

Policy on Providing Compensation for Fixed-Term Work Agreements (Pkwt) Based on The Job Creation Law

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Abstract. *The purpose of this study is to determine and analyze the policy of providing compensation for Fixed Term Employment Agreements (PKWT) based on the Job Creation Law. To determine and analyze the implementation of Fixed Term Employment Agreements (PKWT) after the enactment of the Job Creation Law. The approach method used by the researcher is the case approach and the statutory regulatory approach. The type of research used was normative juridical. The data sources in this study are secondary data obtained from literature studies related to the theory of legal protection and the theory of legal certainty. Based on the results of the study. The Compensation Policy for Fixed-Term Employment Agreements (PKWT) based on the Job Creation Law states that employers are required to provide compensation to PKWT workers who have a work period of at least 1 (one) month continuously. Workers/laborers should have the same rights to compensation without discrimination. The calculation of the amount and amount of compensation funds that can be provided has been regulated in Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment. The implementation of Fixed-Term Employment Agreements (PKWT) after the Job Creation Law came into effect still faces several challenges, such as: unclear regulations, hasty implementation, freedom to determine the term of the work agreement, compensation regulations that do not fully provide benefits to workers*

Keywords: Agreement; Compensation; Policy.

1. Introduction

Protection of workers is intended to guarantee the basic rights of workers. In addition, it is also to guarantee equality and non-discriminatory treatment on

any basis to realize the welfare of workers and their families while still paying attention to the development of the progress of the business world and the interests of employers. This is clearly stated in Article 27 paragraph (2) of the 1945 Constitution, namely: "Every citizen has the right to work and a decent living for humanity" and in Article 28D paragraph (2) of the 1945 Constitution, namely: "Everyone has the right to work and receive fair and decent compensation and treatment in employment relations." So the Constitution guarantees that everyone has the right to get equal opportunities to get work according to their abilities without discrimination.

A worker is not only a person who is able to do work to produce goods and services and then get wages or compensation. There are rights that must be given to workers that are sometimes not yet known by an entrepreneur or employer. It has been stated in Law Number 11 of 2020 concerning Job Creation which is the legal umbrella for the protection of workers that every worker has the same rights and opportunities to obtain decent work and livelihood without distinguishing between gender, ethnicity, race, religion and political affiliation according to the interests and abilities of the worker concerned.

Many employers terminate the employment of workers inhumanely or not in accordance with applicable laws. All of this is because workers are considered not to comply with applicable regulations, so that when they receive a termination decision from the company, workers can only accept it with disappointment, even though there are rights that arise from the agreement of workers and companies stated in a written employment agreement.¹ Termination of employment is one of the things in the world of employment that is most avoided and unwanted by workers.

In the world of work, everyone needs interaction or relationships with other people. Both for employers and employees. This relationship is known as an employment relationship. In carrying out an employment relationship, there must be an employment agreement between the parties involved. Workers are part of the workforce who have done work, either working for themselves or working for others or are bound by an employment relationship that is under the orders of the employer and their services in working the person concerned receive wages or other forms of compensation.²

An employment agreement is an agreement between a worker and an employer which is characterized by the existence of a certain wage or salary that is agreed upon and the existence of a relationship between the parties where the

¹Asriwijayanti, 2013, *Post-Reform Employment Law*, Sinar Grafika, Jakarta, p.160.

²Maimun, 2007, *Employment Law: An Introduction*, Pradnya Paramita, Jakarta, p. 12

employer has the right to give orders that must be obeyed by the other party.³

The employment relationship shows the position of both parties, which basically describes the rights and obligations of workers to employers, as well as the rights and obligations of employers to workers. In addition, there are also various other relationships between the two parties which are basically also carrying out work with payment as compensation, but are not employment relationships.⁴

In the employment contract, workers can find out their employment status. Employment status is regulated in Government Regulation of the Republic of Indonesia Number 10 of 2020 concerning Job Creation Chapter IV Employment points 12 to 16 which revises Articles 56 to 61 of the 2003 Employment Law. Worker status is based on the end time, namely: Fixed Term Employment Agreement (PKWT) and Indefinite Term Employment Agreement (PKWTT).

The objectives of this study are as follows: To find out and analyze the policy of providing compensation for Fixed Term Employment Agreements (PKWT) based on the Job Creation Law. To find out and analyze the implementation of Fixed Term Employment Agreements (PKWT) after the Job Creation Law came into effect

2. Research Methods

The approach method used by the researcher is the case approach and the statutory regulatory approach. The type of research used is normative juridical. The data sources in this study are secondary data obtained from literature studies.

