

## **Legal Analysis of Legal Protection of the Rights of Employees with Fixed-Term Employment Agreements (PKWT) Who Receive Unilateral Termination of Employment (PHK) by the Company (Research Study in Semarang City)**

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**Abstract.** *Fixed-Term Employment Agreement is a form of employment relationship that is widely used in Indonesia, especially for temporary work. Although it has been regulated in Law Number 6 of 2023 and Government Regulation Number 35 of 2021, Fixed-Term Employment Agreement employees often face legal vulnerabilities, especially when there is a unilateral Termination of Employment before the end of the contract period. Unilateral layoffs without a clear legal basis not only violate applicable provisions but also have a significant impact on workers' welfare. The settlement mechanism through the Industrial Relations Court that is available is often ineffective in providing justice quickly. Weak supervision, lack of understanding of the law by workers, and bad faith from companies worsen this situation. Based on the views of legal experts, fair and effective legal protection is essential to ensure social justice in accordance with the values of Pancasila. Therefore, this study was conducted to analyze the legal protection of Fixed-Term Employment Agreement employees who were unilaterally laid off by companies in Semarang City. The research method used is legal research with a sociological juridical approach (empirical), which combines normative analysis with empirical data obtained from the field. The author conducted an analysis of legal protection for Fixed-Term Employment Agreement employees who were unilaterally laid off by companies in Semarang City and the application of the law on the rights of Fixed-Term Employment Agreement employees who were unilaterally laid off by companies in Semarang City. Legal protection for Fixed-Term Employment Agreement workers includes preventive protection, namely through the creation of a complete and transparent written work contract, as well as repressive protection through dispute resolution mechanisms such as bipartite, mediation, and the Industrial Relations Court. The views of legal experts such as Philipus M. Hadjon, Satjipto Rahardjo, Hans Kelsen, Yudi Latif, and Lawrence M. Friedman reinforce the importance of fair legal protection that sides with workers as the weaker party.*

**Keywords:** *Fixed Term Employment Agreement; Legal protection; Unilateral Termination of Employment.*

## 1. Introduction

Employers are individuals, businessmen, legal entities or other bodies that employ employees by paying wages or other forms of compensation in Article 1 number 4 of the Manpower Law. According to Law No. 14 of 1969, employees are any person who is able to carry out work, both within and outside of an employment relationship in order to produce services or goods to meet the needs of the community (Article 1).<sup>1</sup>An employee is anyone who works for wages or other forms of compensation. Examining the issue of unilateral Termination of Employment (PHK) of Part-Time Employment Agreement (PKWT) employees in more detail. Because when faced with a strong party, namely the employer, the employees become the weak party. It is not uncommon for employees to experience repeated injustice when dealing with the interests of the company, because they are always seen as a weaker group. For workers, PHK means the beginning of a period of unemployment and the loss of the ability to support themselves and their families on a daily basis. If everyone has the right to work, then that person should have the right to continue working after getting a job. An agreement between an employee and a company on a statement of willingness by both parties. The employee is willing to work for the company/employer and receive wages. The company/employer states its willingness to employ by paying wages. So an agreement like this is called an employment agreement. Basically, an employment agreement contains provisions relating to the employment relationship. Article 51 of Law No. 13 of 2003 Employment agreements are made in writing or verbally. In the valid conditions of an agreement Article 1320 of the Civil Code, namely:

1. Free agreement from both parties
2. Skills/abilities
3. Certain things
4. Because it is halal.<sup>2</sup>

Through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law in Lieu of Law Number 11 of 2020 concerning Job Creation. The government has made significant changes to employment provisions, including PKWT. These changes aim to increase the flexibility of the labor market and attract investment. PKWT is regulated in Government Regulation Number 35 of 2021<sup>3</sup>, which is a derivative regulation of the Job Creation Law Number 11 of 2020.<sup>4</sup>Article 81 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation, it is necessary to stipulate government regulations regarding fixed-term employment agreements, transfer power, working hours and rest times, and termination of employment.<sup>5</sup>

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<sup>1</sup>Manulung, Sendjun H, 2001, Principles of Employment Law in Indonesia, Jakarta, PT.Rineka Cipta, p. 3

<sup>2</sup>Civil Code

<sup>3</sup>Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment.

<sup>4</sup>Aprillia Ariesti Yani, Heru Suyanto, 2024, "Legal Protection of the Rights of Workers with Fixed-Term Employment Contracts in Termination of Employment Before the Contract Ends", Kertha Semaya Journal, Vol. 12 No. 7. P.. 1551.

<sup>5</sup>Sinar Grafika Editorial, 2023, Implementing Regulations of the Job Creation Law in the Manpower Office: Government Regulation of the Republic of Indonesia Number 34 of 2021, Government Regulation of the

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Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment Article 1, which means:

1. Employment Relationship is a contract that determines the terms of work, salary and orders between the employer and employee;
2. Employees are people who work and are paid cash or other forms of compensation.

Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment Article 2 Paragraphs (1-4) States:

1. An employment relationship arises because there is an employment contract between the employer and employee.
2. The employment agreement is expressed verbally or in writing.
3. Written employment agreements are made in accordance with statutory regulations.
4. The work agreement is signed for a predetermined period of time or forever.<sup>6</sup>

PKWT can be understood as an employment agreement for a certain period of time, which is usually valid for no more than 5 years, where the employer or company can choose to extend the agreement or terminate it. The time limit of the employment agreement is set for a certain period in an employment relationship that has a limited duration. The employment status of PKWT is explained in Article 8 Paragraph 1 and Article 9 Paragraph 4 of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Time, and Termination of Employment.

