

PROTECTION OF WORKERS IN CERTAIN TIME EMPLOYMENT AGREEMENTS IN INDONESIA

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PROTECTION OF WORKERS IN CERTAIN TIME EMPLOYMENT AGREEMENTS IN INDONESIA

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Abstract

On November 2, 2020 Law Number 11 of 2020 concerning Job Creation was promulgated. Prior to the promulgation of this law, workers in Indonesia had faced challenges, in 2022 the government issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. The type of research used by researchers is normative legal research, namely legal research conducted by examining library materials or secondary data. Protection of workers/laborers regarding the period of time in the Specific Time Work Agreement (PKWT), based on the provisions of Article 8 of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, PKWT based on the term time is made for a maximum of 5 (five) years. In the event that the Specific Time Work Agreement (PKWT) expires, the worker/laborer is entitled to receive payment of compensation money.

Keywords: Worker Protection, Fixed Time Employment Agreement, Indonesia.

INTRODUCTION

The desired national development goals National development which is full of challenges and global competition will be characterized by the importance of the quality of human resources who master science and technology. Quality human resources will determine the future of the nation. Human resource development emerges and is an urgent need in all development sectors and sub-sectors. Humans are required not only to be the object of development but also to be the subject of development. To become a reliable subject of development, it is necessary to develop and manage human resources with the aim of improving quality and making people productive and independent (Asyhadie, 2007).

Therefore, human resources are considered as a determining factor and are the most valuable assets in development efforts that have been, are being and will be implemented. In this case, human resources as development resources and development actors, must have a productive work ethic, skills, creativity, discipline and professionalism, and be able to utilize, develop and master science and technology (IPTEK).

The goal of national development to be achieved by the Indonesian people is to develop the Indonesian people as a whole, both materially and spiritually. The role of humans in development today is very large and cannot be ruled out.

In the implementation of national development, the workforce has a very important role and position as the actor and goal of development. In accordance with the role and position of the workforce, manpower development is needed to improve the quality of the workforce and its participation in development as well as to increase the protection of the workforce and their families in accordance with human dignity. Protection of workers is intended to guarantee the basic rights of workers and guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of workers and their families while still paying attention to developments in the progress of the business world.

National development which is full of challenges and global competition will be colored by the importance of quality human resources who master science and technology. Quality human resources will determine the future of the nation. Human resource development emerges and is an urgent need in all development sectors and sub-sectors (Asyhadie, 2007).

The development of the manpower sector is part of national development. The objectives of manpower development are to empower and utilize manpower optimally and humanely, to realize equal distribution of employment opportunities and to provide manpower in accordance with the needs of national and regional development, to provide protection to manpower in realizing prosperity, and to improve the welfare of manpower and their families.

Law Number 13 of 2003 that there is no longer any stipulation regarding the term limit of a Specific Time Work Agreement.

The previous manpower law stipulated article 59 paragraph (1) that a work agreement for a certain time can only be made for certain jobs which, according to the type and nature or work activities, will be completed within a certain time, namely:

- 1) Work that is completed once or is of a temporary nature;
- 2) Work that is estimated to be completed in a short time and no longer than 3 (three) years;
- 3) Seasonal work;
- 4) Work related to new production, new activities, or additional products that are still in trial or exploration.

The provisions of this Article have been amended by the Job Creation Law to become.

Work agreements for a certain time can only be made for certain workers who, according to the type and nature of work activities, will be completed within a certain time, namely as follows:

- 1) Work that is completed once or is of a temporary nature;
- 2) Work that is estimated to be completed in the not too distant future;
- 3) Seasonal work;
- 4) Work related to new products, new activities, or additional products which are still in trial or exploration; or
- 5) Jobs whose type and nature of activities are not permanent.

Amendment to letter (b) which removes the category limitation of "3 (three) years at the most" correlates with the omission of paragraph (4) in Article 59 which stipulates that "a work agreement for a certain time based on a certain period of time can be held for a maximum of 2 (two) years may only be extended 1 (one) time for a maximum period of 1 (one) year".

The implications of losing these clauses are very serious, in addition to removing the maximum term and extension limits, this new provision also eliminates the opportunity for workers to change their status from contract workers to permanent workers. Even though the position of workers in the status of workers for a certain time is far more vulnerable than permanent workers.

