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Constitutional Court Decisions in Progressive Law from Case Study on Outsourcing Worker Protection

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ABSTRACT. This study explores how the Constitutional Court interprets the protection of outsourcing workers through a progressive legal perspective. It focuses on key aspects such as labor protection, progressive law, and judicial interpretation. The main aim is to understand the Court's approach in safeguarding outsourcing workers and to uncover both normative and structural obstacles that affect its implementation. Using a qualitative normative method, this research relies on library-based analysis, examining Constitutional Court rulings, relevant legislation, and academic sources. The findings show that the Court tends to apply a progressive legal approach that prioritizes substantive justice and the protection of workers' rights. However, challenges remain, including inconsistencies in regulations, limited oversight, and a lack of legal awareness among stakeholders. These issues highlight the need for stronger and more consistent progressive legal strategies moving forward.

KEYWORDS: Constitutional Court, outsourcing workers, progressive law, labor protection, judicial interpretation

INTRODUCTION

In the dynamics of modern labor systems, outsourcing practices have become one of the most controversial issues. On one hand, outsourcing is viewed as an efficiency strategy for companies in responding to the demands of an increasingly dynamic global market. However, on the other hand, this practice often generates fundamental problems related to inequality of rights, uncertainty of employment status, and weak legal protection for workers (Haurissa et al., 2024) (Tejamukti, 2025).

The Constitutional Court, as the guardian of the constitution in Indonesia, has issued several decisions addressing outsourcing issues (Dewa et al., 2023). One of the most significant is Constitutional Court Decision No. 27/PUU-IX/2011, which emphasizes that the implementation of outsourcing must continue to guarantee the protection of workers' fundamental rights. However, over time, the implementation of this decision has been marked by a tension of interests between state regulations, economic policies, and labor rights (Lestari et al., n.d.).

Outsourcing practices, which were initially limited to supporting activities, have now expanded into core or primary functions within the organizational structure of companies. This phenomenon has created social unrest among workers, particularly because they feel the loss of job security, access to social security, as

well as the right to fair wages and contractual certainty (Budiyono, 2021). In this context, there is an urgent need to re-examine how Constitutional Court decisions are implemented and interpreted within industrial relations. A progressive legal approach becomes a crucial key, as it does not merely view law as a set of norms, but as an instrument of social emancipation and justice (Batubara et al., 2021).

This issue becomes increasingly critical following the enactment of Law No. 11 of 2020 concerning Job Creation, which was later reinforced by Government Regulation in Lieu of Law No. 2 of 2022. Many argue that these regulations weaken the bargaining position of workers, including outsourcing workers, due to the flexibility that tends to benefit employers (Widianita et al., 2023). This phenomenon raises fundamental questions regarding the extent to which the Constitutional Court is capable of maintaining the principles of social justice within industrial relations that are increasingly dominated by market logic. Does the Constitutional Court remain an institution of hope in defending the rights of outsourcing workers, or has it been co-opted by structural political-economic pressures?

In several cases, constitutional judges have demonstrated the courage to interpret the constitution progressively, even beyond the limits of formalistic normative interpretation. This approach represents a paradigm that views law as an instrument of social transformation, placing substantive justice as its primary orientation (Wamyani, 2022). However, the challenge of progressive law does not stop at the level of discourse. The greatest obstacle lies in how these values can be grounded into concrete policies capable of transforming conditions of structural injustice. Many progressive Constitutional Court decisions have not received regulatory responses, or are even ignored by policymakers (PERDA No. 5, 2023).

Therefore, this study attempts to re-emphasize the urgency of interpreting Constitutional Court decisions through the lens of progressive law. The objective is not only to assess normative conformity, but also to explore the extent to which law is able to take the side of vulnerable groups such as outsourcing workers, who have long been positioned within the shadow of systemic exploitation.

