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Legal Certainty of Fixed-Term Employment Agreements for Tourism Workers

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Abstract

The objectives to be achieved in this study are to analyse the legal certainty of fixed-term employment agreements (PKWT) for workers in the tourism sector. The methodology employed is of a normative juridical nature, encompassing a comprehensive review of extant literature. The issues that have been identified are as follows: 1. The following questions must be addressed: firstly, how is the legal certainty regarding changes in the status of fixed-term employment agreements for workers who have passed a work period of five years? Secondly, what legal remedies can be taken by workers and labour unions who do not receive their rights? The findings of this study suggest that Law No. 6 of 2023 and PP No. 35 of 2021 have yet to establish a comprehensive regulatory framework for the work period and work status of PKWT workers. The Constitutional Court's Decision Number 168/PUU-XXI/2023, which underscores the five-year PKWT work period, has yet to offer legal clarity for PKWT workers in the event of a violation by the company. It is imperative that explicit legal regulations be established pertaining to the work status of PKWT, particularly in instances where the work period has exceeded five years. In instances where employees have not been granted their legal rights, there are several avenues of recourse available. Primarily, the resolution of disputes can be undertaken through non-litigation channels. Within this framework, four distinct methods of dispute resolution are recognised: bipartite, mediation, conciliation, and arbitration. Secondly, the utilisation of litigation channels within the purview of the industrial relations court constitutes a pivotal aspect of this mechanism.

Keywords: Legal Certainty, PKWT, Workers, Tourism

1. Introduction

The Indonesian government's commitment to addressing the challenges posed by labour regulation is indicative of its dedication to overcoming the various issues that have persisted. This event constitutes a form of legal protection that can be provided by the government as an effort to carry out the mandate stated in the 1945 Constitution of the Republic of Indonesia. According to Law No. 13/2003 on Labour, the concept of labour protection is defined as a legal guarantee that ensures the realization of justice, opportunity, and equal treatment for all individuals without discrimination on any basis. The primary objective of this legal framework is to promote thewelfare of workers and labourers, while simultaneously considering the evolving trends and developments in the business world[1].

The present regulatory framework encompasses a revised labour cluster regulation, which was formerly delineated in Law No. 13 of 2003 and is now codified in Law No. 11 of 2022 concerning Job Creation, subsequently amended by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation into Law. It is evident that the current legal framework in Indonesia is comprised of two key legislative instruments, namely Law No. 13 Year 2003 and Law No. 6 Year 2023. These legal provisions serve as the foundational basis for the relationship between employers and workers, thereby establishing a regulatory framework for the Indonesian labour system. Despite the fact that Law No. 6 of 2023 is intended to enhance domestic investment and offers a rational framework to facilitate entrepreneurship, it is imperative that its implementation also prioritises the safeguarding of workers' rights and obligations.

Among the various dynamics of regulatory changes that occur in Law No. 6 of 2023 compared to Law No. 13 of 2003, the provision regarding the working period of a Fixed-Term Employment Agreement (PKWT) is the most substantive aspect and has received attention from various parties[2]. The recent enactment of Law No. 6 Year 2023 has effected the abolition of the time limit for non-permanent contracts that was previously stipulated in Article 59 of Law No. 13 Year 2003 on Manpower. Specifically, the rights, benefits, and protection of workers are set out in greater detail in Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment[3].

Government Regulation No. 35 of 2021, Article 8, paragraph (1), states that 'Non-permanent contracts based on a period of time may be made for a maximum duration of 5 (five)

years'. Consequently, the duration of employment agreements is restricted to a maximum period of five years. In the event that the stipulated timeframe is exceeded, the legal consequence would be the termination of the work agreement, despite the continuation of work activities. In the event

[1] Muhammad Zainuddin, Saartje Sarah Alfons, Ronny Soplantila, 2023, *Implikasi Pengaturan Tenaga Kerja Asing Dalam Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja Terhadap Eksistensi Tenaga Kerja Lokal,* Pattimura Law Study Review 1, No. 2: Hal. 99.
[2] Hendra Gunawan, 2022, *Perlindungan Hukum Terhadap Pekerja Buruh Untuk Mendapatkan Upah Minimum*, Journal Justice 4, No. 2 : hal. 68.
[3] I Budiartha and N Putu, 2017, *Legal Protection for Outsourcing Workers from the Perspective of Justice Principles and Legal Certainty*, JL Pol'y & Globalization 65, no. 13: hal 61.

that the worker is retained beyond the specified period, the employment relationship is to be legally converted to an Indefinite Time Work Agreement (PKWTT).