The regulation changes raise concerns regarding the protection of the rights of PKWT employees, especially in the case of unilateral termination of employment (PHK) by the Company. We need to be aware that there are problems experienced by employees with the PKWT system and often harm employees. A common problem is lower salaries. This is often a problem in fixed-term employment contracts. There are additional problems that arise in Fixed-Term Employment Agreements (PKWT) when the agreement is still ongoing, where one party suddenly terminates it without a clear reason, causing losses to the other party. In practice, employment agreements contain clauses that detail the reasons for the termination of the agreement. Therefore, when one party considers that there is a violation of the agreement, the party can unilaterally terminate the employment relationship based on the clauses in the employment agreement.<sup>7</sup> According to Sedarmayanti, "Termination of

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Republic of Indonesia Number 35 of 2021 concerning Fixed-Term Employment Agreements, Expert Power, Working Hours and Rest Hours, and Termination of Employment, Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages, Government Regulation of the Republic of Indonesia Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program, PT. Sinar Grafika, Jakarta. Second printing. p. 40

<sup>6</sup>Ibid., p. 43-44

<sup>7</sup>Novi Eriza, 2016, Responsibility for Compensation for Unilateral Termination of Employment Contract Against Workers by PT. Sucofindo Epsi, Pekanbaru City Based on Law Number 13 of 2003 Concerning Manpower, JOM

employment (PHK) is a condition where an employee no longer works at a company because the employment relationship between the person concerned and the company is terminated or not extended."<sup>8</sup>According to Mutiara S. Panggabean, Termination of Employment (PHK) is the termination of the employment relationship between workers and employers which can be caused by various reasons, thus ending the rights and obligations between them.<sup>9</sup>

Based on article 61 paragraph (1) Law no. 13 of 2003, the work agreement ends if:

1. Worker/employee dies;
2. Expiration of the term of the employment agreement;
3. The existence of a court decision and/or decision or determination of an industrial relations dispute resolution institution that has permanent legal force; or
4. The existence of certain circumstances or events stated in the employment agreement, company regulations, or collective work agreement that can cause the employment relationship to end.

According to the rules in force in Indonesia, employers/companies may not unilaterally dismiss workers without a strong and clear basis. The government's efforts to protect workers from termination of employment (PHK) are supported by the regulations in Article 153 of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law<sup>10</sup>In this article, it is stated that companies may not arbitrarily dismiss employees for unclear reasons or reasons that are not permitted in this article.

There are many cases that occur in Indonesia about PKWT employees/workers being unilaterally laid off, some are just silent and do not know how to fight for their own fate, their rights are simply lost, there are also those who fight for their rights through the industrial relations court, such as the example of the case of the SEMARANG District Court Decision Number 15/Pdt.Sus-PHI/2022/PN Smg, an employee named Ainaya Mazaluna, a PKWT employee placed at PT. Pos Indonesia (Persero) sued PT. Dapensi Trio Usaha, Semarang City branch. That Aina Mazaluna worked at PT. Dapensi Trio Usaha, Semarang City branch. Aina worked from 2019 and two contracts, namely January 1, 2020 to December 31, 2020, and January 1, 2021 to December 31, 2021 based on the agreement in the Fixed Term Employment Agreement (PKWT). Aina received unilateral dismissal in August 2021, that Aina had attempted bipartisan negotiations in 2021 but did not produce an agreement. On the recommendation of the Semarang City Manpower Office, a letter of recommendation was issued and a report/minutes of the settlement of industrial relations, termination of

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Faculty of Law, Volume III Number 2, p. 3. <https://media.neliti.com/media/publications/186409-ID-tanggung-jawab-ganti-ruqi-atas-pemutusan.pdf> Accessed on November 05, 2024 at 09.08 WIB

<sup>8</sup>Sedarmayanti, 2019, Human Resource Management, Revised Edition, Refika Aditama Publisher, Bandung, p. 403.

<sup>9</sup>Sri Rahayu, 2018, Legal Review of the Implementation of Unilateral Termination of Employment (PHK) by Companies According to LAW Number. 13 of 2003 (Case Study of Supreme Court Decision Number: 37 K/Pdt.Sus/2013), Jurnal Good Governance Vol. 14 No. 1. P. 70

<sup>10</sup>Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

employment, but there was no agreement between the two parties, so Aina filed a lawsuit with the Industrial Relations Court at the Semarang District Court Class 1A Special. Aina's lawsuit in the Semarang City Industrial Relations Court was partially granted and PT. Dapensi Trio Usaha, Semarang City Branch, paid the lawsuit that was granted in court.<sup>11</sup> That basically employees/workers must demand their rights by fighting in court without awareness of the Company's responsibilities according to applicable laws.

## 2. Research Methods

The research conducted using sociological legal research, using a sociological approach to examine how law is accepted, applied, and functions in society. This research aims to understand the social reality that occurs in the field related to the application of law.<sup>12</sup> Sociological legal research aims to obtain data on the effectiveness of law in society and to look for factors that influence its implementation.

## 3. Results and Discussion

### 3.1. Legal Protection for PKWT Employees Who Are Unilaterally Laid Off by Companies in Semarang City (Analysis Using Legal Protection Theory, Pancasila Justice Theory, Legal System Theory)

Employment is one of the important aspects in the life of the nation and state. The working relationship between employers and workers should be based on the principles of justice, legal certainty, and protection of workers' rights. One form of working relationship that is widely applied in Indonesia is through a Fixed Term Employment Agreement (PKWT).

PKWT is basically made for temporary, seasonal, or specific time-bound work. Regulations regarding PKWT are regulated in Law Number 13 of 2003 concerning Manpower and amended through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law in Lieu of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021. These provisions basically provide legal protection to PKWT employees, including the obligation to provide compensation at the end of the contract period and the prohibition of layoffs before the end of the agreement period except in certain circumstances.<sup>13</sup>

In practice, there are still many cases of unilateral termination of employment (PHK) of PKWT employees before the end of the contract period. These layoffs are often carried out without a strong legal basis and without a fair dispute resolution mechanism. As a result, employees

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<sup>11</sup>District Court Decision Number 15/Pdt.Sus-PHI/2022/PN.Smg. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed00e6ae69bf029d02313335373038.html> Accessed On November 1, 2024

<sup>12</sup>Mukti Fajar and Yulianto Achmad, 2015, Dualism of Normative and Empirical Legal Research, 3rd ed., Yogyakarta: Pustaka Pelajar Publisher, p. 45.

