
The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah¹, Dauman²

¹²Universitas Pamulang, Indonesia

Correspondent: dosen01383@unpam.ac.id¹

Received : September 18, 2023

Accepted : November 16, 2023

Published : November 30, 2023

Citation: Nursa'adah., Dauman. (2023). The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty. Sinergi International Journal of Law, 1(3), 184-191.

ABSTRACT: The changing landscape of the millennial-era business world demands affordability and quality, necessitating a minimal cost strategy for optimal performance. Before 2000, permanent employment was the norm, but thereafter, employers began using fixed-term employment agreements managed by outsourcing firms. Various aspects of the employer-employee relationship have been regulated in employment law, including Law No. 13 of 2003 on Manpower and Law No. 11 of 2020 on Job Creation. However, implementing these regulations, particularly concerning compensation for fixed-term employment under Law No. 11 of 2020, has created legal challenges, notably for employers in sectors like cleaning, parking, security, and more. This study employs a normative legal research approach, analyzing legal provisions and their real-world applications. It aims to assess the applicability of severance compensation rules for fixed-term employment agreements in outsourcing companies. The findings will be presented in a report scheduled for publication in July 2023.

Keywords: Employer, Employee, Compensation



This is an open access article under the CC-BY 4.0 license

INTRODUCTION

In essence, in everyday life, every individual requires funds to meet their needs. Consequently, workers seek employment, while on the other hand, employers also naturally require a workforce to operate their businesses. In reality, this often leads to friction and issues between them, particularly concerning industrial relations in the workforce. The occurrence of labor problems is a fundamental issue frequently faced by countries, including Indonesia. The most fundamental issue and the dream of both workers and employers are the creation of a harmonious, dynamic, democratic, and just working environment. Unfortunately, this remains far from realization, especially for workers (Berge, 2020; Browne & Russell, 2020; Grydehøj, 2016).

In Indonesian labor law, various aspects of employment, previously known as labor law, have been extensively regulated. Essentially, these regulations are intended to protect the rights of workers while also providing employers with the opportunity to conduct their businesses peacefully without disruptions of a social nature, such as strikes, which can potentially harm both parties

The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah and Dauman

(workers and employers). The government has played a mediating role in resolving labor issues, aiming for fair and democratic solutions to ensure the rights of workers and the sustainability of businesses in the Republic of Indonesia. As a result, several employment programs and regulations in Indonesia have been established to promote a just, prosperous, and equitable society. In pursuit of welfare and labor development, it is essential to define the relationship between labor and employers, encompassing their rights and responsibilities, in order to achieve a prosperous life for all (Gertz et al., 2018; Nurjanah & Karjoko, 2019).

The emergence of industrial relations disputes between workers and employers typically places workers in a disadvantaged and vulnerable position. However, during the era of reformist government, a relatively more comprehensive and democratic labor law was established compared to previous provisions. In an effort to regulate and create favorable employment relationships, the Government, along with the People's Consultative Assembly, officially enacted Law Number 13 of 2003 on Manpower on March 25, 2003. This law serves as a guideline for both workers and employers.

As the foundation of industrial relations, Law Number 13 of 2003 on Manpower declares that the development of manpower is an integral part of national development and is correlated with industrial growth, strengthening the nation's economic structure. With the enactment of Law Number 11 of 2020 on Job Creation, it is hoped that it can absorb the Indonesian workforce more extensively amidst increasingly competitive circumstances and the demands of economic globalization. To support job creation, adjustments in various aspects of regulation related to ease, protection, and empowerment of cooperatives and small and medium-sized enterprises, enhancement of the investment ecosystem, and acceleration of national strategic projects, including improved worker protection and welfare, are necessary.

The government's role in industrial relations includes establishing policies and legal regulations that must be adhered to by all parties, as well as overseeing and enforcing these rules to ensure effective operation and aiding in the resolution of industrial relations disputes. Thus, the government's interest in industrial relations is to ensure the sustainability of the production process on a broader scale. On the other hand, for workers and labor unions, their role in industrial relations involves carrying out their duties, maintaining order for the sake of production continuity, democratically expressing their aspirations, developing skills and expertise, contributing to company advancement, and advocating for the welfare of members and their families.