RESEARCH METHODS

The type of research used by researchers is normative legal research, namely legal research conducted by examining library materials or secondary data. Legal research is carried out by examining literature or secondary data, by analyzing a legal issue through laws and regulations, literature and other reference materials related to the issues discussed by the researcher (Soekanto, 1990). The type of research used in this study is about synchronizing laws and regulations regarding the problems studied.

RESULTS AND DISCUSSION

Legal protection for employment in accordance with the Labor Law Number 13 of 2003 by providing a National Social Security System has been established based on Presidential Decree No. 20 of 2002 which aims to compile a Law on the National Social Security System. That everyone has the right to social security to be able to meet the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just and prosperous Indonesian society and to provide comprehensive social security, the state has developed a National Social Security System.

According to Iman Soepomo in Saprudin (2019) labor protection is divided into 3 (three) types, namely:

- 1) Economic protection, namely protection of workers in the form of sufficient income, including when workers are unable to work against their will;
- 2) Social protection, namely protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize;
- 3) Technical protection, namely labor protection in the form of work security and safety.

Talking about legal protection means discussing the rights and obligations of workers. Originally, legal protection was the goal or duty of the state government, it was enough just to defend the law, in other words, to maintain public order and welfare. Now the purpose of legal

protection is more than that, namely to carry out statutory provisions as a realization of the will of the State, also to carry out public interests.

In order to guarantee these labor rights, it is necessary to carry out efforts to implement legal protection for workers. Legal protection for workers is outlined in Article 27 paragraph (2) of the 1945 Constitution which states "Every citizen has the right to work and a living that is worthy of humanity". Furthermore, in the provisions of Article 28 D paragraph (2) of the 1945 Constitution, which states "Every person has the right to work and receive fair and proper compensation and treatment in a work relationship". The purpose of legal protection as stated in Article 4 of Law Number 13 of 2003 concerning employment is to provide protection to workers in realizing prosperity and increasing the welfare of workers and their families.

One form of realization of the implementation of legal protection is the implementation of workers' rights stipulated in the work agreement. Law Number 13 of 2003 concerning Manpower, Article 1 point 14 provides the meaning that "An employment agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains working conditions, rights and obligations of both parties". Based on these provisions, the work agreement generally regulates the terms of work and the rights and obligations of both parties, namely the rights and obligations of workers and employers.

Employment relationship is the relationship between employers and workers based on work agreements. The work relationship is something abstract, while the work agreement is something concrete or real. With a work agreement, there will be a bond between employers and workers (Sutedi, 2009).

Compulsory work agreements according to Subekti (1982) must fulfill the requirements as referred to in civil law and the principles of agreements in general. According to article 1320 of the Civil Code, a valid agreement must meet the following conditions:

- 1) Agree those who bind themselves;
- 2) The ability to make an agreement;
- 3) A certain thing; and
- 4) Halal reasons.

The agreement of those who bind themselves means that both parties or parties entering into the agreement must agree, agree, agree on the things that were agreed upon, without any coercion, mistakes, fraud. This agreement contains an element of offer and acceptance of the offer (Husni, 2003).

The ability to make an agreement, namely to enter into a contract, the parties must be competent but it may happen that the parties or one of the parties entering into a contract, the parties must be competent but it may happen that the parties or one of the parties entering into the contract are not competent according to law. A person by law is considered incapable of entering into an agreement if the person is not yet 21 years old, unless he has been married before he was 21 years old.

Something certain means that in a contract the object promised in the agreement must be clear and determined by the parties, the object of the agreement can be in the form of money or services. There is no obstacle that the amount of goods is not certain, as long as the amount can then be determined or calculated.

For what is lawful, what is meant by law is because what is lawful is if it is not prohibited by law, does not conflict with decency and public order. An agreement made for reasons or reasons that are not lawful, such as buying and selling marijuana to disrupt public order, provides sexual pleasure without a legal marriage (Soedjono, 2008).

The four conditions are cumulative, meaning that all of them must be met before it can be said that the agreement is valid. The terms of the free will of both parties and the ability or skills of both parties in making an agreement in civil law are referred to as subjective requirements because they concern the person making the agreement, while the condition for the existence of the promised work must be lawful is referred to as an objective requirement because it concerns the object of the agreement. If the subjective conditions are not fulfilled then the agreement can be rescinded.

Regarding the legal requirements for work agreements, they are specifically regulated in the provisions of Article 52 of Law Number 13 of 2003 concerning Manpower, namely work agreements are made on the basis of:

- 1) Agreement of both parties;
- 2) Ability or ability to carry out legal actions;
- 3) There is an agreed job; and
- 4) The agreed work does not conflict with public order, decency, and applicable laws and regulations.