<sup>13</sup>Budi Suroso, 2018, Employment Law in Indonesia, Jakarta, Rajawali Pers, p. 122-125.



are disadvantaged both economically and socially.<sup>14</sup> This unilateral layoff practice is contrary to the principle of employee protection which should guarantee the continuity of the employment relationship during the contract period.

The phenomenon of unilateral layoffs of PKWT workers in the city of Semarang is increasingly rampant, especially in labor-intensive sectors such as manufacturing, retail, and services. Many companies claim efficiency or changes in business strategy to end employment relationships early without paying attention to applicable legal provisions.<sup>15</sup>

Employees with a Fixed Term Employment Agreement (PKWT) have different rights and obligations than permanent employees or Indefinite Term Employment Agreements (PKWTT). PKWT is an employment agreement made for temporary, specific, or project-based work within a specified period of time. The rules regarding PKWT are regulated in Law Number 13 of 2003 concerning Manpower and its derivative regulations, including Government Regulation No. 35 of 2021.

PKWT employees, there are various rights that must be fulfilled by the company. One of the main rights is to receive wages according to the agreement, which must not be lower than the applicable minimum wage. Based on Article 88B of the Manpower Law, the wages given to PKWT employees must not be lower than the minimum wage set by the local government. In addition, the wage system must be adjusted to the wage scale applicable in the company and in accordance with the work agreement that has been agreed upon between the two parties. In addition, PKWT employees are also entitled to social security for workers, including protection in the form of BPJS Health and BPJS Employment, which include work accident insurance, death insurance, old age insurance, and pension insurance if they meet the requirements.

The right to annual leave and rest, based on Article 79 of the Manpower Law, every employee who has worked for 12 consecutive months in the company is entitled to annual leave of at least 12 working days. In addition, employees are also entitled to a weekly rest of 1 day for 6 working days in a week or 2 days for 5 working days in a week. If the company requires employees to work on national holidays, then employees are entitled to overtime compensation in accordance with applicable provisions.

When the PKWT contract ends, employees also have the right to compensation money. Based on Government Regulation Number 35 of 2021, companies are required to provide compensation money to PKWT employees who have worked for at least 1 month. The amount of compensation is calculated based on the employee's length of service, which is 1 month's wages per year of work that has been completed. If the contract is extended, compensation must still be paid before the contract extension takes effect.

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<sup>14</sup>Rieke Diah Pitaloka, 2010, Labor Law Politics, Jakarta, Kompas Media Nusantara, p. 88.

<sup>15</sup>Abdul Rachmad Budiono, 2018, "Legal Review of Protection of Contract Workers in Industrial Relations," Journal of Law & Development, Vol. 48, No. 2, p. 435.

Philipus M. Hadjon argues that legal protection is an effort to provide protection for a person's rights from arbitrary actions. He divides legal protection into two main forms:

1. Preventive legal protection

Aims to prevent violations. In this form, people (in this context: employees) are given the opportunity to participate, raise objections, or reject detrimental policies/decisions before the decision comes into effect.

2. Repressive legal protection

Aims to resolve disputes after a violation of rights occurs. This mechanism is carried out through the courts or other dispute resolution institutions.

According to Hadjon, the existence of preventive and repressive protection mechanisms is an integral part of a state of law (*rechtsstaat*), which guarantees that all government and private actions are subject to the law.<sup>16</sup>

PKWT or Fixed Term Employment Agreement is a form of employment agreement between a company and an employee for a certain period of time or for a certain job. In accordance with the provisions:

1. Article 56 of Law No. 13 of 2003 concerning Manpower.

2. P No. 35 of 2021 concerning PKWT, Outsourcing, Working Hours, and Termination of Employment.

PKWT must meet special requirements, including:

1. Based on a certain time period or the nature of the work completed within a certain time.

2. Must be made in writing and in Indonesian.

3. Contains clear clauses regarding rights, obligations and termination of employment.

Unilateral termination of PKWT without a valid reason is an unlawful act. According to the concept of preventive legal protection from Philipus M. Hadjon, preventive means anticipating the occurrence of legal violations before a dispute occurs. This is done by creating a system, procedure, or legal document that:

1. Clear

2. Transparent

3. Fair to all parties.

Preventive protection, the potential for arbitrary action by employers against workers can be minimized because all rights and obligations have been clearly regulated in the employment contract. One important aspect that must be included is the mechanism for ending the employment relationship, including the grounds for terminating the employment relationship before the end of the agreement. Preventive legal protection in PKWT requires companies to:

1. Make a written work agreement,

2. Prepare the contents of the agreement completely and transparently,

3. Strictly explain the mechanisms and rights of workers in the event of termination of employment.

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<sup>16</sup>Philipus M. Hadjon, 1987, *Legal Protection for the People in Indonesia*, Surabaya, Bina Ilmu, p. 25-27.

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The principle of a state of law that prioritizes legal certainty, justice, and protection of basic workers' rights. If the PKWT is not made in accordance with the provisions, or does not contain a clear termination mechanism, then the PKWT can be considered an indefinite-term work agreement (PKWTT) as regulated in laws and regulations.

Repressive legal protection is a form of protection provided after a violation of workers' rights. In the context of a Fixed-Term Employment Agreement (PKWT), if there is a unilateral termination of employment or other violations by the company, workers have the right to seek justice through a dispute resolution mechanism. One of the legal channels available is the Industrial Relations Court (PHI), which provides workers with the opportunity to sue the company for actions that are considered to violate the provisions of the law or employment agreement.

