



## Legal protection of specified time work agreement workers

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### Abstract

This research examines the regulation of fixed-term employment agreements in Indonesian labor law and its impact on legal protection for workers bound by such agreements. This research uses normative research methods. The results show that although fixed-term employment agreements have been regulated in labor law, their legal protection has decreased after the amendment of Manpower Law No. 13 of 2003 to Job Creation Law No. 11 of 2020. This decrease in protection is due to the elimination or replacement of several provisions, such as the term of the fixed-term employment agreement and termination of employment.

**Keywords:** Labor, temporary employment, legal protection

### Introduction

The scope of employment contains various dimensions that are interrelated and very complex. Therefore, labor law is not only limited to regulating the relationship between workers and employers but also covers various aspects outside the relationship. This emphasizes the importance of all parties to comply with existing regulations, as well as the need for government involvement as a third party that plays a role in providing protection.

National development aims to develop Indonesian society as a whole, to create a just, prosperous, and prosperous society in both material and spiritual aspects, in accordance with the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia. In the context of this development, labor plays a very important role, both as an actor in the development process and as the target of the development results themselves.

Therefore, development in the labor sector is needed to improve the quality of the workforce and strengthen their participation in development. In addition, it is also important to improve protection for workers and their families. This protection aims to ensure equality and equal opportunities, as well as non-discriminatory treatment in order to realize welfare for workers and their families while taking into account the development and progress of the business world.

The issuance of Law Number 11 of 2020 on Job Creation brought significant changes, including in the aspect of employment, which replaced several provisions in Law Number 13 of 2003 on Manpower. These changes, especially those related to fixed-term employment agreements, raise questions about whether the new law and its derivative regulations can provide a guarantee of legal certainty and better protection for workers.

Based on this background, the formulation of the problem to be discussed is the form of legal protection available to workers who are bound by a fixed-term employment agreement (PKWT).

### The research method

This research uses normative research methods or doctrinal research which aims to find legal principles and doctrines.

By examining library materials or legal materials, both primary and secondary legal materials, especially those related to optimizing legal protection for workers with the PKWT system. The data analysis method used is a qualitative method. The approach used is the statutory approach (statute approach).

### Results and discussion

Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to work and receive fair and proper remuneration and treatment in employment relations. In a welfare state, the government in particular is considered responsible for ensuring a minimum standard of living for every citizen to achieve a prosperous life. This is in line with Gooding's statement that in a welfare state, state intervention is very important to improve general welfare and optimize social welfare <sup>[1]</sup>. If there is no government intervention (in the realm of the welfare state), it will cause social instability. Of course, this deviates from what has been mandated by the 1945 Constitution of the Republic of Indonesia, because based on this mandate, the government is obliged to protect against discriminatory treatment, equality before the law, the right to work and receive fair remuneration and treatment in employment relations, and other rights.

Legally, the position of workers and employers is equal, so both must receive equal treatment in the eyes of the law. However, in sociological studies, this is not easy, considering that in addition to employers as parties who have money, the percentage of job opportunities and the community or the number of workers who need work is never balanced. This triggers the bargaining position of workers in employment practices to become weak <sup>[2]</sup>.

The unequal position is because workers only rely on their energy to carry out their work. In addition, employers often consider workers as objects in employment relationships. Workers are external factors in the production process. These rights must be protected by considering the principle of balance and the limitations of government authority in supervising and taking action against violations of laws and regulations <sup>[2]</sup>. With the explanation above, the government

drafts labor laws and makes various changes to the articles contained therein.

Reforms in the field of employment law began with the issuance of Law Number 21 of 2000 concerning Workers' Unions/Labor Unions. Then followed by the issuance of Law Number 13 of 2003<sup>[3]</sup> concerning Employment, and the issuance of Law Number 2 of 2004 concerning the Settlement of Industrial Relations. Next is Employment Law Number 13 of 2003 and the latest is Law Number 11 of 2020 concerning Job Creation<sup>[4]</sup>.

