



Analysis of Legal Protection for Employees Who Do Not Have a Fixed-Term Employment Contract (Decision Number 687 K/Pdt.Sus-PHI/2016)

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ABSTRACT

According to Law No. 13 of 2003 on Manpower, fixed-term employment agreements (PKWT) are not applicable in employment relationships. Employers have ignored the highest time limit allowed by Law Number 13 of 2013 on Manpower regarding the working period of fixed-term contracts. In addition, they still have not fulfilled the rights of time workers such as wages, working hours, and labor social security. This violates the human rights of workers, who as Indonesian citizens are protected by the Indonesian Labor Law. One of the obstacles in the implementation of PKWT according to Law No. 13/2003 lies in two factors. First, the rules governing the implementation of non-permanent contracts are not in line with employment needs. Employers cannot recruit employees for something that is not necessary for the continuity of business operations. Most of the types of work required are fixed and belong to the core work of the production process. Thus, in this case, Article 59 of the Labor Law has been violated, as the work prohibited by the statutory provisions on PKWT

INTRODUCTION

Workforce is any person who is able to do work to produce goods and/or services, either to meet their own needs or for the community. Workers/laborers are any person who works by receiving wages or other forms of compensation, in other words, workers/laborers are workers who are in an employment relationship so that the employment contract, either verbally or in writing, is very important to be carried out in the world of employment as a liaison between workers and companies or employers, as protection for workers and employers and to provide legal certainty for both parties regarding the rights and obligations that have been agreed upon. According to Law No. 13/2003 concerning Manpower, an employment contract is a written or verbal agreement between workers and employers that contains the terms of employment, rights and obligations of both parties. The definition of an employment contract has been widely developed in the general public, one of which is in the book by Salim HS, an agreement or employment contract is an event where someone promises to someone else or where two people promise each other to do something. A clear agreement or contract can minimize uncertainty in carrying out work, so an agreement or contract is very necessary, but in reality there are still many employees who do not have a clear work contract or agreement or fulfill the elements, so that many employees do not get the rights to wage protection, occupational health rights, job security rights, severance pay rights, long service awards, and work replacement money, but it should also be noted that workers who do not have an agreement or work contract also have basic rights that are recognized and protected by law such as fair wages, humane working hours, and protection against harassment and discrimination in the workplace. In its development, the element that is most often not fulfilled in an employment agreement is a fixed-term employment agreement (PKWT), PKWT is regulated in Government Regulation No. 35 of 2021. A Fixed-Term Employment Agreement (PKWT) is an employment agreement between workers/laborers and employers to establish an employment relationship for a certain period of time or for a certain job. Law No. 13 of 2003 concerning employment has regulated several rights and obligations of Employees-Companies, However, there are changes in the provisions with the enactment of Law No. 11 of 2020 concerning Job Creation or the Job Creation Law. The following is about the rights and obligations of companies in the Job Creation Law.

1. Workers or Laborers Must Implement the Provisions of the Employment Agreement

Article 126 Paragraph (1) of the Manpower Law, the rights and obligations of companies and workers/laborers have been determined. This regulation emphasizes that workers or laborers and companies are required to include clauses that need to be stipulated in the employment agreement, which must be in accordance with laws and regulations so that it is not void by law.

2. Workers Must Implement Obligations when Resigning

According to Article 162 Paragraph (3), workers or laborers must meet the requirements for resignation in the form of submitting a written

resignation application a maximum of 30 days before the date of resignation, not be bound by a work bond, and continue to carry out their obligations until the date of resignation.

3. Workforce Training

One of the company's obligations is to provide training to its workforce. Meanwhile, workers have the right to receive it. This is as regulated in Article 11 of the Manpower Law. According to Article 81 of the Job Creation Law which amends Article 13 Paragraph (1) of the Manpower Law, job training is organized by job training institutions managed by the government, private sector, or companies.

4. Paying Compensation for Foreign Workers

Employers are required to pay compensation for every foreign worker they employ. This is stated in Article 81 Paragraph (9) of the Job Creation Law which amends Article 47 Paragraph (1) of the Manpower Law.

