

Legal Protection for Workers with Fixed-Term Employment Agreements (PKWT) Based on a Review of the Job Creation Regulation

Henlia Peristiwa Rejeki¹, Toto Tohir Suriaatmaja², Oksidelfa Yanto³

¹²Universitas Islam Bandung, Indonesia

³Universitas Pamulang, Indonesia

Correspondent: henlia.peristiwa10@yahoo.com¹

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ABSTRACT: One form of employment agreement in Indonesia is a fixed-term employment agreement, or what we usually hear as a contract employment agreement. Recently, more and more business actors or companies have used a contract work system for their workers. It is suspected that in the implementation of the contract work agreement, it is more profitable for entrepreneurs or companies by ignoring the rights of workers that should be obtained. To obtain data, the method used in this study is the library research method, which is a research method carried out in the library, where data is obtained by reading, studying books, laws and regulations, scientific works, papers, the internet and other documents related to this. This article discusses How Legal Protection for workers whose contracts are continuously extended without a clear status. With the ratification of Perpu Number 02 of 2022 which is a replacement for Law Number 11 of 2020 concerning Job Creation, it is hoped that it can help employees with Fixed-Term Employment Agreements (PKWT) to fulfill their rights at work, especially the payment of final PKWT compensation which should be paid when the Fixed-Term Employment Agreement (PKWT) ends.

Keywords: Legal Protection, PKWT, Workers.



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INTRODUCTION

Based on the provisions of the 1945 Constitution of the Republic of Indonesia, it states, "The State of Indonesia is a state of law" according to Article 1 paragraph (3). This means that the Indonesian nation is a nation based on law. The legal system currently adopted by the Indonesian nation is the Continental European legal system (Djamali (2014). The 1945 Constitution of the Republic of Indonesia states that every citizen has the right to work and a decent living for humanity, based on this, Law Number 13 of 2003 concerning Manpower (Law No. 13 of 2003 (2003) was formed (State Gazette of the Republic of Indonesia 2003 Number 39) hereinafter referred to as the Manpower Law is the main legal basis in the field of manpower in addition to the 1945 Constitution of the Republic of Indonesia. In essence, a law is a fortress of protection for employees in Indonesia.

The employment agreement is the beginning of the birth of industrial relations between capital

owners and workers. However, companies often violate the provisions of the employment agreement regulated in Law Number 13 of 2003 concerning Manpower (Law No. 13 of 2003) (hereinafter referred to as the Manpower Law) and the Decree of the Minister of Manpower and Transmigration Number KEP/100/MEN/VI/2004 (Minister of Manpower and Transmigration of the Republic of Indonesia (2004). This agreement between the employer and the worker creates an employment relationship. The creation of an employment relationship between workers or employees and employers, gives rise to an agreement that has been made and agreed upon by each party to obtain their rights (Avriandi & Sihotang (2022). The agreement that arises results in the creation of an employment agreement. An employment agreement is an agreement that arises as a result of the existence of an employment agreement between employers and employees that contains a binding work bond for the parties involved in making the agreement. The binding of the parties in an employment agreement, results in the emergence of obligations between each party to implement the agreement made, because the agreement has been in effect as a law for the parties who made it.

The Employment Law qualifies employment agreements into two types, namely Fixed Term Employment Agreements (PKWT) and Indefinite Term Employment Agreements (PKWTT). PKWT is an employment agreement between workers/laborers and employers to establish an employment relationship for a certain period of time or for certain work, while PKWTT is an employment agreement between workers/laborers and employers to establish a permanent employment relationship. The implementation of the PKWT system is more widely used by companies and is considered very effective and efficient for employers, namely in order to obtain greater profits where the costs incurred by employers for work are smaller because employers do not have to have a large number of workers/laborers (Muttaqin & Uwiyono (2022). If it is known that employers have a lot of workers, then employers must provide various benefits for the welfare of workers such as health care benefits, termination of employment (PHK) benefits, work award benefits and so on, in the sense that by employing workers with PKWT, these costs can be reduced.

The number of employees using Fixed Term Employment Contracts (PKWT) is considered very efficient and effective in reducing the company's operational burden to increase profits, because the expenses incurred for employees are relatively low, considering that the company does not need to employ many permanent employees. (Permana (2022)

The impact of the implementation of this PKWT clearly causes anxiety among employees. This is due to the uncertainty experienced by workers regarding their future in undergoing a working relationship with the company. When continuing after three years of working as a PKWT employee with a new work contract, employees will feel calm because their careers will clearly shift to PKWT workers. However, if the company decides to lay off employees, they must be prepared to face the reality of looking for a new job. (Noviana et al. (2022)

With the approval of Perpu Number 02 of 2022 (Perpu No. 2 of 2022) concerning Job Creation, a wave of demonstrations was again carried out by various elements of society, including labor unions and students (Soepomo (2001). This was due to the provisions in the approved Perpu, especially in Article IV relating to employment, which greatly harms workers, including those

bound by work agreements for a certain period of time. The provisions regarding work agreements for a certain period of time previously regulated in Law Number 13 of 2003 have undergone many changes and deletions.