According to Sutrisno based on an interview with the author, the Semarang City Manpower Office affirmed its commitment to protect workers, both those with Fixed Term Employment Agreement (PKWT) status and permanent employees, who experience unilateral Termination of Employment (PHK) by the company. That the government is present to guarantee justice for workers whose rights have been violated. Sutrisno emphasized that the law must make people happy, not add to their suffering. Therefore, we are ready to provide legal assistance, mediation, and assistance to every worker who is a victim of unilateral layoffs.<sup>17</sup>

This dispute resolution mechanism is part of the repressive legal protection that aims to restore workers' rights that have been violated. PHI acts as an independent institution to examine and adjudicate disputes between workers and employers, with the aim of achieving justice and ensuring that workers receive their rights in accordance with applicable provisions. This judicial system ensures that even if a violation occurs, workers still have a legal path to obtain recovery in accordance with the principles of justice and legal certainty mandated by the rule of law. This dispute resolution process begins with efforts to resolve the following:

1. Bipartite, namely negotiations between workers and employers to reach an agreement. If no agreement is reached within 30 days.
2. Mediation conducted by a mediator appointed by the Department of Manpower or an authorized agency.
3. The Industrial Relations Court (PHI) functions as a special judicial institution that handles employment disputes.

Satjipto Rahardjo sees legal protection as a system that includes legal actions aimed at balancing the inequality between the strong and the weak, both legally and economically. This legal protection is not only focused on fulfilling formal rights, but further to ensure true justice in the context of social relations. In this case, industrial relations, including relations between employees and companies, are in great need of regulations that provide more protection for workers who are often in a weaker position.

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<sup>17</sup>Interview with Dr. Sutrisno, S.Km., MH.Kes., Head of the Semarang City Manpower Office accessed on May 02, 2025



Rahardjo also argued that the legal process is not only about the application of rigid rules, but more about efforts to realize concrete justice, especially in matters involving the weaker party. In this case, workers who are unilaterally laid off must receive legal protection that is not only procedural but also substantive, which ultimately provides a fair solution in accordance with the socio-economic conditions of workers.

Hans Kelsen, in his theory known as the "Pure Theory of Law", argued that law should be understood as a system separate from external factors, such as morality or politics.<sup>18</sup> According to Kelsen, law should only be seen from a normative perspective that regulates relations between individuals in society without involving other values that are not directly related to the law itself. In this context, legal justice according to Kelsen focuses on fulfilling the norms that exist in the legal system, which must be followed by every individual without any interference or intervention from other subjective values.

According to Yudi Latif, the Pancasila justice theory emphasizes social justice that is based on the noble values contained in Pancasila. In his view, Pancasila justice is not only about equality before the law, but further includes social welfare for all Indonesian people, especially those who are in vulnerable or disadvantaged positions.<sup>19</sup> Pancasila justice emphasizes the principle of mutual cooperation, where the state, society, and individuals must support each other to realize shared prosperity.

Article 27 Paragraph (2) in conjunction with Article 28D Paragraph (2) of the 1945 Constitution emphasizes that the right of every citizen to obtain decent work and receive fair treatment in employment relations is part of employment law in Indonesia. This law is in line with the objectives of national economic development based on Pancasila economic democracy, which focuses on efforts to realize social welfare for all Indonesian people.<sup>20</sup> This shows the state's commitment to ensuring that every employee gets their rights, including the opportunity to obtain decent work and fair working conditions, in accordance with the principle of social justice for all Indonesian people.

The Pancasila justice theory developed by Yudi Latif emphasizes the values of social justice that are based on the spirit of Pancasila as the basis for assessing an action or policy, including in terms of employment. In employment relations, justice does not only measure equality or fairness in formal (procedural) form, but also involves more substantial aspects of social welfare for all Indonesian people, especially for workers who are in a weaker position.

Social justice is an important foundation in ensuring that workers' rights are protected, not only through formal legal processes, but also through a broader understanding of welfare and fair treatment in the world of work. This concept is in line with the values of Pancasila, especially the principle of Social Justice for All Indonesian People, which requires balance in every action involving companies and employees.

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<sup>18</sup>Hans Kelsen, 1967, *Pure Theory of Law*, Berkeley, University of California Press, p. 16-18.

<sup>19</sup>Yudi Latif, 2014, *Pancasila Social Justice: A Philosophical Perspective*, Jakarta, Kompas Book Publisher, p. 88-91.

<sup>20</sup>M. Mochtar Kusumaatmadja, 2003, *Introduction to Legal Science*, Bandung, Alumni, p. 61-63.

Unilateral termination of employment (PHK) by companies is often claimed for reasons such as efficiency, restructuring, or declining company performance. However, sometimes these reasons are used as an excuse to avoid the company's obligations to workers. For example, companies that want to reduce operational costs may lay off workers without providing proper compensation or without following legal procedures. In situations like this, workers are often in a weaker position and have difficulty fighting for their rights.<sup>21</sup>

Legal protection for employees who experience unilateral layoffs also includes the right to receive compensation. The law stipulates that employees who are laid off are entitled to receive severance pay, long service awards, and replacement rights. However, in reality, many employees do not receive proper compensation due to various reasons, such as company bankruptcy or employer non-compliance with applicable regulations.

Unilateral termination of employment (PHK) not only affects employees personally, but also their families. Job loss often causes workers' families to face economic and social difficulties. Children may be forced to stop their education, while basic needs such as food and shelter become difficult to meet.<sup>22</sup>

Lawrence M. Friedman states that law functions as a system consisting of three main components, namely: legal structure, legal substance, and legal culture. These three components interact with each other to create a legal system that can function well in society. The three components are

1. Legal Structure: Refers to existing legal institutions, such as the judiciary, legislature, and legal bureaucracy. This structure includes the legal system that regulates and implements employment policies and regulations.
2. Legal Substance: Relating to the legal norms that form the basis for existing rules, including laws, regulations and court decisions that regulate industrial relations between employees and companies.
3. Legal Culture: Relates to the values, attitudes, and behavior of a society towards the law. In the employment context, legal culture includes society's views on workers' rights and employers' obligations, as well as how society as a whole accepts and implements existing regulations.