Work agreements made by the parties that conflict with the 1st (one) and 2nd (two) terms, the legal consequence is that the work agreement can be canceled. If the work agreement is contrary to conditions number 3 (three) and 4 (four), then the work agreement will be null and void by law.

Work agreements made in writing, at least contain the following provisions:

- 1) Name, company address, and type of business;
- 2) Name, gender, age and address of the worker/laborer;
- 3) Position or type of work;
- 4) Place of work;
- 5) The amount of wages and the method of payment;
- 6) Terms of employment which contain rights and obligations of employers and workers/labourers;
- 7) Start and period of validity of the work agreement;
- 8) Place and date the work agreement was made; and
- 9) Signatures of the parties in the work agreement.

The provisions in the work agreement concerning the amount of wages and the method of payment as well as the terms of employment which contain the rights and obligations of the entrepreneur and the worker/laborer may not conflict with company regulations, collective bargaining agreements and applicable laws and regulations.

Based on the provisions of Article 81 point (12) of Law Number 11 of 2020 concerning Job Creation, it regulates changes to the provisions of Article 56 of Law Number 13 of 2003 concerning Manpower. Based on these provisions, work agreements are made for a certain time (PKWT) or for an unspecified time (PKWTT).

As for what is meant by a Fixed Time Work Agreement, hereinafter referred to as PKWT based on Article 1 number (1) of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.100/Men/VI/2004 concerning Provisions for the Implementation of a Specific Time Work Agreement, "*is a work agreement between workers/laborers and employers to enter into a working relationship for a certain time or for certain workers*". While the Work Agreement for an Unspecified Time, hereinafter referred to as PKWTT, is a work

agreement between workers/laborers and employers to establish a permanent working relationship.

Changes to the provisions of Article 57 of Law Number 13 of 2003 concerning Manpower have a significant impact on the protection of workers in the Specific Time Work Agreement. Initially Article 57 paragraph (1) of Law Number 13 of 2003 stated "A work agreement for a certain time is made in writing and must use the Indonesian language and Latin letters". Then in paragraph (2) states "A work agreement for a certain time that is made unwritten contrary to the provisions referred to in paragraph (1) is stated as a work agreement for an indefinite time". This means that at that time, the work agreement must be made in writing, if the entrepreneur violates these provisions, the work agreement will change to a work agreement for an unspecified time (PKWTT).

However, in the provisions of Article 57, changes are no longer regulated as a result of the law. Article 57 Amendment states:

- 1) A work agreement for a certain time is made in writing and must use the Indonesian language and Latin letters.
- 2) If a work agreement for a certain time is made in Indonesian and a foreign language, if later there is a difference in interpretation between the two, the work agreement for a certain time made in Indonesian will apply.

Sanctions abolished if employers make work agreements for a certain time in writing or verbally, automatically closing the space for workers bound by PKWT to become PKWTT workers. In this context, of course, there is a weakening of legal protection for workers. Due to the abolition of these provisions, the legal consequences for employers who make an unwritten PKWT, of course, will objectively conflict with the legal terms of the work agreement which will result in the agreement being null and void by law. Because it is contrary to the provisions of the law which require PKWT to be made in writing.

The Fixed Time Work Agreement also does not require a probationary period. If a probationary period is required, the required probationary period is null and void and the working period is still counted. Based on the provisions of Article 13 of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, the PKWT contains at least:

- 1) Company name, address and type of business;
- 2) Name, gender, age and address of Worker/Labourer;
- 3) Position or type of work;
- 4) Place of work;
- 5) The amount and method of payment of Wage;
- 6) The rights and obligations of Employers and Workers/Labourers in accordance with the provisions of laws and regulations and/or working conditions set forth in Company Regulations or Collective Bargaining Agreements;
- 7) Start and period of validity of the PKWT;
- 8) Place and date the PKWT was made; and
- 9) Signatures of the parties in the PKWT.

PKWT must be registered by Employers at the ministry that administers government affairs in the field of manpower online no later than 3 (three) working days after signing the PKWT. In the event that PKWT registration online is not yet available, the PKWT registration shall be carried out by the Entrepreneur in writing at the agency that administers government

affairs in the district/city manpower sector, no later than 7 (seven) working days from the signing of the PKWT.

Specific Time Work Agreement (PKWT) is made based on the Time Period, or Completion of Work. In addition, it cannot be held for jobs that are permanent. The following will discuss one by one the two types of PKWT.

