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NORMATIVE STUDY OF COMPENSATION FOR FIXED-TIME WORK AGREEMENTS (PKWT) BASED ON THE JOB CREATION LAW

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Abstract

Background. The dynamics of labor regulation reform need to be analyzed for the benefit of the community in general and workers/laborers in particular.

Aims. Since the implementation of Law No. 11 of 2020 concerning Job Creation and Government Regulation No. 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment, there have been deletions, updates, and additions to articles related to labor law.

Methods. In this study, normative juridical research is applied, which emphasizes the analysis of legal products such as laws and regulations but still pays attention to the reality in society related to the problem to be discussed.

Result. This study reviews regulatory updates, including an analysis of Fixed-Time Work Agreements (PKWT) rules in the Job Creation Law. The provisions of PKWT have changed, namely, workers/laborers whose contract period has been completed are entitled to compensation money or severance pay.

Conclusion. This is a new thing, so this study aims to analyze in a normative juridical manner the provisions for providing compensation or severance pay, starting from the distribution of the amount to the sanctions for the company if it violates it.

Implementation. Many entrepreneurs still do not implement the law. Sanctions must be applied, namely, administrative sanctions such as written reprimands, restrictions on business activities, temporary suspension of part or all of production equipment, and freezing of business activities.

Keywords: Compensation, Job Creation Law, PKWT

INTRODUCTION

Employment Law is a statute designed to govern employment practices. Historically, labor law was referred to simply as labor. A framework of regulations designed to establish a more systematic employment structure, with the objective of enhancing the overall welfare of the Indonesian populace. Consequently, several initiatives and regulations pertaining to Indonesian job growth are enacted to achieve a just, successful, and equitable society in Indonesia. To achieve welfare and job development, it is crucial to govern the interaction between labor and the entrepreneur, according to their rights and responsibilities in fostering a prosperous existence..¹

The definition of Workers/Laborers is found in Article 1, number 3 of Law No. 13 of 2003 regulating Manpower, which states: "Workers/laborers are individuals who perform work in exchange for wages or other forms of compensation." Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia asserts that "Every Indonesian citizen has the right to work and a decent livelihood for humanity," while Article 28D, paragraph (2) affirms that "Everyone has the right to work and receive fair and decent remuneration and treatment in employment relationships."

Workers has rights that must be upheld during the execution of their duties, since all individuals have fundamental life necessities that require satisfaction. These workers endeavor to attain a satisfactory livelihood through employment, subsequently receiving remuneration. According to Article 1, paragraph 30 of Law No. 13 of 2003 regarding Manpower, "wage" refers to the entitlement of the worker/laborer received as compensation from the employer in monetary form, established and disbursed in accordance with the stipulations of an employment contract, agreement, or legislation, inclusive of allowances for workers and their families for work and/or services rendered or to be rendered.

As previously stated, it is essential to draft an Employment Agreement in accordance with Article 1601 of the Civil Code while engaging in work or employment interactions. An Employment Agreement is a contract between the employer and the employee or the individual performing the task. It governs the labor requirements, rights, and obligations of the parties pursuant to Article 1, paragraph (14) of Law No. 13 of 2003 about employment. The employment contract may be either verbal or written.

¹ Taufiq Yulianto, *Law as a Means to Protect Workers/Laborers in Industrial Relations*, ORBITH, Vol.8, No.2 (July 2012), p.5

Within the framework of labor arrangements, there are two categories of employment contracts: Fixed-Term Work Agreements (PKWT) and Indefinite-Term Work Agreements (PKWTT). PKWT is a contractual arrangement between an employer and an employee to formalize an employment connection for a specified duration or for temporary work, sometimes referred to as a contract worker agreement. PKWTT is a contractual arrangement between an employer and an employee to formalize a permanent employment relationship or position..²

In practice, numerous organizations favor a fixed-term employment contract (PKWT) arrangement for staff recruitment. This arises from entrepreneurs' belief that PKWT is more efficient and effective. Entrepreneurs typically aspire to maximize revenues while minimizing costs. Numerous employers in Indonesia opt not to hire permanent employees, favoring contract staff instead, as this alleviates their financial obligations for health benefits, labor awards, and other associated charges. Despite amendments to the Labor Law following the implementation of the Job Creation Law, including provisions for compensation or severance pay for PKWT workers or those who have fulfilled their contracts, some enterprises continue to contravene these requirements. Presently, modifications are occurring in the structure of the PKWT agreement, including the stipulation of compensation or severance pay upon the expiration of the Fixed-Time Work Agreement. PKWT employees are entitled to remuneration by relevant regulations. Organizations that infringe upon workers' rights or fail to adhere to rules will face penalties.