5. Provision of Wages in Accordance with Laws and Regulations

As explained in Article 81 Paragraph (24) of the Job Creation Law which amends Article 88, every worker or laborer has the right to a decent living for humanity. This decent living includes minimum wages, wage structure and scale, overtime wages, and wages when absent from work for certain reasons. Provisions regarding the amount of wages between employers and workers/laborers must not be lower than the provisions of the laws and regulations. If the agreement is lower or contradicts the regulations, then the agreement is void and the wage regulation is implemented in accordance with the laws and regulations.

6. Severance Pay

Article 81 Paragraph (44) amends the provisions of Article 156 Paragraph (1) which in essence is that if there is a termination of employment, the employer is obliged to pay severance pay and/or service award money and compensation for rights that should be received. The amount of severance pay or award must be determined in the employment agreement.

7. Rights and Obligations of PKWT in the Job Creation Law

A Fixed-Term Employment Agreement (PKWT) is an agreement between workers, in this case contract employees or an employment relationship for a certain period of time or for certain jobs. PKWT is generally applied to contract workers whose regulations refer to the Manpower Law, the Job Creation Law, Government Regulation Number 35 of 2021 and the Decree of the Minister of Manpower Number 100 of 2004.

The rights of Fixed-Term Employment Agreement (PKWT) workers are as follows:

- a. Wages
- b. Rest time
- c. Leave
- d. Religious Holiday Allowance (THR).

The obligations of Fixed-Term Employment Agreement (PKWT) workers are as follows:

- a. Carry out work responsibly
- b. Maintain company secrets
- c. Be loyal to the company
- d. Comply with all company regulations

Types of Work for Fixed-Term Employment Agreement (PKWT) workers are as follows:

- a. Work that is completed once or is temporary in nature
- b. Work that is estimated to be completed in a not too long time
- c. Seasonal work
- d. Work related to new products, new activities, or additional products that are still in the trial period
- e. Work whose type, nature, or activities are not permanent.

Article 58 of the Job Creation Law emphasizes that PKWT cannot require a trial period. If there is a trial period, then the work is null and void by law and the employee's status changes to an Indefinite-Term Employment Agreement (PKWTT) employee.

Where in reality there are still many employees or workers who do not have a clear employment contract with the company so that the employment status is unclear Irregular working hours, PKWT status can change to PKWTT because there is no written agreement or contract made. So it can confuse employees and companies in proving dispute resolution When it happens someday, then with the many cases that occur against workers who do not have a contract or employment agreement, it is very necessary to consider special laws for the protection of employees or workers who do not have a written employment agreement or contract. Because this is very important to maintain justice in the world of work, so that all workers get the same justice according to what is indeed their right, and ensure that workers in this situation are not vulnerable to exploitation or unfair treatment, so that employers / companies cannot arbitrarily employ someone to do work with inhumane hours, and there is no security or protection while working. So with the legal certainty for workers who do not have a permanent employment agreement to receive appropriate legal protection, Based on this in accordance with the title of "Analysis of Legal Protection for Employees who do not have a Fixed-Term Employment Contract (PKWT)" this study was conducted by examining a Supreme Court decision on a special civil case of industrial relations disputes at the cassation level. Decision Number 687 K / Pdt.Sus-PHI / 2016, discusses the violation of the contract committed by the Defendants by not trying to implement the correct contract system in accordance with the applicable Employment provisions, with a trial period, even done repeatedly, and no break time (break) this is clear both from the type and nature of the work given has clearly deviated and violated the provisions of the contract and the absence of good faith in implementing, trying and carrying out a good employment agreement.

LITERATURE REVIEW

1. Previous Research

Research on the legal status of PKWT workers according to (A. J. Kusuma, E. Ratna M.S, and I. Irawati: 2020) in the Journal entitled Legal status of PKWT workers that is not in accordance with the provisions of the Manpower Law, states that the position of workers in the judge's consideration with the Tanjung Karang court decision No. 13 / Pdt.Sus.PHI / 2014.Tjk and the Surabaya court decision No. 82 / G / 2014 / PHI.Sby, that workers who are bound by PKWT are continuously PKWTT workers, legal protection for PKWT workers in the application of the agreement still violates the provisions that have been regulated by law, namely regarding PKWT which should be made in written form or recorded but is made verbally.

