

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Legal Protection for Workers of Certain Time Work Agreement (PKWT) Exceeding the Time Limit of 5 (five) Years

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Abstract. *Protection of workers with a Certain Time Work Agreement (PKWT), this is a government step to protect the interests of PKWT workers has made the latest Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment. Many people consider that they still do not have legal certainty for workers if there is a violation of the provisions relating to the terms and elements of a certain time work agreement work contract. In theory, legal certainty is the clarity of behavioral scenarios that are general and binding on all citizens, including legal consequences. That the terms of the implementation of PKWT, there is no clarity of norms regarding legal sanctions or legal implications if there is a violation of the terms and conditions of the implementation of a Certain Time Work Agreement, especially violations of the past length of PKWT, where the provisions stipulated in the Government Regulation of the Republic of Indonesia that PKWT is no longer than 5 (five) years. However, it does not regulate sanctions if violated. So that legal protection for PKWT workers regarding overdue time is important because it is related to legal certainty of employment relationship status.*

Keywords: *Legal Certainty; Protection; PKWT time limit.*

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1. Introduction

Legal protection for workers/laborers in conducting labor *relations* with employers has been carried out by the Government through Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation which was later replaced by a Regulation in Lieu of Law (PERPU) concerning Job Creation and subsequently ratified into Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, however, the substance of the provisions has not changed much, where the Government in 2021 as a derivative of the Job Creation law has issued Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment (PHK), where one of the main things regulated is regarding the type of employment relationship between workers / laborers and employers which aims to regulate provisions as conditions for hiring workers / laborers with a certain time agreement aka contract workers and workers with indefinite time work agreements aka permanent workers / permanent employees. *According to Asri Wijayanti, "Legal relations carried out by at least two legal subjects regarding a job. The legal subject who engages in employment relations is the employer or employer with the worker/worker."*¹. Furthermore, the Government Regulation defines a Certain Time Work Agreement hereinafter abbreviated as PKWT is a work agreement between Workers / Workers and employers to hold work relations for a certain time or for certain jobs, while an Indefinite Time Work Agreement hereinafter referred to as PKWTT is a Work Agreement between Workers / Workers and Employers to hold a permanent employment relationship.

For workers / workers with an Indefinite Time Work Agreement (PKWTT) is not too much regulated in the provisions of the law or legislation because permanent workers are usually regulated in many Collective Labor Agreements (PKB) at the company level, while certain time work agreements the government has made special provisions on the terms and conditions for the implementation of employing PKWT workers / workers in the company in the form of laws and implementing regulations where it has It is determined that PKWT can be implemented by the company based on two things, namely based on the time period, namely work that is expected to be completed in the not too long time, seasonal work, or work related to new products, new activities, or additional products that are still under trial or exploration and based on the completion of work, i.e. work that is once completed or work that is temporary in nature and PKWT also cannot be held for permanent work.

¹ Asri Wijayanti, 2015 "Post-Reformation Labor Law" Jakarta, Sinar Grafika, p. 36.

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If you pay attention to the provisions in Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Rest Time and Termination of Employment, in one of the clauses the article regulates the length of time for a certain time work agreement limited to work that is estimated to be completed in a not too long time which is carried out for a maximum of 5 (five) years.

Judging from the Government's policy, it can be seen that the government has taken a policy to open doors for entrepreneurs to be able to use contract labor (PKWT) so that companies in Indonesia have high competitiveness so that they are more competitive in running their businesses, *flexibility worker* taps are opened by allowing the company to recruit workers / laborers with status as contract workers or workers / laborers with a certain time work agreement (PKWT) which aims to make the company more efficient in managing the company with the hope that the company will grow so that wide job opportunities are open for job seekers, but still with certain conditions.

The terms and conditions for the use of contract labor (PKWT) stipulated in the laws and regulations have been rigidly regulated by the maker, but if you look at the practical level, you can find facts at the company level, the provisions and conditions are still many companies that do not comply and even tend to violate them on the grounds that there are no legal sanctions if they violate these regulations.

Therefore, this study tries to examine more deeply how legal protection by the government for PKWT workers / workers concerned, if there is a violation beyond the time limit of 5 (five) years in the implementation of workers / contract workers or workers with a Certain Time Work Agreement (PKWT).