PKWT Based on Period

Based on the explanation of the provisions of Article 81 number (15) of Law Number 11 of 2020 concerning Job Creation, that "what is meant by permanent work in this paragraph is work that is continuous, uninterrupted, not limited in time and is part of the from a production process in one company or work that is not seasonal. Meanwhile, non-seasonal work is work that does not depend on the weather or certain conditions. If the work is continuous work, is not interrupted, is not limited in time, and is part of a production process, but depends on the weather or the work is required because of certain conditions, then the work is seasonal work which does not include permanent work so that can be the object of a work agreement for a certain time.

Based on the provisions of Article 5 paragraph (1) Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, that PKWT based on a period of time is made for certain jobs, namely:

- 1) Work that is estimated to be completed in the not too distant future;
- 2) Seasonal work; or
- 3) Work related to new products, new activities, or additional products that are still in trial or exploration.

Based on these provisions, the legislators restrictively limit the types of work that can be made PKWT. For work that is estimated to be completed in a short time, work that is estimated to be completed in a short time is carried out no later than 5 (five) years. This latest provision is different from the previous provision, namely that it is made for a maximum of 3 (three) years based on the provisions of Article 3 paragraph (1) of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.100/Men/VI/2004 concerning Provisions for Implementation of Time Work Agreements Certain.

PKWT based on the completion of a particular job, namely work that is seasonal in nature, so it is made for certain jobs, namely work that is completed once or work that is temporary in nature. For work that is seasonal in nature, it is work that depends on the season or weather; or certain conditions. Work whose implementation depends on the season or weather may only be carried out in certain seasons or certain weather. While work whose implementation depends on certain conditions is additional work carried out to fulfill certain orders or targets.

Jobs related to new products are products that have never existed before or development of existing products. The work related to new activities is a business that has just been carried out by the Company.

Regarding the PKWT period, there has been a change in regulation when compared to the previous arrangement, namely Law 13 of 2003 concerning Manpower. Based on the provisions of Article 8 of Government Regulation No. 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, it is stated:

- 1) PKWT based on the period referred to in Article 5 paragraph (1) can be made for a maximum of 5 (five) years.

- 2) In the event that the PKWT period as referred to in paragraph (1) is about to end and the work being carried out has not been completed, then the PKWT can be extended for a period according to the agreement between the Employer and the Worker/Labourer, provided that the entire PKWT period and its extension are no more than 5 (five) years.

Based on these provisions, the time limit of PKWT is a maximum of 5 (five) years. The PKWT extension can be held, but the terms of the entire PKWT period and its extension are not more than 5 (five) years. So there is no limit to the number of times it can be extended, as long as the PKWT and its extension are not more than 5 (five) years.

According to the author, this arrangement provides more legal certainty than the previous provisions. Where previously it was stipulated that "A work agreement for a certain time based on a certain period of time can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year". Because the provisions give rise to multiple interpretations, some interpret PKWT and its extension as 3 (three) years, but there are also those who interpret PKWT and its extension as 5 (five) years.

Regarding the legal consequences if the entrepreneur violates the maximum PKWT deadline explicitly Government Regulation No. 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, does not regulate it. However, based on the provisions of Article 81 point (15) regarding amendments to Article 59, in paragraph (3) it is stated "A work agreement for a certain time that does not comply with the provisions referred to in paragraph (1) and paragraph (2) by law becomes a Time Work Agreement. Not Certain."

Based on these provisions, if the entrepreneur makes a PKWT, one of which is contrary to the provisions of "work that is estimated to be completed in the not too long time", in this case it may not be more than 5 (five) years, then the PKWT by law becomes an Unspecified Time Work Agreement.

PKWT Based on Completion of Work

PKWT based on the completion of a particular job based on the agreement of the parties as outlined in the Employment Agreement. The agreement of the parties contains:

- 1) The scope and boundaries of a work are declared complete; And
- 2) The length of time for completion of work is adjusted to the completion of a job.

In the event that certain work agreed upon in the PKWT can be completed faster than the agreed time, the PKWT is terminated by law when the work is completed. However, if in the event that certain work agreed upon in the PKWT cannot be completed according to the agreed timeframe, then the PKWT period is extended to a certain time limit until the work is completed. The working period of Worker/Labourer in the case of an extension of the PKWT period shall still be regulated since the employment relationship based on the PKWT.

As for PKWT, which can be carried out for certain other jobs whose type and nature or activities are not permanent, in the form of certain jobs that change in terms of time and volume of work as well as payment of Worker/Labourer wages based on attendance. PKWT can be done with a daily work agreement.