2. Theory

There are several definitions of library research according to experts, namely:

- a. According to (Sarwono: 2006) Library research is a study that examines various reference books and previous research results of the same type that are useful for obtaining a theoretical basis for the problem to be studied,
- b. According to (Sugiyono: 2012) Library research is a theoretical study, references and other scientific literature related to culture, values and norms that develop in the social situation being studied.
- c. Meanwhile, Khatibah (2011) states that library research is an activity carried out systematically to collect, process, and conclude data using certain methods/techniques in order to find answers to problems faced through library research. Meanwhile,
- d. According to Danandjaja (2014) states that library research is a method of systematic scientific bibliographic research, which includes collecting bibliographic materials, related to research targets; collection techniques using library methods; and organizing and presenting data.

So library research is a research activity carried out by collecting information and data with the help of various materials available in the library such as reference books, previous similar research results, articles, notes, and various journals related to the problem to be solved.

METHODOLOGY

1. Scope of Research

The scope of the research is in accordance with the formulation of the problem to be studied, regarding the Rights and obligations obtained by employees who do not have a Fixed-Term Employment Agreement (PKWT) contract, and what risks are obtained by the company or employer due to the absence of a clear Fixed-Term Employment Agreement (PKWT) contract.

2. Type of Research

The type of research used by the researcher is normative juridical research. According to Soerjono Soekanto, the normative juridical approach is legal research conducted by examining library materials or secondary data as a basis for research by conducting a search for regulations and literature related to the problems being studied. In Normative Juridical research, research will use Primary and Secondary Legal materials. Commonly used secondary data sources are scientific publications, such as Articles, Journals and Scientific Books. The research approach used is as follows:

1. Statutory approach method (Statute Approach) The statutory approach method (Statute Approach) is a research conducted by analyzing cases or legal issues, contained in the Supreme Court Decision No. 687 K/Pdt.Sus-PHI/2016.
2. Statutory Approach Method The Statutory Approach Method is a research conducted by examining Law No.13 of 2003 concerning Manpower, Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP.100/MEN/VI/2004 concerning Provisions for the Implementation of Fixed-Term Employment Agreements, and Government Regulation No.35 of 2021 Regulating work agreements, rest periods, outsourcing, and Termination of contracts.
3. Conceptual Approach Method. The Conceptual Approach Method is an approach that comes from the views and doctrines that develop in legal science, so that researchers in studying research can produce ideas, understandings, concepts and legal principles faced in this research problem

where the researcher acts as a second party, because it is not obtained directly. These materials are arranged systematically.

3. Research Method

To obtain data in writing this thesis, library research techniques are used, researchers use 3 research methods, namely:

- a. The case approach is carried out by analyzing cases or legal issues, which are contained in the Supreme Court decision. 241 PK / Pdt / 2011.
- b. The statutory approach is carried out by examining the Commercial Law Code (KUHD), Law No. 40 of 2011 concerning Insurance and Law No. 8/1999 concerning Consumer Protection.
- c. The Conceptual Approach is an approach that comes from the views and doctrines that develop in legal science, so that researchers in studying research can produce ideas, understandings, concepts and legal principles faced in this research problem.

4. Data Sources

According to Arikunto, data sources are subjects from which data can be obtained. This means that data sources are called information that is needed to answer the problem questions in this study. To conduct research, the author must choose data sources to produce answers to the problems in this study.

The sources of legal materials used in this study to solve the problem formulation are as follows:

1. Primary Legal Materials

Primary legal materials are binding legal materials related to what is to be analyzed in writing this research, namely legal protection for employees who do not have a fixed-term employment contract (PKWT).

a. Law No. 13 of 2003 concerning employment.

b. Government Regulation No. 35 of 2021 Regulating work agreements, rest periods, outsourcing, and termination of employment.

2. Secondary Legal Materials

Secondary legal materials are legal materials that provide explanations regarding primary legal materials. Secondary materials in this study consist of:

a. Printed books or electronic books

b. Scientific articles

c. Law journals

d. Expert opinions

e. Legal theories

By referring to the sources above, the analysis of Legal Protection for employees without a Fixed-Term Employment Agreement (PKWT) can be carried out comprehensively, covering aspects of statutory regulations and academic studies.