Problem Formulation

Based on the background description above, this research will be focused on the following question formulation:

1. What are the terms and conditions for workers / workers of Certain Time Work Agreement (PKWT) according to Law Number 13 of 2003 concerning Manpower?
2. What are the terms and conditions for workers/laborers of Certain Time Work Agreements (PKWT) according to Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law Chapter IV of Manpower?

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3. What are the legal implications of a Certain Time Work Agreement (PKWT) that violates overdue according to the laws and regulations?

Objectives

The purpose of this study is to understand how important legal protection for workers is Certain Time Agreement (PKWT) so that the employment relationship between workers and employers has limits and legal certainty so that workers have a definite future and fairer treatment.

2. Research Methods

The type of research used is normative juridical with the type of literature research , namely reviewing applicable laws and regulations, namely Law Number 13 of 2003 concerning Manpower, Regulation in Lieu of Law (PERPU) of 2022 concerning Job Creation, Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and Government Regulation Number 35 of 2021 concerning PKWT, Outsourcing, Working Time, Rest Time and Termination of Employment.

This research is descriptive analytical which will show the provisions of laws and regulations relating to Certain Time Work Agreements (PKWT). Furthermore, the research data used are primary data and secondary data sourced from literature. The entire data will be processed and formulated so that it can find a conclusion as the research theme.

3. Results and Discussion

3.1. Terms and conditions of workers / workers Certain Time Work Agreement (PKWT) according to Law Number 13 of 2003 concerning Manpower.

Basically, the form of legal protection against a certain time work agreement starts from the existence of an agreement, in a work agreement for a certain time (PKWT) is regulated to provide protection for workers, which regulates the legal subject who makes the agreement, the object of work carried out, the start and when the agreement ends, where the appointment of contract workers is carried out through an agreement in the form of a Certain Time Work Agreement (PKWT). where According to R. Subekti: "A covenant is an event where one person promises to another or where two people promise each other to do something".² and based on the work agreement regulated in Law Number 13 of 2003 in Article 1 number 14: *"Work agreement is an agreement between workers / workers and employers or employers*

² R. Subekti, 1987, *"The Law of Agreements"*, Jakarta, Intermasa, p. 1

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containing work conditions, as well as the rights and obligations of the parties". As for work that is continuous or is a permanent / permanent work of a business entity. Protection of workers / laborers through the arrangement of indefinite time work agreements (PKWTT) is to provide certainty for those who carry out work that is continuous in nature will not be limited by the time of their work agreement. As for employers who use through this fixed-time work agreement (PKWT) arrangement, employers are given the opportunity to apply it for work that is limited in time, so that employers can also avoid the obligation to appoint permanent workers / laborers for time-limited work. When the enforceability of Law Number 13 of 2003 concerning Manpower is still valid for Certain Time Work Agreements (PKWT) as stipulated in Article 56 paragraph (2) of Law Number 13 of 2003 concerning Manpower is only based on the period or completion of a certain work and cannot be held for permanent work. In addition, an employment agreement for a certain time can only be made for certain work which according to the type and nature or activity of the work will be completed within a certain time, so that the implementation provisions are regulated in Article 59 of Law Number 13 of 2003 concerning Manpower, namely a certain time work agreement can only be made for certain work which according to the type and nature or activity of the work will be completed within a certain time, that is:³

1. Work that is once completed or temporary in nature;
2. Work that is estimated to be completed in the not too long time and no longer than 3 (three) years;
3. Work that is seasonal; or
4. Work related to new products, new activities or additional products that are still under trial or exploration.
5. An employment agreement for a certain time cannot be held for work of a permanent nature;
6. The employment agreement for a certain time can be extended or renewed;
7. A certain time employment agreement based on a certain period 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;

³ Pasal 59 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan

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8. Employers who intend to extend the specified time work agreement, no later than 7 (seven) days before the end of the certain time work agreement have notified their intention in writing to the worker / worker concerned;

9. Renewal of a certain time work agreement can only be held after exceeding the grace period of 30 (thirty) days of expiration of this certain time work agreement can only be done 1 (one) time and a maximum of 2 (two) years;

The provisions mentioned above, are terms and conditions for the company when it will use contract labor or PKWT, if in its implementation the company violates one of the terms and conditions mentioned above, then there are legal implications that must be borne by the company, namely the change in the employment relationship status of workers / contract workers (PKWT for the sake of law changes to permanent workers / workers (PKWTT) this refers to the provisions of Article 59 Paragraph (7) Law Number 13 of 2003 concerning Manpower.