Article 8, paragraph (2) further states that 'In the event that the PKWT period, as referred to in paragraph (1), will expire and the work carried out has not been completed, an extension of the PKWT can be made with a period in accordance with the agreement between the employer and the worker/labourer, provided that the total period of the PKWT and its extension is not more than five years.'

The absence of any mention of the regulation of changes in the status of non-permanent contracts in PP No. 35 of 2021 engenders ambiguity in the legal framework, particularly as the regulation in question still lacks legal certainty, thereby failing to provide a clear explanation of the position of non-permanent workers. This mechanism underscores a foundation that merits consideration by the government in order to strengthen the position of non-permanent workers.

The issue of the urgency of regulating non-permanent contracts is a matter of concern for workers in the tourism sector. In accordance with Article 18 of Law No. 10/2009 on Tourism (hereinafter referred to as Law No. 10/2009), the priority of workers in tourist destinations is emphasised. However, the PKWT work mechanism is an effort to provide certainty for tourism workers to protect their right to obtain employment. The issue of the establishment of Law No. 6 of 2023 is anticipated to facilitate legal certainty for non-permanent workers, a mechanism that is expected to be endorsed by the government. However, in reality, there are still many vague norms that occur which cause problems for non-permanent workers, especially in the tourism sector.

2. Problem Formulation & Method Research

In consideration of the aforementioned explanation of the phenomenon, the problem formulation in this study is as follows:

1. The present study seeks to examine the legal certainty surrounding the modification of the status of a fixed-term employment agreement for workers who have surpassed the five-year working period.
2. In what manner may legal recourse be pursued by workers and trade unions in instances where their rights have been violated?

This research method is a process that involves meticulous consideration and thoroughness in order to achieve a specific objective. It encompasses activities such as writing, searching,

compiling, analysing and formulating, which are undertaken until a comprehensive report is produced.

This research is of a normative juridical nature. Normative juridical research is a research method that aims to identify and analyse legal norms, legal principles, and relevant legal doctrines in order to answer legal issues that become the object of study. The present study focuses on the analysis of legal materials, both primary and secondary, provided that said materials contain legal norms. The present study employs a dual approach, incorporating both a statute-based and an analytical framework.

3. Analysis and Discussion

3.1. Legal Theories and Concepts

3.1.1. Legal Certainty Theory

Legal certainty is one of the main objectives in the legal system that aims to realise justice[4]. The concrete form of legal certainty is the implementation or enforcement of the law against an action regardless of who did it. With legal certainty, every individual in Indonesia can be held accountable for all their actions. Legal certainty aims to realise the principle of equality before the law without discrimination.

Legal certainty, according to Peter Mahmud Marzuki, is a concrete manifestation of the rule of law reflected in both written and unwritten form, which contains general norms that serve as guidelines for every individual in acting in society. The regulation sets limits and becomes a reference for the community in taking action against other parties. The implementation and existence of these regulations is a form of legal certainty[5].

According to Lon Fuller in his book entitled The Morality of Law, there are several principles that must be fulfilled by law, so that if they are not fulfilled, thus, a legal system cannot be called law if there is no legal certainty in it. In other words, legal certainty is an essential element in the legal system itself. The eight principles in question are as follows[6] :

1) A legal system consisting of regulations must be based on consistent norms, not on erroneous decisions for certain problems;
2) The rules should be publicised to the public in an open manner;

[4] Sutrisno, Fenty Puluhulawa, and Lusiana Margareth Tijow, 2020, *Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi*, Gorontalo Law Review 3, no. 2, hal. 168.
[5] Peter Mahmud Marzuki, 2008, *"Pengantar Ilmu Hukum"*, Jakarta, Kencana, hal. 158.
[6] Lon Fuller, 1963, *The Morality of Law Revised Edition*, London, Yale University Press, hal. 54-59.

3) The rules should not be retroactive, as this may undermine the integrity of the legal system as a whole;
4) Regulations must be formulated in a way that is easily understood by the general public;
5) There should be no regulations that contradict each other;
6) Regulations should not require actions that exceed existing capacities or capabilities;
7) Regulations should not undergo frequent changes;
8) There should be harmony between the regulations set and their implementation in daily practice.

3.1.2. Theory of Legal Protection

Legal protection is a form of guarantee against human rights violated by other parties, which is given so that people can fully enjoy the rights guaranteed by law. In other words, legal protection includes various juridical efforts that must be carried out by law enforcement officials to ensure a sense of security, both psychologically and physically, from various forms of disturbances and threats originating from any party[7].