Law Number 13 of 2003 on Manpower has clearly defined the rights and obligations of each party in conducting industrial relations. However, the rigid regulation of these rights and obligations, while ensuring legal certainty, has also raised concerns among employers. Employers are particularly apprehensive about these regulations because they may result in substantial costs.

With the second amendment to the 1945 Constitution of Indonesia, Human Rights, including the advancement of basic rights for citizens, have been incorporated into the Constitution. Article 27, paragraph (2) of the 1945 Constitution states that every citizen has the right to a job and a livelihood that is suitable for human dignity. Consequently, the Indonesian government is obligated to provide protection in the field of employment and labor.

In the world of employment, every individual requires a form of interaction or mutual relationship with others, whether they are employers or employees. This relationship is commonly known as employment relations. According to Article 1, paragraph 15 of Law Number 13 of 2003 on Manpower, employment relations refer to the relationship between an employer and an employee based on a work agreement that includes elements such as the worker, wages, and instructions.

The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah and Dauman

As emphasized in Article 1, paragraph 3 of the Manpower Law, it defines a worker as any person who engages in work and receives compensation in the form of wages or other forms of remuneration. Meanwhile, in paragraph 4, it specifies that an employer is an entity that employs labor and compensates them with wages or other forms of remuneration.

A company serves as an employer, and according to Article 1, paragraph 15 of Law Number 13 of 2003 on Manpower, the relationship between employers and employees is based on a work agreement. In practice, employers often seek to minimize their operational costs, and one strategy they employ is hiring contract workers. When establishing employment relations, employers generally prefer using employment contracts over permanent positions. This preference is influenced by the mandatory severance payments that employers must make to permanent or indefinite-term contract (PKWT) employees. This financial burden can become quite significant, especially if the employer hasn't made advance provisions or entered into partnerships with insurance companies. This situation can become particularly challenging in cases of unexpected employment termination, such as a worker's death or a permanent work-related injury. This is because hiring permanent employees or indefinite-term contract workers can be disadvantageous for employers due to various legal regulations governing wages, welfare, periodic wage increases, social benefits, and rest days or leave entitlements.

In line with the points mentioned above, the enactment of Law Number 11 of 2020 on Job Creation, followed by the issuance of Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements (PKWT), Outsourcing, Working Hours, Rest Periods, and Termination of Employment, has indeed brought about significant changes in Indonesia's labor regulations. This includes changes related to compensation for fixed-term workers. While this is certainly positive news for workers, it poses a significant burden for outsourcing companies. The challenge lies in how partner companies or employers are willing to provide severance compensation for PKWT workers. Considering that the outsourcing of workers is primarily aimed at cost savings and efficiency for the employer, there may be concerns about the additional financial implications of providing severance compensation. As stipulated in the regulations, severance pay for PKWT workers with a minimum of one month of service should be provided proportionally on an annual basis. This shift in labor regulations represents a significant change in the employment landscape, and both employers and workers will need to adapt to these new provisions and find ways to ensure fair and just compensation for all workers, including those on fixed-term contracts.

In practice, the implementation of these provisions, especially concerning the contracts between the employer, outsourcing company, and Fixed-Term Employment Agreements (PKWT), may not always fully ensure the well-being of PKWT workers. For example, employers might not consistently provide the minimum provincial or district wage rates, contributions to the Employment Social Security Agency (BPJS Ketenagakerjaan), health insurance (BPJS Kesehatan), holiday allowances, and especially severance compensation. This inconsistency in providing the required benefits and compensation can result in challenges and disparities in the treatment of PKWT workers, potentially leading to concerns about their welfare and job security. It highlights the need for effective enforcement of labor regulations and ongoing efforts to ensure that all workers, regardless of their employment status, receive fair and just compensation in line with the law.

METHOD

In the writing of this research, the method employed is a juridical-normative research method, which primarily emphasizes the analysis of legal products such as legislation while still taking into consideration the realities in society that are closely related to the issues being discussed. Regarding the research approach, two methods are used. Firstly, the statutory approach, which involves analyzing legal regulations and statutes, and secondly, the conceptual approach, which involves the study and understanding of legal concepts. These two approaches are applied to comprehensively investigate and address the research topic.

Research is a fundamental tool in the development of knowledge and technology. This is because research aims to systematically, methodically, and consistently uncover the truth. Through the research process, data is collected, analyzed, and used to construct a deeper understanding of the topic. According to Soerjono Soekanto, legal research is a scientific activity that employs specific methods, systematic approaches, and particular ways of thinking. The primary goal of legal research is to study one or more specific legal phenomena by means of analysis. Additionally, legal research involves conducting a thorough examination of the related legal facts and seeking solutions to the issues that arise within those phenomena.