3.2. Terms and conditions for workers/laborers of Certain Time Work Agreements (PKWT) according to Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

Before the passing of the Law on Job Creation or commonly called the Omnibus Law, many people were pro and con responding to the passage of the controversial law, especially workers / workers who the majority did not agree with the draft law made by the government, because according to workers / workers the Omnibus Law content was very detrimental to workers / workers, even things that were criticized by workers / workers such as articles related to legal protection of the minimum wage where the provisions for the implementation of sectoral minimum wages are revoked, then the implementation of outsourcing workers is more exempt for all types of work, as well as protection for workers / contract workers (PKWT) where contract workers (PKWT) can be used by employers for a longer period of time than before from 3 (three) years to 5 (five) years this is considered very detrimental to workers / workers because of the increasingly uncertain fate for workers / workers because the work contract is so long and this is considered increasingly gloomy for the future of Indonesian workers / workers. *President of the Confederation of Indonesian Trade Unions (KSPI) Said Iqbal explained that there were 10 issues raised by workers in rejecting the omnibus law of the Employment cluster Job Creation Bill. The ten issues are related to layoffs, criminal sanctions for employers, TKA, UMK and UMSK, severance pay, lifetime contract employees, lifetime outsourcing, working time, leave and wage rights to leave, as well as health insurance and*

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*pension security for outsourced contract workers.*⁴ The fundamental changes in the weakening of labor rights protection can be seen from the provisions regulated by the Omnibus Law, especially the Manpower cluster where the provisions regulated in Law Number 13 of 2003 concerning Manpower are reduced by new provisions in the Omnibus Law Number 11 of 2020 concerning Job Creation, the job creation law which was later changed back to Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law regulates several provisions and conditions as follows, especially Article 59:⁵

1. Work that is once completed or temporary in nature.
2. Work that is expected to be completed in the not too distant future.
3. Work that is seasonal.
4. Work related to new products, new activities or additional products that are still under trial or exploration.
5. An employment agreement for a certain time cannot be held for work of a permanent nature.

The provisions mentioned above regulated by the Omnibus Law of the Manpower Cluster are terms and conditions for companies when they will use contract labor or PKWT, but the change in the Manpower law to the Omnibus Law of the Manpower Cluster has reduced the provisions governing the conditions in the implementation of workers / contract workers (PKWT) where there are several provisions that are dropped / deleted, namely the limitation of contract extension 1 (one) times, notification of workers/contract workers (PKWT) before contract expiration 7 (seven) days before contract expiration, and contract renewal. So that the legal implications of changing the status of labor relations from workers / contract workers (PKWT) for the sake of law to workers / permanent workers (PKWTT) occur if there is a violation in the implementation of workers / workers committed by the company related to violations of work objects only.

⁴ Ferry Sandi, October 5, 2020, "7 Reasons Workers Reject the Omnibus Law: It's True that Layoffs No Severance" is available on <https://www.cnbcindonesia.com/news/20201005131005-4-191944/7-alasan-buruh-tolak-omnibus-law-benar-phk-tak-ada-pesangon> website. Retrieved May 6, 2023.

⁵ Pasal 59 Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang

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3.3. Legal implications of fixed-time employment agreements that violates overdue due time according to laws and regulations.

After November 2020 the government and the House of Representatives passed the Omnibus Law, then in February 2021 the government issued implementing regulations for the Omnibus Law, especially the labor cluster, namely Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Rest Time, and Termination of Employment. Through this Government Regulation as a form of government effort to protect workers/contract workers (PKWT) in protecting their rights, but unfortunately from the comparison of provisions regarding PKWT contained in Law Number 13 of 2003 concerning Manpower with Law Number 11 of 2020 concerning Job Creation and Regulations in Lieu of Law (PERPU) concerning Job Creation, as well as Law Number 6 of 2023 concerning the Establishment of Government Regulations In lieu of Law Number 2 of 2022 concerning Job Creation into Law, the government's protection of workers/laborers is further weakened due to the removal of several legal provisions against legal consequences if there is a violation in the implementation of PKWT because there are no sanctions for companies that violate one of them regarding a certain time work agreement regarding overdue.