According to the ILO (International Labor Organization), non-standard employment relationships are grouped into four categories, namely: a) Non-permanent employment relationships; b) Multi-party employment relationships; c) Part-time and on-call employment relationships; and d) Disguised employment relationships/freelance work<sup>[5]</sup>. In this case, PKWT is included in the category of Temporary Employment Relationships or non-permanent employment relationships. PKWT has been regulated in Law Number 13 of 2003 concerning Manpower until the last Law Number 11 of 2020 concerning Job Creation and its derivatives.

Decree of the Minister of Manpower No. Kep/150/MEN/1999 concerning the Implementation of the Social Security Program for Workers for Casual Daily Workers, Contract Workers, and Permanent Workers which states that employers are required to include workers with Permanent Workers in the BPJS Employment program to protect their rights to obtain social security<sup>[6]</sup>. In addition, Permanent Workers are limited to use only for certain types of work, including work that is completed once or is temporary; seasonal work; work related to new products, new activities, or additional products that are still in the trial period; and/or work that can be completed within a maximum period of three years, meaning that not all types of work can be carried out using Permanent Workers.

Further provisions related to PKWT are regulated in the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP.100/MEN/2004[7] concerning Provisions for the Implementation of Fixed-Term Employment Agreements. This decree regulates special provisions for PKWT such as the agreement must be made in writing, and the contract must be registered with the local Manpower Office. In addition to the provisions above, Law No.13/2003 and Law No.11/2020 regulate the period and termination of employment (PHK) during the contract period[8]. Law Number 13 of 2003 concerning Manpower which regulates the provisions of a fixed-term employment agreement (PKWT) as follows:

1. A fixed-term employment agreement can only be made for certain jobs that according to the type and nature or activities of the work will be completed within a certain time, namely:
  - a. Work that is completed once or is temporary;
  - b. Work that is estimated to be completed in a time that is not too long and a maximum of 3 (three) years;
  - c. Seasonal work; or
  - d. Work related to new products, new activities, or additional products that are still in the trial stage.
2. A fixed-term employment agreement cannot be made for permanent work.
3. A fixed-term employment agreement can be extended or renewed.
4. A fixed-term employment agreement based on a specific period can be made for a maximum period of 2

(two) years and can only be extended 1 (one) time for a maximum period of 1 (one) year.

5. Employers who intend to extend a fixed-term employment agreement must notify workers/laborers in writing no later than 7 (seven) days before the fixed-term employment agreement ends.
6. Renewal of a fixed-term employment agreement may only be made after a grace period of 30 (thirty) days has passed since the end of the old fixed-term employment agreement. Renewal of a fixed-term employment agreement may only be made once and for a maximum of 2 (two) years.
7. A fixed-term employment agreement that does not meet the provisions as referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6) by law becomes an indefinite-term employment agreement.
8. Other matters not regulated in this Article shall be further regulated by a Ministerial Decree.

Then there were several changes in Law Number 11 of 2020 concerning Job Creation, the provisions for updating and expanding Article 59 of the Manpower Law have been amended in Article 81 number 15 of the Job Creation Law, as follows:

1. A work agreement for a certain period can only be made for certain jobs that according to the type and nature or activities of the work will be completed within a certain period, namely as follows:
  - a. Work that is completed once or is temporary;
  - b. Work that is estimated to be completed in a not-too-long time;
  - c. Seasonal work, work related to new products, new activities, or additional products that are still in the trial period;
  - d. Work whose type and nature or activities are not permanent.
2. A fixed-term work agreement cannot be made for work that is permanent in nature.
3. A fixed-term work agreement that does not meet the provisions as referred to in paragraph (1) and paragraph (2) shall by law become an indefinite-term work agreement.
4. Further provisions regarding the type and nature of fixed-term work activities, as well as the time limit for extending fixed-term work are regulated in Government Regulations.