This approach allows us to view law in its entirety, not merely as a legalistic text, but also as a manifestation of moral and social values that live within society. In this context, Constitutional Court decisions must be evaluated based on their ability to realize social justice, rather than merely procedural legality (Muda, 2021). One important study in this context is the work of Ramadhona (2023), which shows that post-Constitutional Court regulations often only fulfill procedural aspects without capturing the essence of protection for vulnerable groups. This indicates a gap between progressive interpretation in judicial decisions and regulatory practice in the field.

In addition, Atmoko (2016) emphasizes that the reconstruction of labor law requires political courage and ethical alignment. In practice, many derivative policies actually limit the space for workers to legally fight for their rights. This study also touches upon an important aspect of judicial activism, namely the active role of

constitutional judges in encouraging more just legal reform. This is in line with the thoughts of Satjipto Rahardjo, who emphasized that law must be “pro-people” and must not become a tool for perpetuating inequality (Kurnia, 2023). Interestingly, although there are several progressive Constitutional Court decisions, such as those related to outsourcing and labor rights, bureaucratic responses to these decisions are often slow or even non-existent. This strengthens the assumption that legal reform requires synergy between the judiciary, executive, and legislative branches (Pratiwi, 2023).

Thus, this research does not merely focus on normative juridical analysis, but also explores the sociological and political dimensions of outsourcing practices. This approach demonstrates that progressive law can serve as a promising alternative to realizing justice within unequal industrial relations. This study also highlights the importance of listening to voices from below namely, the narratives of outsourcing workers which are often overlooked in formal legal discourse. Those in vulnerable positions frequently lack adequate access to legal protection (Lestari et al., 2025).

This study will also examine various industrial sectors that implement outsourcing systems extensively, and relate them to the impact of the implementation of Constitutional Court decisions on the real conditions of workers. This is important in order to assess the extent to which law truly works to achieve social justice (Budiyono, 2021). Furthermore, this research will map structural and cultural obstacles in the implementation of Constitutional Court decisions, as well as offer transformation strategies based on progressive legal values to strengthen the position of workers within the labor law system (Muda, 2021; Ramadhona, 2023).

The urgency of this discussion is not only related to labor issues, but also to the existence of the Constitutional Court as an institution that should serve as the guardian of substantive justice values within the constitutional system (Kurnia, 2023; Yanti, 2022). Through an interdisciplinary, critical, and socially grounded approach, this article is expected to contribute to academic discourse and legal practice in Indonesia, as well as serve as an intellectual contribution toward strengthening the role of the Constitutional Court in realizing more humane protection for outsourcing workers.

RESEARCH METHODS

This study uses a qualitative approach with a library research method to analyze juridical interpretations, socio-political contexts, and ideological aspects of Constitutional Court decisions on outsourcing worker protection. It aligns with normative-progressive legal research, which views law as a tool for social emancipation (Rahardjo, 2006); (Ahmad, et. al, 2024) (Degdo Suprayitno, 2024).

The study relies on secondary data, including Constitutional Court decisions, relevant legislation, academic literature, and supporting sources such as reports,

expert opinions, and online media. Data are collected through academic databases, official court websites, and related publications, then analyzed using content analysis and a prescriptive-critical approach (Soekanto & Mamudji, 2001). This method supports the study's objectives: to examine the Court's interpretation, identify implementation barriers, and propose progressive legal strategies. It also enables critical evaluation of judicial practices, emphasizing that law should side with marginalized groups and function as a means of social transformation (Rahardjo, 2006).

RESULTS AND DISCUSSION

The Constitutional Court Interprets the Protection of Outsourcing Workers through a Progressive Legal Approach

The Constitutional Court plays an important role in addressing labor law issues, particularly in relation to the protection of outsourcing workers. In several of its decisions, the Court demonstrates its alignment with workers as a vulnerable group that is often marginalized by exploitative labor market mechanisms. The interpretation of the constitution by the Court is not limited to normative textual meaning, but extends to social justice values as a reflection of a progressive legal approach (Ahmad, A., Absori, S. H., Azhari, A. F., & Hamdan Zoelva, 2020).