So far, the implementation of PKWT is in accordance with the Manpower Law which outlines and emphasizes that PKWT cannot be applied to permanent types of work, but only to certain jobs that can be extended or renewed. It should also be noted that PKWT has a maximum time limit of 2 years and can only be extended once with a maximum of 1 year. (Soesilo & R (2008)

Based on the description above, workers who are bound by a fixed-term employment agreement (PKWT) will face uncertainty regarding their status as employees, because there is a possibility that employers will continue to implement a limited-term employment agreement in accordance with the provisions contained in the Government Regulation in Lieu of Law (Perpu) Number 02 of 2022. The author plans to explore Perpu Number 02 of 2022 (Perpu No. 2 of 2022) relating to Job Creation and legal certainty for workers with fixed-term agreements. In this context, the author will discuss Perpu Number 02 of 2022 (Perpu No. 2 of 2022) along with aspects of protection and legal certainty faced by employees with PKWT status, so that we can understand the position of workers while ensuring that the rights of PKWT employees as workers are guaranteed. (Zaeni, 2008)

METHOD

The research conducted in this journal applies normative legal methods. Standard jurisprudence is a legal discipline that is carried out by conducting research on secondary data or library sources as the main object to be investigated, namely research that involves examining literature related to this journal taken from the library. In this prescriptive legal approach, the method used is an approach based on statutory regulations, often referred to as the statute approach.

The sources of information used come from primary legal documents such as laws on fixed-term employment contracts, as well as secondary legal references such as books and magazines relevant to the topic of this study. In addition, there are also tertiary sources of secondary law such as dictionaries, encyclopedias, newspapers, and various other online sources. The method of analysis and data delivery in this study is presented using a descriptive-analytical approach. The data processing carried out is qualitative, while the method of drawing conclusions uses a deductive approach.

RESULT AND DISCUSSION

Fixed Term Employment Agreement based on Perpu Number 02 of 2022 (Perpu No. 2 of 2022)

Fixed Term Employment Agreements (PKWT) as regulated in Perpu Number 02 of 2022 (Perpu No. 2 of 2022) and its derivative regulations, basically aim to provide legal certainty for workers and employers. However, in practice in the field, the implementation of this regulation still leaves

various problems that have a direct impact on justice and legal protection for PKWT workers.

One concrete example that often occurs is the case of workers in the manufacturing sector in the Bekasi industrial area, where PKWT workers are employed continuously through contract extensions without a break, even for more than five years (Agustianto (2022)). This is contrary to Article 8 of PP No. 35 of 2021 which limits the PKWT work period to a maximum of five years. In practice, workers who have worked for more than five years are still not appointed as permanent workers (PKWTT), so that normative rights such as severance pay and job security cannot be enjoyed by these workers.

In addition, there are also cases in the modern retail sector in Jakarta, where PKWT workers are employed for core work that should be the domain of permanent workers. In fact, Article 59 of the Manpower Law (Law No. 13 of 2003, Art. 59) emphasizes that PKWT can only be applied to certain jobs that are temporary, seasonal, or time-bound. In reality, PKWT workers in this sector not only lose the opportunity to become permanent workers, but also often do not receive the compensation that should be given after the end of the contract period, as regulated in PP No. 35 of 2021.

The real impact of this practice is felt by PKWT workers, including uncertainty of work status which leads to difficulties in planning for the future, such as applying for credit, buying a house, or children's education. In addition, PKWT workers are also vulnerable to unilateral termination of employment without adequate severance pay or protection, so that they suddenly lose their source of income. Not only that, in many cases, PKWT workers are not fully registered in the social security program, so that access to social protection is very limited. This condition causes psychological stress due to uncertain work status and potential exploitation, such as excessive workload without protection of working hours and proper rest.

When comparing the applicable legal provisions and practices in the field, a significant gap is found. Normatively, PKWT regulations have regulated time limits, types of work, rights to compensation, and social security. However, in reality, government supervision of the implementation of these regulations is still weak, so that many companies ignore these provisions. This shows that legal protection for PKWT workers is not yet fully effective, because there are still loopholes that are exploited by employers to avoid obligations. (Udiana, 2011)

The launch of Government Regulation Number 35 of 2021 (PP No. 35 of 2021), as a development of the acceptance of the Job Creation Law which has now been amended to Perpu Number 02 of 2022 (Perpu No. 2 of 2022) concerning Job Creation, explains that workers who are bound by PKWT contracts face difficulties in becoming permanent employees. This can be seen in article 8 which states:

1. PKWT in accordance with the time stipulated in Article 5 paragraph 1 can be carried out for a maximum period of five years.
2. Regarding the time limit for PKWT as stated in paragraph one, if the contract period ends and the tasks that must be carried out have not been completed, then the additional time for PKWT can be done based on an agreement between the employer and employee/laborer, on the condition that the total time limit for PKWT and its additions does not exceed five years.