3. Results and Discussion

3.1. Compensation Policy for Fixed Term Employment Agreements (PKWT) based on the Job Creation Law

Law Number 20 of 2020 concerning Job Creation has been in effect for approximately 2 years since it was enacted in 2020. Since it was first discussed in the DPR until now, the Law has been debated and even challenged at the Constitutional Court which resulted in the Constitutional Court's Decision. The Constitutional Court stated that the Job Creation Law was conditionally unconstitutional because it did not follow the procedures stipulated in the Law on the Formation of Legislation. It is known that the Job Creation Law contains various materials that are united in one Law, one of which is the chapter on

³Abdul Khakim, 2009, Basics of Indonesian Employment Law, Citra Aditya Bakti, Bandung, page 49

⁴Sendjun H. Manulang, 2001, Principles of Indonesian Employment Law, Asdi Mahasatya, Jakarta, p. 63

Manpower.⁵

The employment sector contained is a change from several contents in various previously existing employment laws, such as the Employment Law, the National Social Security System Law, the BPJS Law, and the Indonesian Migrant Worker Protection Law. The Job Creation Law changes, removes, and adds several concepts of employment relations that have been regulated in the Employment Law, especially related to Fixed-Term Employment Agreements (PKWT) and Worker Service Provision Agreements (outsourcing).⁶

The provision of compensation is regulated in the Job Creation Law, Article 61A concerning the provision of compensation for PKWT workers/laborers. The article is as follows: (1) explains that when a fixed-term work agreement ends as referred to in Article 61 paragraph (1) letters b and c, the employer is obliged to provide compensation money to the worker/laborer. (2) The compensation money as referred to in paragraph (1) is given to the worker/laborer according to the worker/laborer's length of service at the company concerned. (3) Further provisions regarding compensation money are regulated in Government Regulation.

Furthermore, adjustments are made to regulate certain work agreements further through Government Regulations, no longer through Ministerial Regulations. The amended Article 59 states that work agreements for a fixed period of time can only be made for certain jobs that will clearly be completed within a specified time, such as temporary, seasonal, related to new products or activities, or non-permanent work. Such agreements cannot be used for permanent work. Furthermore, Government Regulation Number 35 of 2021 further explains the types of PKWT, both based on the time period and the completion of a certain job. PKWT based on the time period is intended for work with an estimated completion within a certain time, while PKWT based on the completion of a certain job is used for work that is completed once or temporarily.⁷

Meanwhile, according to Hadi Poernomo, wages are the total amount paid as a replacement for services that have been rendered by workers covering a certain period or conditions. So that it can be seen in general wages are a form of appreciation for the performance or services that have been done by workers to

⁵Susilo and Andi Darma, 2014, "Employment Law Study on Regulation of the Minister of Manpower and Transmigration Number 19 of 2012," *Mimbar Hukum - Faculty of Law, Gadjah Mada University* 26, no. 2, pp. 248–59, <https://doi.org/https://doi.org/10.22146/jmh.16041>.

⁶Fitriyaningrum, "Implementation of Outsourcing System in Achieving Indonesian Workers' Welfare Reviewed from Law Number 13 of 2003."

⁷Fauzi Ridwan Harahap, Yasmin Lubis, and Marzuki, 2023, "Legal Protection of Outsourcing Workers for Office Administration Staff Based on Employment Agreements According to Law Number 11 of 2020 Concerning Job Creation," *Jurnal Ilmiah Metadata* 26, no. 2, pp. 320–34, <https://doi.org/https://doi.org/10.47652/metadata.v5i1.327>.

employers based on certain agreements or conditions.⁸

In the implementation of employment relationships, employers prefer to use PKWT rather than PKWTT because it is considered more efficient and effective, considering that employers can obtain greater profits with little capital. PKWT has a temporary nature with several types of work as follows: Single-time or temporary work, estimated time that is not too long, seasonal, and related to a new product, nature and activity.⁹

The provision of compensation is charged to the employer/outsourcing company according to Article 15 point (1) which states that employers are obliged to provide compensation to workers/laborers whose employment relationship is based on a PKWT contract.¹⁰ Meanwhile, in practice, outsourcing companies have not yet implemented compensation for workers/laborers employed because the service user/user company argues that the right to compensation is the responsibility of the outsourcing company, while on the other hand, the outsourcing company relies on fees for managing the work carried out with a fee presentation of between 7% - 10% of the total agreed payment value, the service user/user is not involved in the Law so that the implementation of compensation by the outsourcing company is difficult to implement.