Lawrence M. Friedman's legal system theory can be applied to analyze how Indonesian legal structures, such as the Industrial Relations Court (PHI), function to provide legal protection to employees who are laid off without a valid reason. The legal substance, in this case, refers to the Manpower Law which regulates employee rights related to layoffs, such as the right to severance pay, long service awards, and other compensation. Meanwhile, legal culture reflects how society and the business world understand and comply with existing legal provisions, as well as how legal protection for employees is accepted and applied in practice. Discrimination in the termination of employment (PHK) against PKWT employees can occur if the company terminates the employment relationship based on factors unrelated to the

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<sup>21</sup>Rahmad, L., 2021, Increasing Legal Awareness in the World of Work, Legal Publishing, Jakarta, p. 49

<sup>22</sup>Ahmadi, A., 2020, The Economic Impact of Layoffs on Families, Socio-Economic Studies, Jakarta, p. 59.

employee's performance or ability, such as religion, gender, or ethnicity. The right to receive fair treatment also includes clear, transparent, and objective procedures in the termination process. Therefore, legal protection of employees' rights to receive fair treatment and freedom from discrimination is very important to prevent abuse of authority by the company, as well as to ensure that termination decisions are taken based on objective and fair considerations.<sup>23</sup>

According to the Republic of Indonesia Law Number 13 of 2003 concerning Manpower, companies are not allowed to terminate employment unilaterally, except in conditions clearly regulated by law. Article 151 of this law states that termination of employment must be carried out for legitimate reasons and following appropriate procedures. In the event that workers are unilaterally laid off, they are entitled to receive compensation rights according to their length of service, such as severance pay, length of service awards, and replacement of rights.

The legal termination procedure (PHK) is a series of steps that must be taken by the company in accordance with applicable legal provisions. In order for the PHK that is carried out not to be considered a unilateral PHK that violates the law, the company must follow clear procedures and in accordance with the Employment Law in Indonesia, namely Law No. 13 of 2003 concerning Employment.

Procedures that must be followed by the company to ensure that the termination of employment is carried out legally:

1. Prior Notice (Notice)
2. Negotiation and Mediation Process
3. Dispute Resolution Process through the Industrial Relations Court (PHI)
4. Compensation Provision.

The main obligation that must be carried out by the company before carrying out layoffs is to provide prior notification to employees. Article 151 paragraph (1) of the Employment Law stipulates that companies are required to provide written notification to employees who will be laid off, at least 30 days in advance. This notification is intended to give workers time to find alternative solutions or new jobs.

The company and employees are required to negotiate regarding the termination of employment. This negotiation can involve representatives of the labor union (if any), to discuss the reasons and provisions governing the termination of employment, as well as the possibility of compensation or discussions regarding the arrangement of the termination of employment. Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

1. Article 1 paragraph (10) of this Law explains that mediation is an effort to resolve industrial relations disputes through a negotiation process facilitated by a mediator appointed by the Manpower Office or an authorized agency.
2. Article 4 paragraph (1) stipulates that negotiations between workers (or trade unions) and employers are the initial step in resolving disputes. If negotiations do not reach an

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<sup>23</sup>Prakoso, B. 2019, "Legal Protection for Laid-Off Workers in Indonesia", Jurnal Keadilan, p. 161-175.

agreement, then it can be continued with mediation, arbitration, or a lawsuit at the Industrial Relations Court (PHI).

If mediation fails and the dispute cannot be resolved, workers have the right to bring the matter to the Industrial Relations Court (PHI). PHI is an institution that has the authority to resolve employment disputes, including those related to unilateral layoffs.

1. Submission to the PHI: Workers who feel they have been disadvantaged or have been unilaterally dismissed without the correct procedure can file a lawsuit with the PHI within a maximum of 30 days after the decision to dismiss.
2. PHI Decision: After the trial process, PHI will issue a binding decision. If PHI decides that the termination of employment is unlawful, then the company is required to provide compensation to the worker, including severance pay, long service awards, and replacement of rights in accordance with the provisions of the Manpower Law.

If the termination of employment is carried out legally and the worker loses his/her job, the worker is entitled to compensation in accordance with the provisions of the law. This compensation includes:

1. Severance pay: Money given by the company as a reward for employee dedication, with the amount calculated based on length of service.
2. Length of Service Award: Money given as a form of appreciation for a worker's length of service.
3. Compensation for rights that have not been granted, such as untaken annual leave, medical expenses, etc.

Workers also have the right not to experience coercion or threats during the termination process. Companies are prohibited from using intimidation or violence to force workers to accept termination or influence their decisions. Protection against this pressure or threat is very important so that workers can make decisions that are in accordance with their interests and rights without feeling threatened or afraid of negative impacts.<sup>24</sup>

The Pancasila Justice Theory, protection of PKWT workers who are unilaterally laid off must ensure that their rights are protected, namely:

1. Social Justice: Pancasila teaches that the state and every institution must act to ensure that every individual is treated fairly and does not experience oppression. In the context of unilateral layoffs, workers must be protected from all forms of intimidation or violence that could harm their rights. Layoffs must be carried out through legal and transparent procedures, which do not involve coercing workers to accept decisions that are detrimental to them.
2. Honor and Dignity of Workers: One of the principles of the Pancasila Theory of Justice is respect for the dignity of every human being. Workers who are laid off have the right to have their dignity respected, and should not be forced to accept layoffs through threats or violence. Intimidation in the layoff process is contrary to this principle, which prioritizes respect for the individual's right to make decisions freely without fear.

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<sup>24</sup>Suharto, B., 2017, "Implications of Legal Protection for Workers Laid Off Due to Business Closure", *De Jure Legal Research Journal*, p. 211-226.

3. Fair Legal Protection: In accordance with the Pancasila principle of justice, companies are required to provide legal protection to workers so that they do not become victims of coercion. This includes the right to receive proper notice, the opportunity to negotiate, and the right to file a lawsuit if the termination of employment is carried out illegally or violates their rights.

4. Fair Dispute Resolution: In the event of a dispute related to unilateral layoffs, the Pancasila Theory of Justice encourages a fair and impartial resolution. Workers must have access to a court or independent dispute resolution body, such as the Industrial Relations Court, to ensure that they receive equal justice and are not silenced by threats or pressure from the company.

Unilateral termination of employment (PHK) without a clear basis and without a legitimate procedure is an unjust act. Islam teaches that all forms of employment relationships be carried out with transparency, justice, and benefits for both parties. Unilateral termination of employment without providing workers' rights, such as severance pay, long service awards, and other rights, is contrary to the principles of justice and responsibility in Islam.