3. Tertiary Legal Materials

Tertiary Legal Materials are legal materials that serve as additional instructions and explanations related to the research. In this study, the tertiary legal materials used are legal dictionaries and the Big Indonesian Dictionary (KBBI).

RESEARCH RESULT

1. Rights and Obligations for Employees Who Do Not Have a Fixed-Term Employment Contract (PKWT)

Basically, an employment relationship is a relationship that regulates the rights and obligations between employers and individuals who work as workers or laborers. Every right and obligation must be balanced. The parties are responsible for each other in an employment relationship. As stated by Bahder Johan Nasution, the rights of workers and laborers are the rights of employers, and the rights of workers and laborers are the rights of employers. Thus, each party can sue the other party if there is a violation of the obligations that have been regulated by laws and regulations or an employment agreement. An employment agreement is the basis of an employment relationship. Initially, CHAPTER 7 BOOK III of the Civil Code regulated employment agreements, as well as the Regulation of the Minister of Manpower Number: PER - 02 / MEN / 1993 concerning employment agreements for a certain period of time, but this is no longer valid after Law Number 13 of 2003. concerning Manpower, which regulates the Employment Agreement. In employment law, the types of employment agreements are distinguished as follows:

1. Employment Agreement for a fixed period, namely an employment agreement between workers/laborers and employers to establish an employment relationship for a specified period or for a specific job. Hereinafter referred to as PKWT.
2. Employment Agreement for an indefinite period, namely an employment agreement between workers or laborers and employers to establish a permanent employment relationship. Hereinafter referred to as PKWTT.

Soeroso defines the existence of a legal consequence as a result or impact of actions taken by a legal subject to achieve a certain goal. These consequences are usually regulated by law and actions taken by legal subjects are considered valid or legal because they are based on applicable law. The agreement reached between the two parties will have legal effect, which means that the agreement will be considered legal by both parties and cannot be terminated by either party separately. In fact, employees can experience positive and negative effects as a result of oral employment agreements. One of the beneficial effects is increased employee control over their work schedules, which allows them to better satisfy their own needs and preferences. In addition, it has the potential to foster a sense of trust between the two parties. In addition, an oral employment agreement allows employees and employers to resolve issues that arise in a timely manner through open and honest communication.

employment contracts are divided into 2 (two) types, namely written contracts are written agreements of the parties and oral contracts are oral agreements of the parties (sufficient contracting parties). Thus, it is clear that not all contracts are required to be in writing, except those that are expressly required to be in writing, such as contracts. For example: making a permanent employment contract which according to the Manpower Law must be written. An oral agreement is an agreement made by the parties verbally (oral contract), which is not stated in a private deed or official letter. An oral contract contains promises that express the stated will and is considered an integral part of the binding nature of the contract. Agreements can be made verbally or in writing. An oral agreement is an agreement that occurs because of an agreement with each other without any written evidence.

Agreements made verbally usually occur because they already know each other or there is a family relationship, therefore in agreements made verbally, trust is very much needed. Knowing whether an employment agreement is made verbally or in writing, it must be seen whether it is a Fixed Term Employment Agreement (PKWT) or an Indefinite Term Employment Agreement (PKWTT), because the two Employment Agreements have different specifications of rights and obligations as stated in Article 57 paragraph (1) and (2) of the UUK, which requires the PKWT to be made in writing, if it turns out that the PKWT is not made in writing, then the employment agreement automatically becomes a PKWTT. In an employment relationship, legal protection aims to avoid arbitrary actions by the parties, especially from the actions of strong parties who dominate the weak parties, so that a healthy employment relationship will be created. Thus, legal protection is important to be implemented in accordance with the

regulations in force by the parties when establishing an employment relationship, so that the rights and obligations of the parties will also be realized properly.