From the explanation in the article above, it is seen that workers with certain contracts can be extended consecutively with a maximum contract period of 5 years. This situation clearly has a negative impact on workers, when compared to Law No. 13 of 2003 concerning Manpower.

Legal Protection for Fixed-Term Workers

Justice is a fundamental normative foundation for a country (Kartasapoetra, 1992). Thus, it is the responsibility of the state to strive to instill the values of justice in the children of its citizens. Based on this, the principle of justice becomes the foundation for regulating rights in the context of employment relations, because every country is committed to implementing the principle of justice in the development of the legal system.

Certainty refers to a particular situation, condition, or term. Of course, the law that is established based on necessity must be fair and clear. It is clear that the law functions as a guide to behavior and justice, because behavioral references should support the command to be considered reasonable. Given the law that is fair and applied consistently, the law can operate.

In connection with the approval of Perpu No. 02 of 2022 concerning Job Creation, many aspects contained therein are considered very detrimental to workers with PKWT status. This Perpu openly removes, changes, and adds various provisions to the Manpower Law, including those related to PKWT. According to Article 59 of the Manpower Law (Law No. 13 of 2003, Art. 59), PKWT can be applied to work that is only carried out for a limited period of time, where the activity is only carried out once, work that will be carried out for no more than 3 years, seasonal work, and work related to new goods or other offers that are still in the trial process.

In the government regulation in lieu of law number 02 of 2022, the provisions contained in article 59 of the Manpower Law have been changed. Changes to this article result in companies not being required to change the status of workers with PKWT status who have worked for more than three years to PKWT, in contrast to the provisions in the Manpower Law. Of course, this is very detrimental to workers who have PKWT status. Perpu No. 02 of 2022, which should be able to provide legal certainty and protection to workers through the implementation and enforcement of this regulation, is still considered less supportive for employees.

Fixed-Term Employment Agreements affected by regulatory changes do not all have a negative impact on workers. This can be seen in Government Regulation Number 35 of 2021 (PP No. 35 of 2021 (2021) which regulates workers with PKWT agreements. This regulation offers legal protection that was previously absent, such as the ability to register for PKWT online and not only through physical documents. In addition, workers will also receive compensation after their PKWT period is over.

Legal protection for workers is the responsibility of the government (Hanifah, 2020) as the party in power, especially in the employment sector. There are three types of legal protection related to employment which are grouped into three categories, namely:

1. Technical protection (occupational safety and health), which includes measures to protect workers from the risk of accidents that may arise from work tools, materials used, or materials

processed by the company.

2. Social security, which is related to society, aims to enable workers to enjoy a decent life and develop like other members of society.
3. Economic protection, which focuses on providing workers with a fair income.

The government is tasked with providing protection, justice, and welfare for all Indonesian people, in accordance with what is stated in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia. Furthermore, in Article 03 of the 1945 Constitution of the Republic of Indonesia, it is stated that the Indonesian nation is a country based on law.

Fair application of law (Azis et al., 2019). Protection of wages and social security of workers is very significant, considering that wages are a key element of the employment bond. In fact, wages are the main motivation for employees when working for individuals or other companies (Trimaya, 2014). Therefore, the state needs to play an active role in addressing issues related to compensation through policy making that is outlined in legislation. In order to obtain appropriate remuneration, the government regulates provisions regarding wages for employees. In order to obtain a reasonable income, the government sets a minimum wage based on reasonable basic living needs through an agreement between the parties involved.

Occupational Health and Safety Protection (Zaeni, 2008), Occupational health facilitates safety for workers so that they can achieve the highest level of productivity in the work environment. Improving health and preventing injuries will provide a sense of security for workers' families. In relation to the health of workers, employers are required to implement regulations in accordance with:

1. Working hours

In Law No. 11 of 2020 Article 77 (1): a. Seven hours per day with a total of forty hours in one week and six working days in a week; b. Eight hours per day and a total of forty hours in one week for five working days in a week. Companies that employ employees or laborers above the specified time limit are required to provide overtime wages, further provisions regarding overtime hours and overtime wages will be included in the Government Regulation.

2. Rest Time

Business people have an obligation to provide leave and rest time to employees, this is regulated in Law No. 11 of 2020 concerning Job Creation (Law No. 11 of 2020) (specifically in the employment section) Article 79 which states:

Article one, Business owners are required to provide:

- a. rest time; and
- b. holidays.