In research, data types are commonly categorized into primary data, that data obtained directly from the original source. Secondary data, category includes official documents, books, research results in the form of reports, and so on.

Common characteristics of secondary data include typically, secondary data is readily available and can be used immediately. Both the form and content of secondary data have been created and filled in by previous researchers, so the current researcher has no control over the collection, processing, analysis, or construction of the data. Secondary data is not limited by time or place.

Problem Formulation: What are the provisions regarding severance compensation for fixed-term employment agreements according to Law Number 11 of 2020 on Job Creation? What are the challenges faced by outsourcing companies in implementing severance compensation for fixed-term employment agreements based on Law Number 11 of 2020 on Job Creation?

RESULT AND DISCUSSION

1. Provisions Regarding Severance Compensation for Fixed-Term Employment Agreements According to Law Number 11 of 2020 on Job Creation

The enactment of Law Number 11 of 2020 on Job Creation has been a subject of controversy, with 31 articles amended, 29 articles removed, and 13 articles added to labor regulations. These disagreements stem from the different interests of various parties involved. Labor union activists, for example, argue that some provisions in the Job Creation Law appear to favor employers, but upon closer examination, there may be clauses that benefit workers as well. This contention is particularly related to the provisions concerning the termination of employment for workers under fixed-term employment agreements (PKWT).

As stated in Law Number 11 of 2020 on Job Creation, and further detailed in its implementing regulation, Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment, Article 61A (1) mandates that employers must provide severance compensation to workers when fixed-term employment agreements end. Article 61A (2) specifies that this compensation should be given to workers at the respective companies.

The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah and Dauman

This new provision in labor regulations represents a significant change as it had never been regulated before, either in the form of laws or ministerial decisions. However, this regulation has posed a significant challenge, especially for outsourcing companies. Even providing the minimum provincial or district wages has been challenging for them, and the introduction of Law Number 11 of 2020 on Job Creation has added to their burden.

In general, there are several crucial issues in the Labor section of the Job Creation Law that benefit workers by providing clearer legal protection, particularly for contract workers. The introduction of compensation at the end of each contract, calculated based on the length of service, is seen as a significant benefit. Even though contract periods can be extended up to a maximum of 5 (five) years, the inclusion of this provision is a special boon for workers. However, on the other hand, it poses a challenge for employers who are required to comply with these regulations.

Under the previous Labor Law, there were no provisions for compensation when fixed-term employment agreements ended. However, the Job Creation Law stipulates that when fixed-term employment agreements expire, employers must provide severance compensation to workers, with the amount adjusted based on the worker's length of service. Additionally, Government Regulation No. 35 of 2021 states that compensation is provided to workers who have a minimum length of service of 1 (one) month. According to this regulation, for fixed-term employment agreements that last for 12 (twelve) months continuously, compensation equivalent to 1 (one) month's wages is provided. If the fixed-term employment agreement is for a duration greater or less than 12 (twelve) months, the compensation is provided proportionally.

As stipulated in Government Regulation Number 35 of 2021, Article 16, the calculation and details of the amount and size of severance compensation are as follows: a). For fixed-term employment agreements (PKWT) lasting continuously for 12 (twelve) months, compensation is provided equivalent to 1 (one) month's wages. b). For fixed-term employment agreements (PKWT) lasting for 1 (one) month or more but less than 12 (twelve) months, compensation is calculated proportionally with the formula: length of service x 1 (one) month's wages. c). For fixed-term employment agreements (PKWT) lasting more than 12 (twelve) months, compensation is calculated proportionally with the formula: length of service x 1 (one) month's wages.

However, in the provisions of Government Regulation Number 35, there is a specific exception for foreign workers employed in Indonesia, particularly those under fixed-term employment agreements (PKWT). According to Article 15(5) of Government Regulation Number 35, it states: "The provision of severance compensation does not apply to foreign workers employed by employers under PKWT-based employment relationships." This exception benefits the workers. Essentially, this rule is enacted as an effort to provide fair and equitable protection among workers under PKWT and PKWT' status.