In an employment relationship, the two elements are interconnected and cannot be separated. When someone succeeds in carrying out his obligations, then he is entitled to the rights for the success that has been completed as his responsibility. Likewise, someone can claim the rights that are his authority when he has completed his obligations as a responsibility that must be completed. Therefore, the importance of equality of rights and obligations that can be realized with legal protection as a basis in an employment relationship. When an employment relationship has been established and agreed upon by both parties, then the two elements above must be fulfilled by the parties. Obligations are all efforts to carry out an action that must be carried out by someone in order to achieve a goal. In an employment relationship, the obligation of workers/laborers is to carry out tasks and work to completion, and to comply with the instructions and regulations that have been previously agreed upon in the agreement. Meanwhile, the obligation of employers is to provide wages on time as a form of compensation to workers which is the right of workers/laborers. Employers are also obliged to provide job training, provide opportunities and treat workers/laborer fairly, and pay attention to the health and safety of workers/laborers. While rights are an award given to someone to act or receive something as authority or power based on law. Employers have obligations that must be carried out because they are the rights of workers/laborers. For example, such as the right to receive wages for their work properly and on time. This means that workers/laborers must be given wages that are balanced with the energy they spend and work on, and in accordance with what has been agreed upon in the agreement including the term of payment of wages. Other rights of workers/laborers are to get job training opportunities to develop the potential of workers both before and during the work period.

Another right that must be owned by workers/laborers is to be treated properly and equally regardless of any background and without discrimination, so that workers can act and behave the same as other workers as long as it does not conflict with applicable regulations. Meanwhile, the rights of employers are certainly to receive the correct work results from workers/laborers according to the agreement in the agreement. Employers also have the right to direct and regulate workers/laborers in carrying out their work so that it can be in accordance with the goals and vision and mission of the company. When workers/laborers cannot meet the needs of the employer or cannot work according to the agreement, the employer also has the right to terminate the employment relationship with the workers/laborers. However, this cannot be done immediately like that. Termination of employment is usually carried out because workers/laborers are no longer able to complete their tasks and work due to certain natural things such as retirement, having an accident and illness so that they die, and it can even be because workers want to resign for their own reasons and desires. Termination of employment can also occur because workers/laborers make serious mistakes such as fraud, theft, revealing company

secrets, and other actions that are contrary to applicable regulations. When workers are absent for too long without any explanation, the company can also terminate the employment relationship. An employment relationship can also occur due to negligence on the part of the company. For example, if the company goes bankrupt or the company is hit by a disaster which is a force majeure, so it cannot be avoided by any party. When the company experiences continuous losses, workers/laborers can be suddenly terminated. Employers or companies can also terminate employment with workers/laborers when the work done by the workers has been completed before the end of the contract period agreed upon in the Fixed Work Time Agreement (PKWT). This will certainly have an impact on the survival of workers whose employment relationships can be terminated directly. The impact is that the welfare of workers/laborers is also threatened because they no longer have jobs to meet their living needs. Workers will also have difficulty finding new jobs due to limited opportunities and time to find work again. Therefore, there is a need for regulations to regulate policies implemented by companies and employers so that they do not behave arbitrarily towards workers/laborers.

2. Legal Risks faced by companies or employers due to the absence of a clear Fixed-Term Employment Contract (PKWT)

The absence of a clear and structured Fixed-Term Employment Contract (PKWT) can cause various legal risks for companies or employers. This risk arises because the ambiguity in the employment relationship can trigger disputes and lawsuits from workers. Law Number 13 of 2003 has emphasized the requirement to make a written PKWT, although an unwritten employment agreement is also permitted in an employment relationship as long as it meets the elements of an employment relationship. However, Indonesian employment law has emphasized in Article 57 paragraph (2) by stating: "A work agreement for a certain period that is made unwritten in conflict with the provisions referred to in paragraph (1) is declared an indefinite-term employment agreement." In terms of the general application of the above article, the community, in this case the parties who have an employment relationship, have a high level of awareness to implement the Employment Law, where in carrying out an employment relationship, they make a written employment agreement.

In addition, employers have known the legal consequences if the PKWT is made in an unwritten form (Unwritten Employment Agreement) which will result in the employment relationship automatically becoming an indefinite-term employment agreement (PKWTT). However, in reality, many workers are still found not holding their employment agreements because the company does not provide them. This fact has violated the provisions of Law Number 13 of 2003 in Article 54 paragraph (3) which states: "The employment agreement as referred to in paragraph (1) is made at least in 2 (two) copies, which have the same legal force, and workers/laborers and employers each receive 1 (one) employment agreement." Meanwhile, in employment law it is emphasized that an employment relationship has the meaning of a relationship that occurs between workers and employers which is based on an employment agreement. The employment agreement must have contained the terms of employment which