Constitutional Court Decision No. 27/PUU-IX/2011 is a concrete example of how the Court positions itself as a guardian of the constitutional rights of workers. In this decision, the Court emphasizes that outsourcing practices must be carried out in a limited manner and only for supporting activities, while still guaranteeing the fundamental rights of outsourcing workers. This interpretation prioritizes protection rather than merely administrative legal certainty (Lestari et al., 2025).

In that decision, the Constitutional Court does not only act as a formal interpreter of the constitution, but also positions itself as an institution that reflects social and moral aspirations of the public. This is in line with the fundamental principles of progressive law developed by Satjipto Rahardjo, where law is positioned as an instrument of emancipation rather than merely regulation (Muda, 2021).

Within a progressive legal approach, law must not be separated from social reality. In several of its legal considerations, the Constitutional Court emphasizes the importance of guarantees for welfare and fairness in employment as part of human rights. This reflects an awareness that industrial relations are not merely economic relationships, but also social relationships that require protection for weaker parties (Budiyono, 2021).

The decision has sparked extensive public and academic discussions, not only regarding the limitations of outsourcing but also concerning the position of the Constitutional Court in advocating justice. Several scholars argue that the Court's courage in this decision represents a form of judicial activism that expands

constitutional space for social protection (Kurnia, 2023). However, the progressive approach of the Constitutional Court often encounters challenges, especially in the implementation and acceptance of its decisions by the executive and legislative branches. In practice, as shown by Yanti (2022), many Constitutional Court decisions, although progressive, are not immediately followed up by implementing regulations or technical policies.

The progressive approach in Constitutional Court decisions reflects the concept of living law, which is not solely derived from legal texts, but also from justice as perceived by society. The Court shifts from formalistic logic toward ethical and moral reasoning, something that is still rarely fully adopted by lawmakers (Ramadhona, 2023). In addition, the Constitutional Court also raises the principle of balance between the interests of employers and workers. In several of its rulings, the Court emphasizes that economic efficiency cannot be used as a justification to neglect legal protection for outsourcing workers (Rachman & Hastri, 2023). This shows that labor law is interpreted as social law, not merely private law.

Through its progressive approach, the Constitutional Court does not limit itself only to written norms, but also considers sociological conditions in society. Decisions like these become an important foundation for developing contextual and value-based legal theory in Indonesia (Wamyani, 2022). Studies by Atmoko (2016) emphasize that the progressive approach of the Constitutional Court must be supported by structural and ethical reforms at the executive and legislative levels. Without such support, progressive decisions risk becoming mere legal narratives that lack implementation power.

In the practice of industrial relations, outsourcing workers still face various uncertainties, ranging from unclear employment status, lack of access to social security, to unilateral termination of employment. This condition shows that the legal protection mandated by the Constitutional Court has not been fully internalized in national labor policies (Budiyono, 2021). On the other hand, the Constitutional Court is also required to maintain consistency in defending workers as part of constitutional justice. This consistency is important not only to maintain the Court's legitimacy, but also to strengthen public trust in law as an instrument of protection.

This progressive approach also has important implications for legal education. Students and academics are encouraged to view law not only as statutory products, but also as an ethical process that must strive for humanity and substantive justice (Muda, 2021). In the context of technological advancement and digital economic development, outsourcing practices have become even more complex. Many digital platforms adopt flexible work models that actually weaken legal protection. Therefore, the presence of the Constitutional Court as a protector of the constitution becomes increasingly relevant in responding to contemporary challenges (Pratiwi, 2023).

Progressive Constitutional Court decisions also encourage the development of

legal awareness among workers. They become more aware of their rights and are more willing to seek justice through legal channels. This shows that the Court functions not only normatively, but also transformatively at the social level. Normatively, the Constitutional Court has established the principle that outsourcing must not become a tool of exploitation. However, sociologically, the biggest challenge lies in implementing these principles through affirmative policies that favor workers (Ramadhona, 2023).