It can be seen in the provisions of Article 6 of Government Regulation Number 35 of 2021 which basically regulates the length of time a certain time work agreement is regulated to be carried out by the company for a maximum of 5 (five) years, meaning that the government limits the implementation of workers / workers a certain time work agreement can only be carried out for a maximum of 5 (five) years⁶, but the Government Regulation is not followed by the provisions of legal sanctions or legal implications if they violate this, the government does not make sanctions provisions if the company violates, so this opens up space for companies to commit violations and becomes the potential for prolonged exploitation of workers / contract workers (PKWT) or contracts indefinitely, even if such a thing happens, This is no longer in line with the government's goal to protect workers/contract workers (PKWT) and deviates from the philosophy of workers/contract workers whose essence is the limitation of time for certain jobs only.

4. Conclusion

That the lawmakers in one of their considerations have conveyed that the protection of labor aims to realize the welfare of workers / workers and their families, meaning that legal certainty for the protection of workers / workers is a necessity, besides that it is not only a

⁶ Article 6 of Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Rest Time, and Termination of Employment

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matter of legal certainty but also about justice received by workers / workers when there is a violation of the law deliberately to make workers / contract workers (PKWT) who the status of the working relationship is continuously PKWT without any opportunity to become a permanent worker (PKWTT) in the company where he works, so the provisions in Article 6 of Government Regulation Number 35 of 2021 should not only regulate the length of the contract but must also regulate legal sanctions if it violates the limit of the length of the PKWT contract of 5 (five) years.

Recommendations

To maximize the government's role in protecting workers/laborers, it is necessary through the government to revise the provisions in Government Regulation Number 35 of 2021 which regulates legal sanctions for breach of contract, as for the form of sanctions, it can be imposed in the form of sanctions for changing their employment relationship status from PKWT workers (contract workers) to PKWTT workers (permanent workers) for companies that violate or administrative sanctions such as revocation of business license.

5. References

Journals:

Caroline, C., Sumiati, S., et.al. 2023. Taxation in the Modern Economy: An In-Depth Analysis of Policy Frameworks, Economic Implications, and Strategic Approaches for Sustainable Financial Development. *International Journal of Society Reviews*, Vol, 1 No.2: p.363-374, accessed from https://scholar.google.co.id/scholar?hl=en&as_sdt=0,5&cluster=4174919886406042461

Deen, Thaufiq., Ong Argo Victoria & Sumain. 2018. Public Notary Services in Malaysia. *JURNAL AKTA*, Vol. 5, No. 4: p.1017-1026. Doi: 10.30659/akta.v5i4.4135, accessed from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

Hajar, Ibnu, & Mubarak, Umam Alfi. 2023. Peningkatan Kinerja Sumber Daya Manusia dalam Konteks Dukungan Sosial. in *Jurnal Riset Bisnis Indonesia*, Vol. 20, No. 1: p.56-64 url: <http://jurnal.unissula.ac.id/index.php/PH/article/view>, accessed on 18 September 2023, at 5:00 pm

Victoria, Ong Argo. Ade Riusma Ariyana, Devina Arifani. 2020. Code of Ethics and Position of Notary in Indonesia. *Sultan Agung Notary Law Review*, Vol. 2 No. 4: p.397-407, Doi:

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10.30659/sanlar.2.4.397-407,

<http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

Books:

Asri Wijayanti, 2015 "Post-Reformation Labor Law" Jakarta, Sinar Grafika, p. 36.

R. Subekti, 1987, "The Law of Agreements", Jakarta, Intermasa, p.1

Van Apeldoorn, 1990, Introduction to Law, Twenty-fourth Printing, Jakarta, Pradnya Paramita, pp.24-25

Internet:

Ferry Sandi, October 5, 2020, "7 Reasons Workers Reject the Omnibus Law: There is No Severance Payment" is available on <https://www.cnbcindonesia.com/news/20201005131005-4191944/7-alasan-buruh-tolak-omnibus-law-benar-phk-tak-ada-pesangon> website. Retrieved May 6, 2023.

Regulation:

Government Regulation Number 35 of 2021 concerning PKWT, Outsourcing, Working Time, Rest Time and Termination of Employment

Law Number 13 of 2003 concerning Manpower

Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law