For workers who underwent a transitional period after the enactment of Law No. 11 of 2020 on Job Creation in November 2020, the regulations have been established in Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Time, and Termination of Employment. This regulation governs the provisions regarding the transitional period for compensation following the enactment of Law No. 11 of 2020 on Job Creation on November 2, 2020. According to Article 64 of Government Regulation No. 35, the calculation of compensation for Fixed-Term Employment Agreements (PKWT) that were in effect before the enactment of Law No. 11 of 2020 on Job Creation begins from November 2, 2020, until the PKWT expires.

2. Challenges Faced by Outsourcing Companies in Implementing Severance Compensation for Fixed-Term Employment Agreements under Law Number 11 of 2020 on Job Creation

Furthermore, with the enactment of Law Number 11 of 2020 on Job Creation and the issuance of Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment, it has had a significant impact, particularly on companies engaged in outsourcing services such as cleaning, security, parking services, and more. However, these companies have encountered various challenges in implementing these regulations, primarily concerning the payment of severance compensation.

The main issue in the implementation of these regulations is the avoidance of severance compensation costs by employers, leading them to outsource certain non-core tasks to outsourcing companies. This practice is primarily related to the financial burden of providing severance compensation, which was not traditionally given to employees with Fixed-Term Employment Agreements (PKWT), thereby reducing costs and improving efficiency for the employer.

For example, a company in the outsourcing sector, PT. Sarana Gama Sejahtera, specializes in cleaning services. They entered into a contract with an employee on a Fixed-Term Employment Agreement (PKWT) on September 1, 2022. In the contract, PT. Sarana Gama Sejahtera, as an outsourcing company in the cleaning sector, did not include any provision regarding severance compensation for employees with PKWT status. If a termination of employment (PHK) occurs in the future, this issue arises because PT. Sarana Gama Sejahtera itself does not receive severance compensation from its client company, which provides cleaning services. The problem here is that the outsourcing company will not be able to provide severance compensation to its employees with PKWT status since they only receive a management fee of 10%, which would not be sufficient to cover severance compensation in case of employment termination (PHK).

Based on this issue, there is a significant potential for a time bomb in the legal relationships between the parties involved, which could lead to legal disputes in the future. For example, employees with PKWT status may potentially demand compensation from the outsourcing cleaning company if their employment is terminated. Similarly, the outsourcing cleaning company that employs these workers may demand compensation from their client companies that provide the work. This situation could result in complex legal disputes down the line.

CONCLUSION

In the research conducted by the author on the existence of norms regarding compensation for workers with fixed-term employment agreements based on Law Number 11 of 2020 concerning Job Creation, it can be concluded as follows:

As understood, Law Number 11 of 2020 concerning Job Creation and its implementation through Government Regulation Number 34 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Hours, and Termination of Employment have regulated the provision of compensation for fixed-term employees (PKWT), which had not been previously addressed in labor regulations.

The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah and Dauman

While the provision for compensation to PKWT employees introduced in 2020 is undoubtedly a welcome development for these employees, it represents a significant burden for companies involved in outsourcing services and their client companies providing such work. This situation has the potential to give rise to legal issues in the future, particularly in cases of employment termination (PHK) for PKWT employees. If these employees demand their rights to receive compensation, which is now a legally binding requirement, it could lead to legal challenges and obstacles in the business world.