Article two, rest time as referred to in paragraph 1 point (a) must be given to employees at least:

- a. Rest between working hours, at least 30 minutes after working for four consecutive hours,

and the rest period is not counted as working hours; and b. One weekly rest for six working days in one week.

Article three, the leave period contained in article 1 point (b) which must be given to workers, namely annual leave, is a minimum of 12 working days after the worker has worked continuously for one year.

Article four, the implementation of annual leave as stated in article 3 is stated in the employment contract, company policy, or collective work agreement. Article five, outside of the rest and leave periods referred to in articles 1, 2, and 3, certain companies can offer longer rest periods as stated in the employment contract, company policy, or agreement between the two parties. (Fardiansyah (2013)

Article six, further provisions regarding the company as stated in article 5 are regulated in Government Regulation.

3. Work safety

Advances in industry, procedures, and modernization go hand in hand with the increasing intensity of work in the workers' environment. This condition triggers high energy expenditure from employees. The impact can result in fatigue, imbalance, and several other problems, which in turn can cause accidents. Therefore, it is important to understand the proper aspects of work safety, and with better regulations, a better and real sense of security can be achieved. This is a crucial element in creating comfort, which has the potential to improve the quality of work results, productivity, and better results. In Article 6 of Law Number 01 of 1970 (Law No. 1 of 1970), it is explained that work accidents are incidents related to work activities, including incidents that occur during the journey to the workplace and vice versa via commonly used roads.

4. Legal Umbrella for Employees Who Join a Trade Union

A labor union is an organization (Law No. 21 of 2000) formed by workers or employees, both from internal and external groups, inclusive, independent, and responsible for defending, maintaining, and protecting the interests of each individual related to labor and improving the standard of living of employees and their families. Article 104 (1) of the Manpower Law (Law No. 13 of 2003, Art. 104) states "Every worker or employee has the right to establish and become a member of a labor union." Employees who have become part of a union have the right to be involved in the management of the union's economy and bear responsibility for the financial aspects of the organization. The provisions in Article 104 of Law No. 13 of 2003 are the same as the provisions in Law No. 21 of 2000 concerning workers and labor unions, specifically stated in Article 5 (1) which is parallel to Article 104 (1) of the Manpower Law (Law No. 13 of 2003, Art. 104).

Legal protection umbrella for workers' fundamental rights to negotiate with employers.

Employment regulations that regulate individual needs in employee and employer employment

relationships. Employment relationships that are regulatory in nature between workers/employees and employers initially contain the rights and obligations of both parties. Understanding of rights and obligations is always mutually beneficial. Law No. 13 of 2003 Article 106 regulates the existence of an organization that serves as a forum to accommodate and conduct negotiations between workers/employees and employers, namely bilateral institutions. This bilateral body is a useful place for communication and consultation on company employment issues. Bilateral institutions consist of several components, namely employers and employees who are freely chosen by employees who represent the interests of workers/employees in the company.

Initially, the purpose of legal protection of employees' rest rights was to protect workers from continued exploitation by employers that could negatively affect their health. Based on Immanuel Kant (Rif'an et al., 2020)'s thoughts on the view of individuals as independent beings, the regulation of working hours and the right to rest is very relevant. This is in line with his teachings on ethics and the categorical proposition contained in the book *Foundations*, stating that basically, humans are free and equal. Therefore, no individual should be treated carelessly.

By removing and modifying several provisions in Article 59, especially paragraph four of Law No. 13 of 2003, the existence of workers with PKWT status will be weaker and more easily exploited by companies. This is because workers can be employed indefinitely as workers with certain types of contracts, which makes it difficult for them to file lawsuits against permanent employment contracts due to violations of the established time limits. Seeing the explanation of the problem above, the author believes that there is still no clear legal guarantee for employees with PKWT status after the enactment of Perpu No. 02 of 2022 concerning Manpower. (Shalihah (2016)

CONCLUSION

1. The enactment of Perpu Number 02 of 2022 (Perpu No. 2 of 2022) as a replacement for the Job Creation Law which makes changes, deletions, and additions to various aspects of the Manpower Law will create various new problems. One of them is that workers who have certain work contracts will have difficulty obtaining permanent work contracts (PKWT) because in Government Regulation No. 35 of 2021 which is part of Law No. 11 of 2020, it is clearly stated that workers can be contracted without a time limit.
2. The change in employment regulations into Perpu on Job Creation, especially on PKWT, does not have entirely negative impacts. For example, there is an increase in legal protection that was previously not regulated, such as PKWT registration that can be done online, not just manually, and providing compensation to employees that they receive after the PKWT period is over.

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