contain the rights and obligations of employers and workers. By not providing a PKWT agreement to workers for a fixed period, it will be difficult for workers, the majority of whom are unskilled labor, to know their rights as workers for a fixed period. In addition, if in the future there is a default by the company, which is detrimental to the worker, it will have fatal consequences, because the worker does not have a basis for the employment relationship, if the worker intends to demand the fulfillment of his rights as a worker through legal channels. If the company has good intentions, filing more than one can use a copy of the PKWT, not necessarily the original PKWT of both which have the same legal force. What has become the company's policy by not providing PKWT to the worker concerned is clearly detrimental to the legal interests of the worker. For the Indonesian nation, the 1945 Constitution has provided a guarantee of basic rights including the right to a decent income for workers. Although the employment relationship is in the realm of private law, that wages can be desired according to the agreement between workers and employers, the State has an interest in protecting its citizens in terms of determining the minimum wage. This is a form of the State's responsibility in protecting the rights of workers to live decently in meeting their basic needs. Humans in their lives always try to meet all their needs. The needs of life vary greatly, whether they are few or many is relative, depending on a person's ability or purchasing power. A person's purchasing power is certainly greatly influenced by the income he earns within a certain period of time after he works. From the various inconsistencies in the rules with the application of labor law, where the more substantial thing from the implementation of Law Number 13 of 2003 concerning Manpower, namely the object of work agreed upon in the PKWT is the core work of the core work. So that the type of work employed

if in the application of PKWT there have been many deviations, because the work done by the workers for an indefinite period of time is included in the type and nature of work that is prohibited from being employed for workers for a certain period of time. The legal consequences of the incorrect object of work carried out will result in the agreement being null and void, and the employment relationship will automatically change to an indefinite period of time (PKWTT). In the application of labor law, it cannot be separated from the role of the government which acts as a supervisor in the employment relationship. If the government does not take persuasive supervisory action by checking the data reported by the employer. The possibility of data manipulation is very large. So that the government in this case, its extension, namely the labor office, must check the real situation in the field related to the implementation of the employment relationship. "Employment problems have never been resolved, from issues of protection, wages, welfare, industrial relations disputes, coaching, and supervision of employment. This is more due to the government's systemic weakness in implementing employment laws. The policy of determining minimum wages within the framework of wage protection today still encounters many obstacles as a result of the failure to realize a uniform wage, both regionally/provincial or city districts, and provincial or city district/city sectors, as well as nationally. In determining minimum wages, there are still differences

based on the level of ability, nature, and type of work in each company whose conditions are different, each region is not the same.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

A work contract is very necessary to be made because it prevents disputes experienced by both parties in the future. A work contract is also very important for employees because with the existence of a work contract/agreement that has been agreed upon by both parties, workers get their rights and obligations as workers, so that it can prevent employers who want to take advantage of workers who do not have contracts, so that workers can be protected,

B. Recommendations

Based on the results of the research used, the researcher would like to provide several suggestions that are considered necessary to support more optimal research in the future, namely:

1. Further researchers need to research with the existing bases in order to develop and optimize similar research in the future and can provide protection for workers without contracts.
2. The court in this case the panel of judges can expand and detail the legal status of workers without contracts and the panel of judges can detail the compensation that must be paid by the defendant to the plaintiff who experiences Termination of Employment

ADVANCED RESEARCH

This study covers the "Analysis of Legal Protection for Employees who do not have a Fixed-Term Employment Contract (PKWT) Decision Study (Decision Number 687 K/Pdt.Sus-PHI/2016)" focusing on employees who do not have a fixed-term employment contract (PKWT) and the incompatibility of the Fixed-Term Employment Contract (PKWT) with Law No. 13 of 2003 concerning Manpower, because of the trial period carried out by the Defendant by not trying to implement the correct contract system in accordance with applicable labor provisions with the trial period that is carried out repeatedly and there is no time, so that many employees are disadvantaged, This study is certainly not perfect and does not comprehensively cover the Fixed-Term Employment Contract (PKWT) in Indonesia, therefore further research that can be done is the expansion of case studies, comparative analysis, evaluation of regulatory effectiveness, policy suggestions.

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