Islam places great emphasis on the importance of maintaining the welfare of workers. As mentioned in the hadith of the Prophet Muhammad SAW, "Give the worker his rights before his sweat dries" (HR. Ibn Majah). This shows that workers' rights must be given fairly and on time, including proper compensation.<sup>25</sup>

According to the opinion of PKWT employees who were unilaterally laid off in Semarang City based on the results of interviews, that employees do not get adequate protection in facing unilateral layoffs. Lack of socialization from the labor office causes laid-off employees to not know their rights. Because of ignorance and fear of taking care of it, laid-off employees do not want to fight for their rights.<sup>26</sup> For employees who are laid off, the existing labor law system in Indonesia, although it already covers employee procedures and rights, is not yet effective enough in providing justice. The process of filing a lawsuit through the Industrial Relations Court (PHI) which is time-consuming and expensive is often an obstacle for employees to obtain their rights.

Sutrisno explained that there are several main problems related to unilateral termination of employment (PHK) of employees with Fixed Term Employment Agreements (PKWT) in Semarang City:<sup>27</sup>

1. The Semarang City Manpower Office has conducted socialization of HRD for companies and employees, but many workers and employers do not properly understand the provisions in PKWT, so that misuse often occurs in its implementation.

2. Several companies carry out layoffs without following the procedures set out in the Employment Law and many companies still do not report work agreements/work contracts to the Semarang City Manpower Office.

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<sup>25</sup>Ibn Majah, 2009, Sunan Ibn Majah, Book 12, Beirut: Dar al-Fikr, Hadith No. 2473.

<sup>26</sup>Interview with Mrs. D (pseudonym) PKWT employee who was unilaterally laid off by the Company, Semarang accessed on April 22, 2025

<sup>27</sup>Interview with the Head of the Semarang City Manpower Office.



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3. Many workers/employees do not join trade union organizations, so workers/employees often do not know their rights and do not have adequate access to legal assistance, making it difficult to seek justice.

Trade unions play an important role in protecting employees, including those with Fixed Term Employment Agreement (PKWT) status, from unfair treatment such as unilateral termination of employment (PHK). Through collective strength, trade unions ensure that employee rights are respected and companies carry out their obligations in accordance with legal provisions. This protection includes assistance in the negotiation process with the company, mediation at the Manpower Office, and dispute resolution at the Industrial Relations Court. Unions also provide education, advocacy, and legal assistance so that members understand their rights clearly and are not easily disadvantaged. By joining a union, employees gain a sense of security and support in dealing with various employment problems, both individual and collective.

Looking at the results of research conducted by Chezia Maharany in Legal Protection for PKWT Workers for Unilateral Termination of Employment Before the End of the Contract Period, the author concludes that legal protection for PKWT employees who are unilaterally laid off by the company still faces a number of challenges. The study shows that although there are regulations governing workers' rights in the event of unilateral layoffs, the implementation of such protection has not been fully effective.

PKWT workers are often in a weak position because of their ignorance of the rights they should receive when layoffs occur before the end of the contract. In addition, although the law requires companies to follow the correct procedures, many companies ignore these provisions, making it difficult for workers to obtain their rights. In many cases, companies carry out unilateral layoffs without providing proper compensation or following transparent procedures, which is contrary to the principle of justice.

The author argues that the dispute resolution mechanism through the Industrial Relations Court (PHI), although available, often does not provide a quick and efficient solution. This causes workers to have difficulty in obtaining justice in a timely manner. Therefore, it is necessary to strengthen the labor law system that is more in favor of protecting the rights of PKWT workers/employees, with stricter enforcement of established procedures and the provision of proper rights in accordance with legal provisions.

The author also emphasizes the importance of preventive efforts such as providing counseling to workers and companies regarding employment rights, as well as the need to improve dispute resolution procedures to be more efficient and provide better protection for PKWT workers who are unilaterally laid off.

### **3.2. Implementation of the Law on the Rights of PKWT Employees Who Are Unilaterally Dismissed by the Company (Analysis Using the Theory of Legal Protection, Pancasila Justice Theory, Legal System Theory)**

The employment relationship between companies and employees in Indonesia is regulated by the Manpower Law, which covers various aspects, including the type of employment agreement, provisions on termination of employment (PHK), and employee rights in the event of termination of employment. One important thing to note is the rights of employees who have a fixed-term employment agreement (PKWT) who are unilaterally terminated by the company. PKWT is a form of employment agreement made for a certain period of time, and usually ends automatically after the contract period expires. However, in cases of unilateral termination of employment, there is legal protection to ensure that employee rights remain protected.

Basically, Law No. 13 of 2003 concerning Manpower (now Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation) regulates employment agreements, including PKWT. According to Article 59 of the Law, a fixed-term employment agreement is made for work that is indeed temporary in nature and does not conflict with statutory provisions. Meanwhile, unilateral layoffs refer to the termination of employment by the company without any agreement or valid reason according to applicable law. This often gives rise to disputes, because employees who are unilaterally laid off feel disadvantaged.

PKWT has different provisions compared to an indefinite-term employment agreement (PKWTT). In PKWT, companies are only allowed to employ employees for a certain period of time according to the type of work and the purpose of the agreement. If the termination of employment is carried out before the end of the contract without a valid reason, then this can be considered a unilateral termination of employment that violates employee rights. Article 61 of the Manpower Law states that the PKWT agreement must not conflict with the law and must consider the interests of both parties.

The results of the interview at the Semarang City Manpower Office, Sutrisno, stated that PKWT employees who were unilaterally laid off were entitled to severance pay in accordance with the provisions of the law, even though they worked with a fixed-term contract. Their rights include severance pay, long-service award money, and compensation for other rights such as untaken leave. If there is no agreement, they can also file a lawsuit against the company. This process also depends on the existence of a clause in the contract that regulates this.<sup>28</sup>

Unilateral layoffs by a company can only be carried out if there is a valid reason according to the law. According to Article 158 of the Manpower Law, valid reasons for layoffs include serious violations by employees, such as criminal acts, or due to compelling circumstances, such as the company's condition of no longer being able to maintain its operations. Unilateral

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<sup>28</sup>Interview with the Head of the Semarang City Manpower Office.