REFERENCE

- Berge, T. L. (2020). Dispute by Design? Legalization, Backlash, and the Drafting of Investment Agreements. *International Studies Quarterly*, 64(4), 919–928. <https://doi.org/10.1093/isq/sqaa053>
- Browne, A., & Russell, J. S. (2020). How to Legalize Medically Assisted Death in a Free and Democratic Society. *Cambridge Quarterly of Healthcare Ethics*, 29(3), 361–368. <https://doi.org/10.1017/S0963180120000080>
- Gertz, G., Jandhyala, S., & Poulsen, L. N. S. (2018). Legalization, diplomacy, and development: Do investment treaties de-politicize investment disputes? *World Development*, 107, 239–252. <https://doi.org/10.1016/j.worlddev.2018.02.023>
- Grydehøj, A. (2016). Toward Subnational Democracies of Scale: Tensions between Democratic Legitimacy, Legality, and Effective Governance. *Geopolitics*, 21(1), 22–42. <https://doi.org/10.1080/14650045.2015.1114918>
- Nurjanah, Y., & Karjoko, L. (2019). The legality of freehold title and legal implications against of land makers officers (the study of freehold title issuance number 1576 / Nusukan Village, Banjarsari Sub-district, Surakarta City, central java). *International Journal of Scientific and Technology Research*, 8(10), 773–777. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85073957606&partnerID=40&md5=0188bb214a4e92f9e3a8941755315cdd>
- Agusmidah, (2010), *Hukum Ketenagakerjaan Indonesia Dinamika dan Kajian Teori*, Jakarta, Ghalia Indonesia.
- Ali, Zaenudin, (2010), *Metode Penelitian Hukum*, Jakarta, Sinar Grafika.
- Amirudin, Asikin, H. Zainal, (2020), *Pengantar Metode Penelitian Hukum*, Jakarta, PT. Raja Grafindo Perkasa.
- Dauman, (2022), Implementasi Perjanjian Kerja Waktu Tertentu Terus Menerus berdasarkan UU RI No. 13 tahun 2003 Tentang Ketenagakerjaan(Studi Kasus Pada PT Sarana Gama Sejahtera), *Palrev Journal of Law*, Volume 5 Issue 2, November.
- Djumadi, (2008), *Hukum Perburuhan Perjanjian Kerja*, Jakarta, PT Raja Grafindo Persada.
- Fandrian, M., Dauman, & Purwanto, Agus, (2021), *Hukum Ketenagakerjaan Modul Program Studi Ilmu Hukum S-1 Universitas Pamulang, Tangerang Selatan*, Unpam Press.
- Halim, Bobby Christian, (2020), Analisis Hukum tentang Perjanjian Kerja Waktu Tertentu(PKWT) pada Undang-Undang Nomor 11 tahun 2020 tentang Cipta Kerja,*Jurnal Prointegrita*, Volome 8 No 2.
- Lestari, Diah Puji, (2022), Analisis Yuridis Normatif Pemberian Kompensasi PKWT Berdasarkan UU Cipta Kerja,*Jurnal Hukum Lex Genera;is*, Unes Semarang, Vol 3 No. 5 Mei.
- Marzuki, Peter Mahmud, (2003), *Penelitian Hukum*, Jakarta, Kencana.

The Perspective on The Norm of Severance Pay Compensation For Fixed-Term Employment Contracts Based on Law No. 11 of 2020 on Job Creation is Linked to Legal Certainty

Nursa'adah and Dauman

- Mulyadi, Kartini, & Widjaja, Gunawan, (2003), Perikatan Yang lahir dari Perjanjian, Jakarta, PT. Raja Grafindo Persada.
- Oetomo, R. Goenawan, (2004), Pengantar Hukum Perburuhan & Hukum Perburuhan di Indonesia, Jakarta, Grhadhika Binangkit Press.
- Salim H.S, (2008), Perkembangan Hukum Kontrak Innominaat di Indonesia, Jakarta, PT.Sinar Grafika.
- Soekanto, Soerjono & Mamudji, Sri, (2011), Penelitian Hukum Normatif, Jakarta, PT Raja Grafindo Persada.
- Soekanto, Soerjono, (2010), Pengantar Penelitian Hukum, Jakarta, Universitas Indonesia.
- Subekti, R., & Tjitrosudibio, R., (1979), Kitab Undang-Undang Hukum Perdata, Jakarta, PT. Pradnya Paramita.
- Subekti, R., (1995), Aneka Perjanjian, Bandung, PT Citra Aditya Bakti.
- Subekti, R., (2003), Pokok-Pokok Hukum Perdata, Jakarta, PT Internusa.
- Sunggono, Bambang, & Harianto, Aries, (2008), Badan Hukum dan Hak Asasi Manusia, Bandung, CV. Mandar Maju.
- Wijayanti, Asri, (2014), Hukum Ketenagakerjaan Pasca Reformasi, Jakarta, Sinar Grafika.
- Yulianto, Taufiq, (2012), Hukum sebagai Sarana Melindungi Pekerja/Buruh dalam Hubungan Industrial, Orbith, Volume 8 No.2.

Legislation and Decisions

- Law No. 13 of 2013 concerning Manpower.
- DKI Jakarta Provincial Manpower and Transmigration Office, 2004.
- Law No. 11 of 2020 concerning Job Creation.
- Civil Code Book.
- Government Regulations.
- Decisions of the Minister of Manpower and Transmigration.