In many industrial sectors such as manufacturing, mining, and logistics, outsourcing practices still dominate. Empirical studies are needed to measure the real impact of Constitutional Court decisions on the actual conditions of outsourcing workers in the field (Lestari et al., 2025). In addition, this study highlights the need for dialogue between the judiciary, executive, and legislative branches in building a more just labor law system. The Constitutional Court cannot work alone; progressive approaches must be jointly supported by all stakeholders.

These findings contribute to the development of legal science in Indonesia, particularly in strengthening a legal paradigm that sides with the people. Progressive law is not merely a theory, but has been proven to be applicable in judicial practice as demonstrated by the Constitutional Court. Ultimately, the role of the Constitutional Court in protecting outsourcing workers through a progressive legal approach becomes an important symbol that Indonesian law must not be neutral in situations of inequality. Law must be present as a defender of the weak, a balancer of power, and a pathway toward true substantive justice.

Barriers to Implementing Constitutional Court Decisions on Outsourcing Workers Can Be Overcome through Progressive Legal Strategies

Constitutional Court decisions related to the protection of outsourcing workers, particularly Decision No. 27/PUU-IX/2011, essentially have established a strong constitutional foundation in affirming the rights of outsourcing workers. However, at the level of implementation, this decision still faces various complex normative and structural barriers. Normative barriers arise when the substance of Constitutional Court decisions is not fully translated explicitly into implementing regulations. For example, the Job Creation Law and its implementing regulations tend to accommodate the interests of labor market flexibility rather than worker protection, and even tend to weaken the principles contained in the Constitutional Court's decision (Rachman & Hastri, 2023).

One form of normative barrier is the existence of legal vacuums at the operational level, which creates uncertainty in implementation. This condition provides a wide space for employers to interpret regulations, often in ways that are not favorable to outsourcing workers (Yanti, 2022). On the other hand, structural barriers are related to bureaucratic culture and the still weak structure of labor supervision. Many labor supervisory institutions in the regions do not yet have the

courage or capacity to enforce the principles of Constitutional Court decisions when dealing with large corporations (Budiyono, 2021).

Low legal literacy among outsourcing workers further exacerbates this situation. Lack of understanding of their legal rights makes workers unable to pursue legal remedies independently. This is where progressive legal strategies based on legal empowerment are needed to strengthen vulnerable groups (Lestari et al., 2025). Progressive legal strategies position law as a transformative tool, not merely regulatory. Therefore, this strategy can address normative barriers by encouraging progressive reinterpretation of implementing regulations by legal actors, such as labor inspectors and judges in industrial relations courts (Muda, 2021).

Another strategy is to encourage the formation of binding implementing regulations that explicitly integrate the substance of Constitutional Court decisions into Ministerial Regulations or even revisions of labor laws. This is necessary to ensure legal certainty in implementing substantive justice (Ramadhona, 2023). The progressive legal approach can also inspire judicial dialogue between the Constitutional Court and other courts within the national judicial system. Through this dialogue, judges in general courts and industrial relations courts can refer to progressive interpretations issued by the Constitutional Court (Kurnia, 2023).

Implementation barriers are also influenced by resistance from business actors who still view outsourcing workers as cost burdens rather than partners. Therefore, progressive strategies must also enter corporate governance by encouraging companies to adopt justice values within corporate social responsibility principles (Wamyani, 2022). From a structural perspective, strengthening labor supervisory institutions is very crucial. The government must carry out institutional reforms so that supervision is no longer merely administrative, but also capable of performing judicial functions that favor workers (Pratiwi, 2023).

Progressive legal education in law faculties also needs to be strengthened. Many future legal practitioners are still trapped in positivistic approaches, whereas labor injustice requires ethical, philosophical, and critical approaches (Muda, 2021). One concrete step is to include Constitutional Court decisions as mandatory material in labor law and constitutional law courses, accompanied by contextual analysis of social inequality in outsourcing labor sectors. At the level of civil society, labor unions and labor NGOs need to strengthen advocacy based on Constitutional Court decisions. Many workers are not aware that they have strong constitutional foundations to claim their rights.