The Compensation Policy for Fixed-Term Employment Agreements (PKWT) based on the Job Creation Law states that in providing compensation money, employers are required to provide compensation money to PKWT workers who have a work period of at least 1 (one) month continuously. The calculation of the amount and amount of compensation funds that can be provided has been regulated in Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment.

3.2. Implementation of Fixed Term Employment Agreements (PKWT) after the Job Creation Law came into effect

The presence of the Employment Law is a form of implementation of Article 27 paragraph (2) of the 1945 Constitution (UUD), which is a form of protection provided by the State to the people to obtain decent work and livelihood. Employment is a legal area that has unique characteristics that combine elements of private law and public law, which requires the presence of the government in regulating the legal relationship between employers and workers.

⁸Santoso, AP 2022. Introduction to Employment Law & Settlement of Industrial Relations Disputes. Pustaka Baru Press. Yogyakarta

⁹Kambey, GS 2021. Fixed Term Employment Agreement (PKWT) Based on Employment Law. Lex Privatum Vol.IX/No.6/May/2021.

¹⁰Maesa, Dinda Ayu Sahari. 2020. "Patent Holder Agreement for Inventions Produced by Inventors in Employment Relations." Google Scholar

Although the employment relationship is basically between legal subjects, namely individuals or legal entities, the presence of the government in regulation is necessary because the relationship is often subordinate, which results in an imbalance of power, especially in terms of socio-economics.

Article 102 paragraph (1) of the Manpower Law emphasizes that the Government has a strategic function in regulating and serving the interests of employers and workers to create harmonious relationships and at least minimize the gap in interests between the two. The Government is responsible for creating regulations that allow employers to operate smoothly and productively, while providing protection to workers so that they are not exploited by employers and feel comfortable working, which will ultimately increase productivity and have an impact on economic development.¹¹

Outsourcing related to the Fixed Term Employment Agreement (PKWT), namely an employment agreement with a validity period that has been determined as a contract employee. Based on this, it means that if the term expires, Termination of Employment (PHK) will automatically occur and employees are not entitled to PHK compensation such as severance pay, work period appreciation money, replacement money, separation money. In practice, outsourcing generally uses a Fixed Term Employment Agreement (PKWT) also related to its contract agreement so that it becomes an outsourcing worker with contract status (PKWT). So, a Fixed Term Employment Agreement (PKWT) and outsourcing are different terms even though their implementation can be carried out simultaneously.¹²

In relation to the Employment Law, it has been explained that the contract system should only be carried out for temporary work and should not be implemented for work that is ongoing. It can be seen that the PKWT system is a system that places workers as temporary workers. This agreement relates to the relationship between workers in the context of implementing temporary work.¹³

Fixed Term Employment Agreements (PKWT) are still valid after the enactment of the Job Creation Law. However, there are several changes that have occurred in the PKWT regulations, namely:

- PKWT renewals are no longer known, there are only PKWT extensions.

¹¹Lis Julianti, 2015, "Legal Protection for Outsourcing Workers in Indonesia," Jurnal Advocacy 5, no. 1, pp. 14–29

¹²Chrys Wahyu Indrawati and Sukarmi, 2017, The Ideal Concept of Making a Deed of Outsourcing Work Agreement for a Certain Period (Study at Bank Jateng), Jurnal Akta, Vol. 4 No. 3, p. 318, <https://jurnal.unissula.ac.id/index.php/akta/article/view/1803/1352>

¹³I Nengah Sugiarta and Maryanto, 2019, Legal Protection For Labor Contract In PT. Nawakara Perkasa Nusantara, Jurnal Daulat Hukum Volume 2 Issue 3, Unissula, page 337, <https://jurnal.unissula.ac.id/index.php/RH/article/view/5637/3387>

- PKWT is based on a time period, with a maximum extension of 5 years.
- PKWT which is based on the completion of a job, can be extended until the job is completed.
- Employers are required to provide compensation to PKWT employees whose work period is at least one month continuously.
- Extension of PKWT must be notified in writing to the employee no later than 7 days before the PKWT ends.