This article addresses the arrangement of compensation for Fixed-Time Work Agreements in Indonesia and the penalties for employers that fail to give such compensation. This study employs normative juridical research, focusing primarily on analyzing legal products, including laws and regulations, while also considering societal realities pertinent to the issue at hand. This research focuses on law through a prescriptive analysis of statutes and regulations. Normative legal study in Indonesia is frequently associated with Common Law research. The two research types are regarded as analogous about their research inclinations. Common Law denotes a fundamental element typically employed to address societal issues. Analyzing legal matters, including violations, unlawful activities, and conflicts, is achieved by examining legal facts, regulations, and pertinent case studies.

This study employs two methodological approaches: the statute approach, which analyzes laws and regulations, and the conceptual approach, which evaluates and comprehends legal

² Abdul Hakim, *Indonesian Manpower Law Based on Law No.13 of 2003*, Publisher of PT. Citra Aditya Bakti, Bandung, 2003, p.55

concepts. This normative research utilizes legal materials such as statutes, regulations, literature, employment contracts, and further legal papers..³

METHODS

This study was undertaken in accordance with the recent stipulations of the Job Creation Law, which outlines compensation or severance pay procedures for PKWT workers/laborers. Consequently, to address the issues examined in this work, the author used normative legal research, gathering evidence from literature and legal documents.

The legal materials pertinent to the issues addressed in this study comprise: the 1945 Constitution of the Republic of Indonesia, Law No. 13 of 2003 regarding Manpower, Law No. 11 of 2020 concerning Job Creation, and Government Regulation No. 35 of 2021. Additional legal materials encompass literature, including works by prominent legal scholars, legal periodicals, case law, academic opinions, and jurisprudence. The author employs a legal journal as secondary legal information pertinent to the research topic.

DISCUSSION

Legal Basis of Fixed-Time Work Agreements (PKWT)

PKWT is classified as a sort of employment contract under Indonesian Employment Law, which recognizes employment agreements as a fundamental source of labor law. Employment law sources can be identified and categorized into statutes, customary laws, traditions, governmental decrees, treaties, labor regulations, and employment contracts. The Employment Law and the Job Creation Law constitute the legal foundation for the provisions of PKWT. Previously, the provisions concerning the execution of PKWT were solely delineated in Law No. 13 of 2003 about Manpower and many other laws, including the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep-100/Men/Vi/2004 of 2004.

After enacting the Job Creation Law, the legislation amended the provisions of PKWT in Manpower by revising, removing, and including many articles. Nonetheless, it must be acknowledged that the provisions of contract employees are just outlined in the Job Creation Law. For specifics about the provisions, refer to Government Regulation No. 35 of 2021, which is the regulation for implementing the Job Creation Law.

³ Soejono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Review*, Sinar Grafika Publisher, Jakarta, 2004.p.30

- a. The Job Creation Law has undergone amendments to 31 articles, deleting 29 articles, and adding 13 articles pertaining to employment rules. The regulations regarding PKWT have been amended in this Job Creation Law. Concerning the definition and comprehension of PKWT, Article 56 paragraphs (2) and (3) of the Job Creation Law elucidate that PKWT is a Work Agreement characterized by the duration and completion of a task, with all aspects delineated in the Employment Agreement. PKWT is commonly recognized by the public as a contractual employee. The PP derivative of the Job Creation Law concerning PKWT, Outsourcing, Working Hours and Rest Periods, and Termination of Employment delineates the recent PKWT regulation, which has been in effect since its promulgation in February 2021, superseding the prior regulation in the Employment Law. The amendments to the regulations concerning PKWT in the PP PKWT, encompassing employment contracts and remuneration, can be delineated as follows:
 - b. The duration of the PKWT may extend to a maximum of five years. The Labor Law previously stipulated that the maximum duration of a fixed-term work agreement (PKWT) was 2 years, extendable by 1 year (totaling 3 years). This was amended by Article 8 of Government Regulation No. 35 of 2021 to a maximum of 5 years. Nonetheless, if the task remains unfinished, it may be prolonged by PKWT by the agreement between the employer and the employee, provided that the extension does not exceed 5 years.
 - c. Remuneration for PKWT employees with a minimum employment term of one month. Government Regulation No. 35 of 2021 establishes new regulations concerning compensation for PKWT workers. Employers must offer monetary compensation to PKWT workers who have been employed consistently for at least one month. This provision is omitted and is inapplicable to PKWT Foreign Workers.
 - d. The reinstatement of the compensation system upon the conclusion of the PKWT contract. According to Law No. 13 of 2003, the stipulation for compensation payment is nullified if the employment relationship is terminated by the party who ends the employment before the conclusion of the PKWT period. The compensation payment equivalent to earnings for the unperformed work time has been eliminated.
 - e. Obligation for compensation payments to contract employees. Under the prior regulation, contract employees were not entitled to compensation or severance pay upon the conclusion of the PKWT contract period; however, the Job Creation Law mandates that employers provide compensation funds as severance pay or service awards for contract employees at the termination of the PKWT. Employees must have completed at least one month of continuous

service. If the contract is prolonged, this compensation fund may be disbursed before the PKWT extension. However, the severance pay regulation is inapplicable to PKWT TKA.