The implications of this progressive legal strategy do not only target normative and structural aspects, but also cultural aspects. Society must be educated to see law as a tool of liberation, not merely as an instrument of state control (Atmoko, 2016). Economically, the implementation of Constitutional Court decisions through a progressive approach can increase the sense of security of outsourcing workers,

which in turn will increase their productivity and loyalty to companies.

In the context of technological development, progressive legal strategies can be implemented by encouraging the development of digital reporting systems for labor violations. In this way, workers can more easily report cases of exploitation anonymously (Pratiwi, 2023). In the education sector, collaboration between legal academics and labor unions can become a driving force for change. Collaborative research that reflects the real conditions of outsourcing workers will enrich grounded progressive legal narratives.

By strengthening progressive legal strategies, the state can carry out its constitutional function optimally: protecting all Indonesian people, including informal sector workers such as outsourcing laborers. Constitutional Court decisions are not merely legal instruments, but also social ethics that provide moral direction for national law. Progressive strategies can help guide the transition from technocratic law toward law that is more just and emancipatory. Therefore, addressing normative and structural barriers through progressive legal strategies is not only the responsibility of the Constitutional Court, but also a collective responsibility of academics, policymakers, workers, and society as a whole who aspire to a more just Indonesia.

CONCLUSION

Constitutional Court Decision No. 27/PUU-IX/2011 marks a significant turning point in efforts to strengthen legal protection for outsourcing workers in Indonesia. Seen through a progressive legal lens, this ruling shows that the Constitutional Court is not just interpreting the constitution in a rigid, textual way, but acting as a moral force that seeks to deliver substantive justice amid unequal industrial relations. The Court firmly emphasized that outsourcing practices must not strip workers of their fundamental rights or become a mechanism for socio-economic marginalization.

However, implementing this decision has proven challenging. Normatively, there is still a lack of comprehensive implementing regulations and limited political commitment to translate the ruling into concrete, worker-oriented policies. Structurally, the obstacles are equally complex, including weak labor supervision, resistance from employers, and low levels of legal awareness among workers. These realities highlight the urgency of adopting a progressive legal approach one that prioritizes the protection of marginalized groups, emphasizes substantive justice, and ensures that the law remains connected to social conditions.

Ultimately, this study shows that law is not neutral but shaped by power relations and competing interests. Therefore, it must function as an emancipatory tool that protects workers from systemic exploitation. Safeguarding outsourcing workers cannot rely solely on formal legal frameworks; it must become a broader social justice agenda involving the state, civil society, and legal institutions. While Decision No. 27/PUU-IX/2011 reflects judicial courage in advancing justice, the real challenge lies in ensuring that it is fully implemented, widely advocated, and

genuinely felt by outsourcing workers who have long been marginalized.

