracting. This regulation should be included in government regulations as a more technical implementation of the Job Creation Law. Government regulations are chosen because they can implement the provisions of the law in a more technical and operational manner. As regulations under the law, government regulations serve to bridge the gap between the general norms in the law and their implementation in the field, so that legal provisions can be applied effectively, uniformly, and in accordance with the

⁴⁸ Fauzan dan Riza, "Perlindungan Hukum bagi Pekerja terkait Pesangon dan Jaminan Kehilangan Pekerjaan berdasarkan Undang-Undang Cipta Kerja dalam Rangka Meningkatkan Perekonomian Negara," (2024) Skripsi World Class Islamic University Sultan Ageng.

⁴⁹ Geby Aviqa et al., "Penyalahgunaan Keadaan dalam Perjanjian Kerja Waktu Tertentu (PKWT) Alih Daya (Studi Perjanjian Kerja Pada PT. MD di Kota Medan)," (2025) 14:1 Al Suthaniyah 69 – 84.

intent of the law. In the context of outsourcing practices as regulated in Law No. 13 of 2003 on Labour and the Job Creation Law.

B. Obligation of Registration and Certification of Outsourcing Companies

The Philippines stipulates that all labour supply companies must be registered and certified by the Department of Labor and Employment (DOLE). This process is not merely a formality but requires proof of the company's readiness to guarantee wages, social security, contract systems, and occupational safety. Without this certification, companies are prohibited from conducting outsourcing activities.

Indonesia does not yet have a specific registration or certification mechanism for outsourcing service providers. As a result, anyone can establish an outsourcing company without strict standards, leading to many cases of workers not receiving their wages on time, not being registered with the Social Security Administration Agency (BPJS Ketenagakerjaan), or being contracted verbally without official documents. By adopting a certification model similar to that in the Philippines, Indonesia could implement a national online registration system managed by the Ministry of Manpower. Every labour provider would be required to demonstrate compliance with labour standards and undergo regular inspections. This approach would not only ensure accountability but also help reduce illegal outsourcing practices.

C. Progressive Regular Audits and Progressive Law Enforcement

Another advantage of the Philippine system is the routine auditing of labour supply companies, which is carried out directly by the DOLE. Audits are conducted not only to check administrative aspects, but also to assess actual working relationships in the field. If violations are found, the DOLE has the authority to impose administrative sanctions such as freezing licences, revoking certifications, and even bringing cases to the labour court.

In Indonesia, oversight of outsourcing companies remains very weak. The ratio of labour inspectors to the number of companies is highly disproportionate. In some provinces, a single inspector must oversee more than a thousand companies. This situation results in labour violations going undetected or not being addressed seriously. Indonesia could adopt an active oversight approach by establishing a Special Outsourcing Oversight Unit with the authority to conduct surprise inspections, receive worker complaints directly or online, and recommend administrative sanctions. Collaboration between the Ministry of Labour and the Ombudsman of the Republic of Indonesia could also be strengthened to monitor violations of outsourcing rights.

D. Equal Protection and Remuneration

The Philippine government emphasises that outsourced workers are entitled to the same legal protections as permanent workers, as long as they perform identical duties. This includes the right to regional minimum wages, holiday allowances, social and health insurance, occupational safety, and the right to unionise.

In Indonesia, there are no explicit regulations guaranteeing equality in terms of protection and wages. Outsourced workers often receive lower wages, receive inadequate holiday allowances, and lack full social security coverage. This disparity in treatment leads to structural discrimination in the workplace.

The principle of 'equal pay for equal work' as applied in the Philippines can be implemented by revising Government Regulation No. 35 of 2021. The state must also ensure that companies using outsourcing services are responsible for the working conditions of outsourced workers, rather than simply shifting responsibility to the service providers.

E. Trade Union Participation in the Monitoring Mechanism

The Philippines provides ample space for labour unions to monitor outsourcing practices, both through social dialogue with the government

and direct involvement in reporting violations. This strengthens workers' bargaining position and prevents companies from monopolising power. In contrast, outsourced workers in Indonesia often find it difficult to form or join unions due to their unclear status. Outsourcing companies often change their names, shorten contracts, or relocate workplaces to avoid union formation.