Legal protection in Law No. 13/2003 and its derivatives and Law No. 11/2020 and its derivatives have quite significant differences in guaranteeing PKWT workers who experience termination of employment during the contract period. Article 62 of Law No. 13/2003 states that if one party terminates the employment relationship before the end of the period stipulated in the PKWT, or the termination of the employment relationship is not due to the provisions referred to in Article 61 paragraph (1) of Law No. 13/2003, then the party terminating the employment relationship is obliged to pay compensation to the other party in the amount of the worker's/laborer's wages until the end of the employment agreement<sup>[9]</sup>. However, with the enactment of Law No. 11/2020 and Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and

Termination of Employment <sup>[10]</sup>, then based on PP No. 35/2021 states that in the event that one party terminates the employment relationship before the end of the period stipulated in the PKWT, the employer is required to provide compensation as referred to in Article 15 paragraph (1) the amount of which is calculated based on the period of the PKWT that has been carried out by the worker/laborer. This raises legal problems in the form of normative conflicts because as stated in Article 62 of Law No. 13/2003, it expressly acknowledges the existence of compensation in the amount of the worker/laborer's wages until the end of the period of the employment agreement if there are PKWT workers/laborers who experience Termination of Employment (PHK). Meanwhile, in Government Regulation Number 35 of 2021 as a derivative regulation of Law Number 11 of 2020 concerning compensation money, the amount of which is calculated based on the PKWT period that has been carried out by workers/laborers when PKWT workers experience termination of employment (PHK). PKWT cannot be carried out for permanent work in accordance with Article 59 paragraph (2) of Law Number 11 of 2020, but in reality, many employers/employers utilize PKWT workers to carry out permanent work.

This is clearly a significant problem. Workers with PKWT (Fixed Term Employment Agreement) status should not carry out tasks that are the responsibility of PKWTT (Indefinite Term Employment Agreement) workers. These tasks are usually more complex and require long-term commitments that are impossible for workers with limited-term contracts to fulfill. Furthermore, when termination of employment (PHK) occurs to PKWT workers in the middle of their contract period, the rights they receive are very minimal. When compared to the contributions and efforts they have made during their employment, the compensation given feels unfair and disproportionate. This causes dissatisfaction and has the potential to harm workers which ultimately impacts productivity and work morale in the workplace.

The provisions regarding the extension and renewal of PKWT (Fixed Term Employment Agreement) are regulated in more detail in Government Regulation (PP) Number 35 of 2021. One important point in this regulation is that the renewal of PKWT can only be done once and for a maximum of two years. In addition, the total period of PKWT and its extensions may not exceed five years. This provision is clearly different from that stated in the Manpower Law, where the term of PKWT is limited to a maximum of two years with one extension for one year. This means that according to the Manpower Law, the total term of PKWT cannot be more than three years.

However, with the latest provisions that have been mentioned, the duration of PKWT can now reach five years. This of course can be detrimental to workers or laborers, because they do not get adequate legal protection. Changes to the provisions of PKWT, which were previously regulated in the Manpower Law and then revised through the Job Creation Law, not only do not increase protection for workers/laborers but have the potential to harm them even further. Thus, this situation gives rise to workers' rights amidst regulatory changes that should provide better guarantees.

## Conclusion

Based on normative research conducted by the author, it can be concluded that PKWT has been regulated in laws and regulations, such as Law Number 13 of 2003 concerning employment to the latest Law Number 11 of 2020 and its derivatives. However, in the Job Creation Law, there tends to be a reduction in legal protection for PKWT workers. Several provisions that regulate have not provided definite guarantees to PKWT workers and tend to be detrimental to PKWT workers, such as regulations related to severance pay and layoffs and provisions for renewal and extension of PKWT.

## Recommendations

In this case, the government must immediately improve or re-regulate the provisions that are detrimental to PKWT workers in order to realize social welfare, guarantees of basic rights, social security, and occupational health and safety as stated in the Constitution of the Republic of Indonesia.

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