REFERENCES

- Ahmad, A, Fachrurrazy, M, Hartati S.S.Y, Amalia. M, Fauzi, E, Gaol. S.L, Siliwadi, D.N, T. (2024). *Buku Ajar Metode Penelitian & Penulisan Hukum* (Sepriano (ed.)). PT. Sonpedia Publishing Indonesia.
- Ahmad, A., Absori, S. H., Azhari, A. F., & Hamdan Zoelva, S. H. (2020). *Tafsir Konstitusi Hak Menguasai Sumber Daya Alam : Studi Putusan Mahkamah Konstitusi tentang Hak Menguasai Negara atas Sumber Daya Alam dalam Prespektif Demokrasi Ekonomi*. [https://doi.org/Ahmad, A., Absori, S. H., Azhari, A. F., & Hamdan Zoelva, S. H. \(2020\). TAFSIR KONSTITUSI: Studi Putusan Mahkamah Konstitusi tentang Hak Menguasai Negara atas Sumber Daya Alam dalam Prespektif Demokrasi Ekonomi \(Doctoral dissertation, Universitas Muhammadiyah Surakarta\).](https://doi.org/Ahmad, A., Absori, S. H., Azhari, A. F., & Hamdan Zoelva, S. H. (2020). TAFSIR KONSTITUSI: Studi Putusan Mahkamah Konstitusi tentang Hak Menguasai Negara atas Sumber Daya Alam dalam Prespektif Demokrasi Ekonomi (Doctoral dissertation, Universitas Muhammadiyah Surakarta).)
- Atmoko, D. (2016). *Program doktor ilmu hukum Universitas Islam Sultan Agung Semarang*. Semarang: Universitas Islam Sultan Agung.
- Batubara, S. A., Tanwin, M. S., & Yosephine, F. A. (2021). *Diversi jurnal hukum*. *Diversi Jurnal Hukum*, 7(1), 129–150.
- Budiyono, T. (2021). *Perlindungan hukum tenaga kerja kontrak dan outsourcing serta problematika implementasinya*. *Refleksi Hukum: Jurnal Ilmu Hukum*, 5(2), 145–160. <https://doi.org/10.24246/jrh.2021.v5.i2.p145-160>
- Degdo Suprayitno, A. A. et. a. (2024). *Metodologi Penelitian Kualitatif: Teori Komprehensif Dan Referensi Wajib Bagi Peneliti* (1st ed.). Sonpedia Publishing.
- Dewa, I., Palguna, G., Nurjanah, I., Komang, N., Padmawati, T., Dananjaya, K., & Halmadiningrat, I. M. (2023). *Indonesia's Constitutional Court Decisions on Outsourcing Scheme: Balancing Protection and Efficiency?* <https://doi.org/10.15294/jils.v8i2.66507>
- Haurissa, Y., Salmon, H., & Pattipawae, D. R. (2024). *Akibat Hukum Apabila Pekerja Outsourcing Tidak Mendapatkan Perlindungan Hukum*. *Bacarita Law Journal*, 4(2), 84–99. <https://doi.org/10.30598/bacarita.v4i2.12745>
- Kurnia, A. (2023). *Perlindungan hukum bagi pekerja alih daya dengan upah di bawah ketentuan: Tinjauan teori kepastian hukum*. *Legal Standing: Jurnal Ilmu Hukum*, 8(1), 39–49.
- Lestari, R. W. P., Santoso, I. B., & Setiady, T. (n.d.). *Legal protection of outsourcing workers against employers' arbitrary actions in termination of employment relationships in Indonesia based on the Job Creation Law*.
- Muda, I. (2021). *Peran putusan Mahkamah Konstitusi untuk menentukan kebijakan pokok dalam negara kesejahteraan di Indonesia*. *Diversi: Jurnal Hukum*, 7(1), 1–24. <https://doi.org/10.32503/diversi.v7i1.1164>
- Pratiwi, D. A. (2023). *Perlindungan hukum tenaga kerja alih daya dalam Undang-Undang Cipta Kerja*.

- Ramadhona, A. (2023). Kajian hukum progresif dalam perlindungan tenaga kerja.
- Rachman, A. A. M. I., Hastri, E. D., & Rusfandi. (2023). Tinjauan penetapan Perppu Nomor 2 Tahun 2022 tentang Cipta Kerja dalam perspektif sosiologi hukum. *Jurnal Panah Keadilan*, 2(1), 41–51.
- Tejamukti, R. (2025). Efektivitas Perlindungan Hukum terhadap Pekerja Kontrak dalam Sistem Outsourcing Pasca Berlakunya Undang-Undang Cipta Kerja dan Peraturan Pemerintah Nomor 35 Tahun 2021. *IBLAM Law Review*, 5(2). <https://doi.org/10.52249/ilr.v5i2.633>
- Wamyanii, W. (2022). Rekonstruksi regulasi perlindungan tenaga kerja berbasis nilai keadilan.