Daily Work Agreements are carried out with the condition that the Worker/Labourer works less than 21 (twenty one) days in 1 (one) month. If the Worker/Labourer works 21 (twenty one) days or more for 3 (three) consecutive months or more, the Daily Work Agreement

becomes invalid and the Employment Relations between the Employer and the Worker/Labourer are legally changed based on the PKWTT.

Entrepreneurs make written daily Work Agreements with Workers/Labourers. The daily Work Agreement can be made collectively and at least contains:

- 1) Name, address of the company or employer;
- 2) Name, address of Worker/Labourer;
- 3) Type of work performed; and
- 4) Amount of Wages.

Employers are required to fulfill the rights of Daily Workers/Labourers, including the right to social security programs.

The relationship between employers and workers/labourers will not last forever. There will be a time when the employment relationship ends, whether that occurs due to termination of employment, or due to the expiration of the work agreement period or the completion of the agreed work. Based on the provisions of Article 81 number (16) of Law Number 11 of 2020 concerning Job Creation, regulating changes to the provisions of Article 61 of Law Number 13 of 2003 concerning Manpower, it is stated that a work agreement ends, if:

- 1) The worker/laborer dies;
- 2) The expiration of the work agreement period;
- 3) The completion of a particular job;
- 4) The existence of court decisions and/or decisions of industrial relations dispute resolution institutions that have permanent legal force; or
- 5) There are certain conditions or events that are stated in the work agreement, company regulations, or collective bargaining agreement which can cause the end of the employment relationship.

Based on these provisions, one of the causes of the termination of the work agreement is the end of the work agreement period or the completion of a particular job. This means that in the PKWT context, the agreement can end if the work agreement period ends or a certain job is completed.

When the employment relationship ends, because the employment agreement has ended, of course, the fundamental question regarding legal protection for workers after the employment relationship has ended. Of course, this is an interesting matter to discuss because there have been new changes since the enactment of Law Number 11 of 2020 concerning Job Creation in conjunction with Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment .

The change is regarding the provision of compensation money to workers/laborers whose work relationship is based on PKWT. Legislators do not provide an authentic understanding or interpretation of compensation money. The gift is carried out at the end of the PKWT.

Compensation money is given to Workers/Labourers who have worked for at least 1 (one) month continuously. If the PKWT is extended, compensation money is given at the end of the PKWT period before the extension and for the PKWT extension period, the next compensation money is given after the PKWT period extension ends or ends.

The amount of compensation money is given in accordance with the following provisions:

- 1) PKWT for 12 months continuously, given 1 month wages;

- 2) PKWT for 1 month or more but less than 12 months, calculated proportionally by calculating: working period x 1 month Wages/12
- 3) PKWT for more than 12 months, calculated proportionally by calculating: working period x 1 month Wages/12

The wages used as the basis for calculating compensation payments consist of basic wages and fixed allowances. In the event that the wages in the company do not use the components of the basic wages and fixed allowances, then the basis for calculating the payment of compensation money is wages without benefits. If the wages in the company consist of basic wages and non-fixed allowances, then the basis for calculating compensation money is the basic wage.

1 In the event that the PKWT is based on the completion of a job, the completion of which is faster than the length of time agreed in the PKWT, the compensation money is calculated until the completion of the work. If one of the parties terminates the employment relationship before the expiration of the period specified in the PKWT, the entrepreneur is obliged to provide compensation money, the amount of which is calculated based on the PKWT period that has been carried out by the Worker/Labourer. Based on these provisions, compensation money is the employer's obligation to provide it, if the work agreement ends.

CONCLUSION

Protection of workers/laborers regarding the period of time in the Specific Time Work Agreement (PKWT), based on the provisions of Article 8 of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, PKWT based on the term time is maximum for a maximum of 5 (five) years. The PKWT extension can be held, but the terms of the entire PKWT period and its extension are not more than 5 (five) years. Legal consequences if the entrepreneur violates the maximum time limit of the PKWT, then by law it becomes an Unspecified Time Work Agreement (PKWTT). In the event that the Specific Time Work Agreement (PKWT) expires, the worker/laborer is entitled to receive payment of compensation money. Compensation money is given to Workers/Labourers who have worked for at least 1 (one) month continuously. As for the calculation regarding the amount of compensation money, it is regulated based on the provisions of Article 16 paragraph (1) of the Government Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment.

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