Viewed from the perspective of the changes regulated in the Job Creation Law, there are various positive and negative impacts on protection for the parties. When viewed from the perspective of Philipus Hadjon who divides legal protection into preventive and repressive, this protection cannot be provided optimally because the norms contained in the Job Creation Law are inadequate.¹⁴

The issuance of Law Number 11 of 2020 concerning Job Creation, legal protection regarding employment is regulated in Law Number 13 of 2003 concerning Manpower which aims to provide protection for workers, so that workers or laborers are not treated arbitrarily by business actors or employers in addition to ensuring the certainty and peace of life of workers. With the enactment of the Job Creation Law which amends 31 (thirty-one) Articles, removes 29 (twenty-nine) Articles and inserts 13 (thirteen) new Articles which aim to protect and increase the role of workers in supporting investment in Indonesia, including providing legal certainty in the regulation of minimum wages and the amount of severance pay, however, in the process of drafting this job creation legislation, there are many public opinions that are against or disagree.¹⁵

Many workers or laborers who reject Law Number 11 of 2020, on average workers or laborers stated that the reason for rejecting the law was because the Job Creation Law contains provisions that are considered to be detrimental to workers. One of the reasons workers reject the Job Creation Law is related to several changes to the provisions governing the Fixed-Term Employment Agreement (PKWT). The PKWT agreement regulated in the Job Creation Law has undergone many changes, especially related to the term of the PKWT agreement and the regulation of compensation for workers.

¹⁴Aan Ahmad Sancoko, 2018, "Fixed Term Employment Agreement (PKWT) in Law No. 13 of 2003 concerning Employment: An Analysis of Masalah Mursalah and Pancasila Justice," *USM Law Review Journal* 2, no. 1, pp. 141–57, <https://doi.org/http://dx.doi.org/10.26623/julr.v1i2.2249>

¹⁵Jimly Asshiddiqie, 2020, *Omnibus Law and its implementation in Indonesia*, Konstitusi Press, Jakarta.

The main difference between PKWT from outsourcing companies and PKWT from companies that do not use outsourcing is in the work principles and work contracts.

After the Job Creation Law (UU Cipta Kerja) came into effect, the extension of the Fixed-Term Employment Agreement (PKWT) is no longer known. What is known is only the extension of the PKWT. PKWT is an employment agreement intended for certain work that is expected to be completed within a certain period of time. PKWT is suitable for temporary work or probationary periods.

The PKWT regulations after the Job Creation Law came into effect are as follows: Extension of PKWT, Recording of PKWT, Compensation, Compensation

The community as the subject of the employment agreement is the employer and the worker. The employer in this case is the Notary and the worker becomes a factor that influences the effectiveness of the implementation of the fixed-term employment agreement (PKWT) in its existence in the employment sector. The following is a description of the Legal Culture or Legal Culture of the Community, in this case between the Notary and the worker:¹⁶

1. In making a fixed-term employment agreement (PKWT), both parties or one party does not follow the process and procedures for making an employment contract as mandated by the Civil Code and the Employment Law, such as negotiating the contents of the contract (clauses) regarding what will be agreed upon so that the principle of freedom of contract is achieved for the parties and the values of justice, benefit and legal certainty are achieved for the parties.
2. Ignorance and lack of understanding of one or both parties to the laws and regulations regarding contract law, especially regarding employment. Such as in calculating their rights in accordance with Law Number 13 of 2003 concerning Employment. So that at the time of the signing effort as a sign of agreement and binding for each party and becoming a Law for the parties who bind themselves to be legally flawed.

The implementation of Fixed-Term Employment Agreements (PKWT) after the enactment of the Job Creation Law still faces several challenges, such as: unclear regulations, rushed implementation, freedom to determine the term of the employment agreement, compensation regulations that do not fully provide benefits to workers.

¹⁶Asrilia Bayi Saka Putri, Gunarto, 2017, Legal Protection of Notary Employees in Fixed Term Employment Agreements (PKWT), *Jurnal Akta*, Vol. 4 No. 4, Unissula, p. 539, <https://jurnal.unissula.ac.id/index.php/akta/article/view/2495/1859>

4. Conclusion

Based on the results of the discussion that the author has described, the author can draw the following conclusions: The Policy for Providing Compensation for Fixed-Term Employment Agreements (PKWT) based on the Job Creation Law states that employers are required to provide compensation to PKWT workers who have a work period of at least 1 (one) month continuously. Workers/laborers should have the same rights to compensation without discrimination. The implementation of Fixed-Term Employment Agreements (PKWT) after the enactment of the Job Creation Law still faces several challenges, such as: unclear regulations, hasty implementation, freedom to determine the term of the work agreement, compensation regulations that do not fully benefit workers. The results of this study can be given the following suggestions: The company should be responsive in implementing these regulations not only because these regulations must be obeyed and implemented, but they can also violate the rights of PKWT employees who work. Before making regulatory changes, the Government needs to conduct a study on these changes, whether the changes have a good impact or not on the workers themselves.

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