Regulations on Workers' Compensation/

PKWT Workers in the Job Creation Law

The prior law, specifically Law Number 13 of 2003 concerning Manpower (Manpower Law), lacked provisions for remuneration and severance pay for contract employees (PKWT) upon the expiration of their contracts. Conversely, Law Number 11 of 2020 regarding Job Creation (Job Creation Law) and its implementing regulation, Government Regulation Number 35 of 2021, mandate that employers provide compensation funds as severance pay or service awards for contract employees upon the conclusion of PKWT.

Workers/laborers entitled to receive compensation funds and severance pay are employees who have worked for at least 1 month regularly. If the contract is to be extended, the compensation funds and severance pay can be submitted before the PKWT extension. Furthermore, the next compensation money is given at the end of the extension period. The calculation of the amount of compensation funds that can be provided has been regulated in Article 16 of Government Regulation No. 35 of 2021, namely:

- a. PKWT workers who work for 12 months regularly are given the right to 1 month of wages;
- b. PKWT workers who work for 1 month or more, but still less than 12 (twelve) months, are calculated equally by calculating: working period x 1 month x Wage;
- c. PKWT workers who work for more than 12 months are calculated equally by multiplying their working period by 1 (one) month of wages.

The salaries mentioned in the preceding computation, which serve as the foundation for determining compensation payments, comprise basic wages and set allowances. If the company's salaries do not include basic wages and set allowances, the calculation for compensation will be based solely on wages without allowances. When firm remuneration comprises basic wages and variable allowances, the foundation for calculating compensation is the basic wage. In PKWT, where the work is completed more swiftly than the duration stipulated in the PKWT, the compensation is computed up to the point of job completion. An agreement between employers and employees determines compensation for workers in micro and small enterprises.

An example of the calculation of PKWT compensation that began after the Job Creation Law came into effect:

A Worker has PKWT for 2 years, with a wage of IDR 4,000,000 per month from January 1, 2022, to December 31, 2023.

1. PKWT ends according to the period, on December 31, 2022: $24/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 12.000.000,-$
2. PKWT is extended for 1 year, with a new end date of 31 December 2024
 - a. On December 31, 2023, Workers are entitled to $24/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 12.000.000,-$
 - b. On December 31, 2024, Workers are entitled to $12/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 6,000,000,-$

If the Worker terminates PKWT on June 30, 2022, then the Worker gets: $6/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 3,000,000,-$

PKWT compensation started before the Job Creation Law came into effect but ended after it came into effect on November 2, 2020. Workers have PKWT for two years with a salary of IDR 4,000,000 per month from January 2, 2020, to January 1, 2022.

1. PKWT ends according to the timeframe, on January 1, 2022:
 $14/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 7,000,000,-$
The working period starts on November 2, 2020, or the date the Job Creation Law was enacted.
2. PKWT extended for 1 year to January 1, 2023
 - a. On January 1, 2022, Workers are entitled to $14/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 7,000,000,-$
 - b. On January 1, 2023, Workers are entitled to $12/12 \times \text{IDR } 6,000,000,- = \text{IDR. } 6.000.000,-$
3. The Worker terminates PKWT on January 1, 2021, then the Worker gets: $2/12 \times \text{Rp. } 6,000,000,- = \text{Rp. } 1,000,000,-$

Assume that one party ends the employment contract before the conclusion of the duration specified in the PKWT. In such circumstances, the employer is mandated to furnish monetary compensation, which is determined by the duration of the PKWT period undertaken by the worker/laborer. Compensation is not provided to PKWT for termination, under Article 61A of Law No. 6 of 2023, which amends Law No. 2 of 2022 regarding Job Creation, for foreign workers and those employed for less than one month, due to the following reasons:

- a. The death of workers/laborers

- b. A court ruling and/or a decision from an Industrial Relations Dispute resolution body that is legally binding.
- c. Certain conditions or occurrences specified in the Employment Agreement, Company Regulations, or Collective Employment Agreement may result in the cessation of the Employment Relationship.

This compensation and severance pay does not apply to foreign workers who work under a PKWT contract, as stipulated in Article 15 paragraph (5), namely: "The provision of compensation money does not apply to foreign workers employed by employers in the Employment Relationship based on PKWT". The provisions regarding compensation and severance pay certainly provide benefits for workers/laborers. This regulation was promulgated to protect PKWT and PKWTT workers fairly and equally.