On the other hand, labour unions in Indonesia are not exclusive and tend to be open to anyone, regardless of their employment status. However, in practice, this openness does not guarantee inclusion for outsourced workers due to weak legal protection and a lack of company support for union rights. Although the law allows for the formation of multiple unions within a single company, fragmentation and weak solidarity among labour sectors render the struggle for workers' rights, including those of outsourced workers, ineffective. This indicates that the non-exclusive nature of labour unions in Indonesia has not been able to address the real challenges faced by vulnerable workers in advocating for their rights.

Indonesia could adopt a tripartite approach by involving labour organisations in the formulation of a list of sectors that can and cannot be outsourced. Besides that, legal protection for outsourced workers who wish to form unions must be strengthened through implementing regulations and international human rights instruments. In addition, legal protection for outsourced workers who wish to form unions must be strengthened through implementing regulations and international human rights instruments.

F. Application of Technology in Labour Supervision

One of the innovations in the Philippines is the development of an online complaint and reporting system that is accessible to outsourced workers. DOLE has a responsive and transparent reporting portal. This encourages public involvement and speeds up government response. Indonesia can emulate this by building an e-Labor Inspection platform that connects labour inspectors, companies, and workers. This system can also be used for

digital work contract registration, reporting violations, and real-time monitoring of outsourcing work conditions.

VI. CONCLUSION

A comparison of the systematic approach to labour law between Indonesia and the Philippines has revealed significant differences in the legal approaches used in the formulation and implementation of laws and protections for workers. In Indonesia, the regulations that form the legal basis for the outsourcing system are set out in Law No. 13 of 2003, which was subsequently amended by Law No. 11 of 2020. This update has opened the door to expanding the types of work that can be outsourced, as outlined in Government Regulation No. 35 of 2021. Although Indonesia's labour regulations are considered competent and capable, this policy is still criticised because flexibility and efficiency are prioritised over the fulfilment of workers' rights. Discrimination and violations of workers' fundamental rights are inevitable due to the flexibility of Indonesia's labour policy. This is in stark contrast to the labour policies of the Philippines, which are regulated by the Labor Code, which tightens regulations on the outsourcing system by implementing 'labor-only contracting.' The Philippine government, through its policies, has emphasised the obligation of outsourcing companies to meet the same standards as main companies. There are many factors that highlight the disparity between Indonesia's and the Philippines' labour regulations. This can be examined from the perspective of regulatory implementation, where the Philippines is deemed more competent with its well-structured regulations and institutional coordination. Secondly, the success of the government in enforcing labour laws and guaranteeing the protection of workers' rights is significantly lagging behind in Indonesia, as indicated by weak supervision and unclear mechanisms for accountability for violations of workers' rights in labour regulations. Education is also a prominent factor in the Philippines, with the establishment of TESDA, which is considered capable of providing training in human resource skills to compete in the global market.

The Philippines is considered more capable and decisive in reforming outsourcing practices in its labour policies. Through the issuance of DO

174, which prohibits labour-only contracting practices, the Philippines has demonstrated its commitment to providing legal protection for outsourced workers. The registration and certification requirements for outsourcing companies established by the Philippines also serve as evidence for companies in fulfilling workers' rights, whereas Indonesia does not yet have a similar mechanism in place. This has the potential to create outsourcing companies that lack clarity in their accountability in fulfilling workers' rights. The regular audits of outsourcing companies by the Department of Labour and Employment (DOLE), the participation of labour unions in monitoring outsourcing practices, and the use of technology in efforts to oversee outsourcing practices indicate that the Philippines has become more transparent and responsive in protecting workers' rights. The strict regulations on equal protection and remuneration in the Philippines could serve as a model for Indonesia to implement similar regulations in its labour policies.

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ARTIFICIAL INTELLIGENCE USE STATEMENT

The author declares that Artificial Intelligence (AI)-based tools were used in a limited capacity during the preparation of this manuscript entitled "*Between Flexibility and Discrimination Against Workers' Rights: Comparing Outsourcing Protection Policies in Indonesia and the Philippines*", submitted to *Jurnal Kajian Pembaharuan Hukum*. AI tools were used solely for grammar and language editing as well as for assisting in drafting and outlining certain parts of the manuscript. No AI tools were used for data analysis or visualisation. The author confirms that no part of the manuscript was entirely generated by AI without human review, editing, and intellectual contribution. The author takes full responsibility for the accuracy, originality, and integrity of the content. The use of AI in the preparation of this manuscript does not violate research ethics, authorship criteria, or publication integrity.

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