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layoffs carried out without a valid reason have the potential to violate the law, and employees have the right to demand their rights.

According to the theory of legal protection by Satjipto Rahardjo, legal protection aims to provide a sense of justice, security, and certainty to the community, including workers as part of vulnerable legal subjects. PKWT employees, substantive justice must be realized through the fulfillment of their rights in real terms, not only formally in the contract, but also in the practice of employment relations.

The principle of justice often faces challenges in its implementation, especially when there is an imbalance of power between employers and workers. One example is in the case of termination of employment (PHK), where many workers are dismissed without going through fair procedures and without proper compensation. This shows that although the law has normatively regulated workers' rights, its implementation is still far from expectations due to weak supervision and enforcement of labor laws.<sup>29</sup>

Constitutional Court Decision Number 6/PUU-XVI/2018 also confirms that PKWT workers have constitutional rights to work protection and welfare rights. Therefore, unilateral layoffs of PKWT employees that are not in accordance with procedures are a violation of workers' basic rights.

The implementation of legal protection also emphasizes that the state must be present in supervising the implementation of PKWT, because PKWT workers are often positioned weaker in employment relations. Therefore, labor supervision institutions and industrial relations dispute resolution mechanisms must actively protect the rights of PKWT workers who are harmed due to unilateral layoffs.

According to Yudi Latif, Pancasila justice demands contextually fair treatment, namely paying attention to the weak and vulnerable position of workers in the industrial relations structure.<sup>2</sup> Therefore, when a company unilaterally terminates a PKWT contract without proper compensation, it is contrary to the principles of just and civilized humanity and the principles of social justice for all Indonesian people. The treatment of workers should not be based solely on contract formalities, but must also consider substantive justice in practice.

PKWT employees who are unilaterally laid off have moral and legal rights to receive protection, such as payment of remaining wages and compensation as regulated in positive law. Yudi Latif emphasized that Pancasila justice does not only prioritize legalistic procedures, but also fights for the restoration of structural injustice in socio-economic life. Therefore, the state is obliged to actively monitor and enforce the rights of PKWT workers so that they do not become victims of corporate injustice.

Legal substance, the rules governing the rights of PKWT workers must be clear, firm, and side with the protection of the weaker party, namely workers. The Employment Law and its

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<sup>29</sup>Suparman Marzuki, 2017, Indonesian Employment Law, Yogyakarta, FH UII Press, 2017, p. 88

derivative regulations need to clarify compensation rights, layoff procedures, and sanctions against companies that unilaterally violate employment contracts.

Amendments to Article 59 of the Manpower Law through Law No. 6 of 2023, Article 81 number 15 in Law No. 6 of 2023 stipulates amendments to Article 59 of Law No. 13 of 2003. These amendments include a re-arrangement of the Fixed-Term Employment Agreement (PKWT), including: explicitly the limitations and provisions regarding the Fixed-Term Employment Agreement (PKWT), namely

1. Limitations of PKWT: A work agreement for a certain period of time can only be made for certain jobs which, according to the type and nature or activities, will be completed within a certain period of time, namely:
  - a. work that is completed once or is temporary in nature
  - b. work that is estimated to be completed within a not too long time and a maximum of 3 (three) years
  - c. seasonal work
  - d. work related to new products, new activities, or additional products that are still in the experimental or exploratory stage.
  - e. A work agreement for a certain time cannot be entered into for permanent work.
2. Duration and Extension: A fixed-term employment agreement may be extended or renewed. A fixed-term employment agreement based on a specific time period may only be made for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year. Employers who intend to extend a fixed-term employment agreement must notify the worker/laborer in question in writing no later than 7 (seven) days before the fixed-term employment agreement ends. Renewal of a fixed-term employment agreement may only be made after a grace period of 30 (thirty) days has elapsed since the end of the old fixed-term employment agreement, and a fixed-term employment agreement that is renewed may only be made 1 (one) time and for a maximum of 2 (two) years.
3. Protection for Workers: If the PKWT does not meet the provisions as stipulated in the amended Article 59, then legally the employment relationship changes to an Indefinite Term Employment Agreement (PKWTT). This means that workers are entitled to the same rights as permanent employees, including:
  - a. Protection against termination of employment (PHK).
  - b. The right to severance pay and other compensation.
  - c. Legal certainty in employment relations (cannot be terminated unilaterally without procedure), Termination of employment cannot be carried out unilaterally without reason and termination procedures according to the Law.

This provision aims to prevent misuse of the contract system by companies and ensure justice and legal certainty for workers. In the application of the law on the rights of PKWT employees who are unilaterally laid off by the company with the enactment of Law Number 6 of 2023 (which stipulates Perpu Number 2 of 2022 concerning Job Creation into law) coupled with detailed provisions in Government Regulation Number 35 of 2021, there are additional rights

for PKWT workers in the form of compensation money, even though their work period is only 1 month.

Article 15 and Article 16 of Government Regulation (P) Number 35 of 2021 concerning PKWT, Outsourcing, Working Hours, Rest Hours, and Termination of Employment:

1. The right to compensation money for PKWT workers Article 15 of P Number 35 of 2021, namely
  - a. Workers/Laborers whose employment relationship is based on PKWT are entitled to receive compensation money from the Employer.
  - b. Compensation money is given to workers/laborers who have worked for at least 1 (one) month continuously.
  - c. Compensation money is given at the end of the PKWT.
  - d. The calculation of the amount of compensation is based on the length of service of the Worker/Laborer.
2. How to Calculate Compensation Money Article 16 P Number 35 of 2021
  - a. The amount of compensation is calculated based on the formula:  
Compensation Money=(Period of Work (months)÷12)×1 Month Wages
  - b. If the employee's work period is more than 1 year, then the calculation is based on multiples of years of work.
  - c. The wages used as the basis for calculation are the basic wages and fixed allowances received by workers.