Workers who undergo a transition period following the implementation of Law No. 11 of 2020 regarding Job Creation on November 2, 2020, are governed by Government Regulation No. 35 of 2021, which addresses Fixed-Time Work Agreements, Outsourcing, Working Hours and Rest Periods, and Employment Termination, outlining the provisions for compensation during the transition period post-enactment of Law No. 11 of 2020. Article 64 of Government Regulation No. 35 of 2021 stipulates that the compensation for PKWT prior to the enactment of Law No. 11 of 2020 is calculated from November 2, 2020, to the conclusion of PKWT.

Sanctions for Employers Who Do Not Provide Compensation

The rights and obligations of PKWT system workers in enterprises have been thoroughly ensured since the implementation of government rules. The company's duty to disburse compensation to employees is evident; failure to do so by the employer incurs administrative penalties as stipulated in Article 61, Paragraph (1) of Government Regulation Number 35 of 2021 regarding Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment. Four administrative sanctions may be imposed on employers who contravene compensation regulations. According to Article 15 paragraph (1), Article 17, Article 21 paragraph (1), Article 22, Article 29 paragraph (1) letters b and c, Article 53, and/or Article 59, administrative sanctions may include:

- a. Written Reprimand;
- b. Restrictions on commercial operations;
- c. Temporary cessation of partial or whole manufacturing equipment; and
- d. Suspension of commercial operations.

Government Regulation No. 35 of 2021 states that compensation or severance pay must be provided when the fixed-time work agreement (PKWT) ends. This PKWT compensation also applies to micro and small business workers, whose amount is determined through the agreement of both parties. However, this PKWT compensation is not used to foreign workers (TKA).

Furthermore, the question is, what are the sanctions if the company still does not implement the new regulations and is reluctant to give severance pay to workers/PKWT? In reality, there are still many cases where companies insist on using the old provision, namely the absence of severance pay for workers/laborers whose PKWT period has ended.

Many companies make excuses by exploiting workers who do not understand the rules. If the company does not pay severance to the worker/laborer or a certain amount of money is not received, the company can be reported to the authorities. Because severance pay is an employee's right protected and guaranteed by law, employees are one of a company's most valuable assets.

Entrepreneurs who fail to pay or provide PKWT compensation face administrative fines and penalties. Modifying Article 190 of the Manpower Law inside the Job Creation Law specifies that central and local governments may impose administrative consequences for infractions, including violations of Article 61A of the Job Creation Law.

Article 61 of Government Regulation No. 35 of 2021 delineates four administrative sanctions: written reprimands, limits on business operations, temporary suspension of partial or whole production equipment, and the cessation of company activities. Assume certain entrepreneurs contravene the established regulations. Consequently, these enterprises may face criminal penalties and fines reaching hundreds of millions of rupiah.

"Whoever violates the provisions as referred to in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), or Article 160 paragraph (4) shall be subject to a criminal sanction of imprisonment of a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp.100 million and a maximum of Rp.400 million" which the rule contains on page 560 which is an amendment from the provisions of Article 185 contained in Chapter IV concerning employment, as quoted in Article 185 paragraph (1).

If the company fails to provide severance compensation to employees due to Company Regulations, such an action cannot be legally justified. Article 111, Paragraph (2) of the Manpower Law stipulates that the Company Regulations must not contradict the provisions of applicable laws

and regulations. The phrase "not contradicting the provisions of laws and regulations" signifies that firm regulations must not be inferior in quality or quantity to existing laws and regulations.

Assume a disagreement arises. In this instance, the stipulations of laws and regulations outlined in Article 111, Paragraph (2) of the Manpower Law are applicable. Consequently, Company Regulations that conflict with the Law are deemed null and void. The applicable provisions are those outlined in the Law. The corporation is mandated to provide severance pay to employees affected by layoffs, despite the divergent stipulations in the corporation Regulations.

CONCLUSION

Amendments, deletions, and additions have been made to various provisions addressing fixed-time work agreements (PKWT) in Law No. 11 of 2020 on Job Creation, as elucidated in Government Regulation No. 35 of 2021. This study addresses the compensation or severance pay for PKWT workers, which employers frequently exploit. It can be inferred that Government Regulation No. 35 of 2021 mandates companies to offer compensation to PKWT workers with a minimum of one month of continuous employment, excluding international workers.

Determining the amount of compensation money is governed by Article 16 of Government Regulation No. 35 of 2021. Due to the continued non-compliance of numerous entrepreneurs with the law, sanctions must be enforced, including administrative penalties such as written reprimands, limitations on business operations, temporary suspension of partial or complete production equipment, and freezing business activities.

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