Workers bound by a Fixed-Term Employment Agreement (PKWT) are entitled to receive compensation if they have worked for at least 1 month continuously. This provision is regulated in Article 15 of Government Regulation Number 35 of 2021, which gives workers the right to receive compensation when the contract ends. The amount of compensation is calculated based on the worker's length of service, with the formula of length of service divided by 12 months and multiplied by 1 month's wages received by the worker. Even though workers only work for one month, they are still entitled to compensation calculated proportionally according to the wages received during the contract period. This aims to provide protection to PKWT workers, ensuring that they receive fair rights in return for the contributions they have made during the contract period. If the company does not pay compensation, workers can file a claim with the Manpower Office or the Industrial Relations Court (PHI).

Semarang District Court Decision Number 15/Pdt.Sus-PHI/2022/PN Smg is clear evidence that the government is present and plays an active role in assisting in the implementation and protection of employee rights. Through the process of resolving this industrial relations case, the government, in this case through the judicial institution, provides a guarantee of legal certainty for the disputing parties, especially in upholding the normative rights of workers. The Panel of Judges stated that the Defendant (company) had terminated the Employment Relationship (PHK) against the Plaintiff (employee, before the end of the Fixed-Term Employment Agreement (PKWT). Furthermore, the Panel of Judges sentenced the Defendant to pay the Plaintiff's rights in cash and immediately, with the following details:



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1. Food Allowance: Rp. 800,000.00
  2. THR Shortfall in 2020: Rp. 37,568.00
  3. Remaining Contract Compensation: Rp. 11,640,000.00
  4. Termination Compensation: Rp. 2,182,518.75
  5. Remaining Annual Leave 2021: Rp. 1,164,010.00
- Total: Rp. 15,824,196.75 (fifteen million eight hundred twenty four thousand one hundred ninety six rupiah and seventy five cents).<sup>30</sup>

The court examines and decides disputes fairly, based on applicable laws and regulations, such as the Employment Law and its implementing regulations. In this way, the government demonstrates its commitment to ensuring that workers who feel aggrieved continue to have access to justice, and that their rights can be restored through available legal mechanisms. This reflects the implementation of the principle of a state of law as well as the protection of human rights in the employment sector.

The legal substance regulated in Government Regulation Number 35 of 2021 provides compensation rights for PKWT workers whose contracts have ended. If the company does not fulfill these obligations, then there is a direct violation of workers' rights regulated by these legal regulations. Based on the legal structure, workers have access to claim their rights through the Manpower Office or the Industrial Relations Court (PHI) as the institution authorized to handle labor disputes.

Legal culture reflects the attitude of society towards the law and its implementation. If society, in this case workers, feels that the law is not on their side because there is no firm action against violations of compensation rights, then their trust in the legal system can decrease. Therefore, to ensure justice and protection of workers' rights, firm law enforcement is needed, both through administrative channels at the Manpower Office and judicial channels through the Industrial Relations Court (PHI).

The application of the law to protect the rights of employees with Fixed Term Employment Agreements (PKWT) who experience unilateral termination of employment (PHK) by the company still often faces challenges in practice. Legally, PKWT employees have clear rights as stipulated in the Manpower Law and its derivative regulations, including the right to compensation for remaining contracts, compensation, and protection from unlawful termination. However, in reality, many companies do not fulfill these obligations, either due to ignorance, negligence, or bad faith. Therefore, stricter labor supervision, legal awareness of workers, and efforts to resolve disputes fairly through mediation, industrial relations disputes, and labor courts are needed. Effective legal protection for PKWT employees who are unilaterally terminated is the key to creating a fair, balanced, and social justice-based employment relationship.

The author realizes that there is a discrepancy between the application of the law in the field and the applicable legal provisions regarding the protection of the rights of PKWT employees

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<sup>30</sup>Semarang District Court Decision, Op Cit, p. 42

who are unilaterally laid off. Ideally, labor law is able to provide certainty and justice for workers. However, in practice, there are still many companies that ignore their obligations and weaken the bargaining position of workers. This non-compliance shows a gap in law enforcement and a lack of legal awareness among business actors and workers themselves. Therefore, the author considers it important to take concrete steps to strengthen legal protection, improve labor education, and improve the system of supervision and resolution of industrial relations disputes in Indonesia.

The author hopes that in the future the government can consider eliminating regulations related to Fixed-Term Employment Agreements (PKWT). The existence of PKWT has often caused job uncertainty and weakened the protection of employee rights. In practice, many companies use PKWT excessively and are not in accordance with the spirit of employment protection, which should provide a sense of security and certainty for workers. With the elimination of PKWT regulations, all employment relationships are expected to be based on Indefinite-Term Employment Agreements (PKWTT) which better guarantee the stability of industrial relations, job sustainability, and worker social security. This step is believed to be able to create a fairer, more socially just employment system that is oriented towards worker welfare. The author believes that with a strong commitment from the government, the business world, and labor unions, the transition to a permanent work system will encourage national productivity, create harmonious industrial relations, and strengthen the competitiveness of the Indonesian workforce amidst the challenges of globalization.

#### **4. Conclusion**

Legal protection for Fixed Term Employment Contract (PKWT) employees who experience unilateral Termination of Employment (PHK) is very important in ensuring justice, legal certainty, and protection of workers' rights. Based on Law Number 13 of 2003 concerning Manpower, which was updated through Law Number 6 of 2023 and P Number 35 of 2021, termination of PKWT employees before the contract ends can only be carried out under certain conditions and with valid legal procedures. Unilateral termination of employment without a clear basis is a violation of the law. The employment relationship between companies and employees in Semarang City, including employees with Fixed-Term Employment Agreements (PKWT), is regulated by the Manpower Law, especially after amendments through Law Number 6 of 2023 and Government Regulation Number 35 of 2021. PKWT is made for certain jobs that are temporary in nature, and if the termination of employment (PHK) is carried out unilaterally without valid reasons, PKWT workers are entitled to legal protection. These rights include remaining wages, contract compensation, and the right to seek justice through the Manpower Office or Industrial Relations Court.

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