Hadjon argues that legal protection is the protection of human dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness, which is based on Pancasila and the concept of the rule of law[8]. Hadjon defines legal protection as a collection of rules or rules that will protect one thing from another. The form of legal protection for the people includes two things, namely preventive legal protection and repressive legal protection. Preventive legal protection is a form of legal protection where people are given the opportunity to submit objections or opinions before a government decision gets a definitive form, while repressive legal protection is a form of legal protection which is more shown in dispute resolution[9].

3.1.3. Legal Utilities Theory

It is the contention of this paper that the law should be capable of providing benefits to society, as was proposed by Jeremy Bentham in his theory of Utilitarianism. In this view, the law should be directed towards the creation of benefits or happiness for individuals and society in its entirety. In the event that the benefits are not accessible to the entire community, it is imperative that the majority of individuals are able to experience them. The significance of expediency in

[7] I Gusti Bagus Suryawan, 2020, *Hak Pekerja Dalam Perjanjian Kerja Waktu Tertentu (Pkwt) Pasca Diundangkannya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja,* Jurnal Kertha Negara 10, no. 4 : hal. 394.
[8] Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya, Bina Ilmu, hal. 25.
[9] Philipus M. Hadjon, 2007, *Perlindungan Hukum Bagi Rakyat Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi*, Surabaya Peradaban, hal. 39.

legal contexts is predicated on the notion that individual well-being is inextricably linked to the collective well-being of the community. Utilitarianism is predicated on the notion that every action, including legal policy, ought to be evaluated based on the benefits it engenders compared to the burden or harm it imposes on society[10].

In order to ensure that the benefits and happiness of society are available to all its members, it is necessary to limit the pursuit of happiness by individuals, thus preventing any potential conflicts of interest. However, in such circumstances, the function of law as a guide becomes paramount, ensuring that the limits applied are clearly defined and preventing an overreach of authority by the government over society.

The Utility Theory of Law is a theoretical framework that aims to explain the role and function of law within society. It is a legal positivist theory that posits that the purpose of law is to serve as a tool to promote societal utility. This theory is often critiqued by legal scholars for its focus on utilitarianism as the primary metric for legal decisions, which some argue is too narrow a focus on individual benefits and disregards broader societal interests.

In his philosophical treatise, Jeremy Bentham posits the notion that human beings have been endowed by nature with a condition characterised by three elements: power, suffering, and pleasure. The existence of pleasure and suffering gives rise to the development of various ideas, views, and conditions of life that are influenced by these. Those who endeavour to liberate themselves from these influences may not fully comprehend the nature of the endeavour. The fundamental objective of these individuals is to pursue pleasure and evade suffering.

For these individuals, the concept of good is synonymous with happiness, while evil is equated with suffering. A close relationship exists between the concepts of good and evil, as well as happiness and suffering. The fundamental purpose of law is to preserve what is considered to be good and to prevent what is considered to be evil, with the ultimate goal of maintaining expediency.

Bentham's philosophical standpoint is fundamentally underpinned by a profound concern for the individual. He advanced the argument that the primary responsibility of the law is to ensure the happiness of individuals, prior to addressing the broader welfare of society. Nevertheless, Bentham did not repudiate the significance of societal interests, which must also be given due consideration. In order to avoid conflict, it is recommended that individual interests in the pursuit

[10] Jeremy Bentham, 1907, *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press.

of happiness be limited. In the absence of such constraints, the principle that "man is a wolf to his fellow man" (or homo homini lupus, as the Latin expression translates) might be realised.

3.2. The arrangement of a specified time work agreement

3.2.1. The arrangement of a specified time work agreement is to be conducted in accordance with Law No. 6 of 2023 on Job Creation

With regard to the attainment of welfare, there exists a legal framework that serves as a reference point for the representation of labour rights, namely Law No. 6 of 2023, which places emphasis on economic growth and investment. Nevertheless, the regulation remains a contentious issue, primarily due to the numerous disadvantages engendered by Law No. 6 of 2023, which appears to be disadvantageous to workers.

One of the issues under discussion is that of Fixed-Term Employment Agreements (PKWT). The regulation of non-permanent contracts was formerly governed by Law No. 13 of 2003, which stipulated that such contracts could only be extended for a maximum duration of two years, and no more than one year.

This mechanism underscores the fact that workers are permitted to engage in PKWT for a maximum duration of three years.

The transition arrangement from PKWT to PKWTT after workers have completed five years of service underscores the need for a comprehensive legal framework to protect workers and ensure company compliance.

The establishment of legal frameworks and effective stakeholder collaboration within the labour sector is imperative to address ambiguities and ensure the effective enforcement of regulations. This, in turn, is essential for the creation of a fair and harmonious working environment within the company.

It is imperative to provide clarity on the duration of the working period and how the working status of non-permanent workers changes when carrying out their work. This is particularly important because non-permanent workers must consider the certainty of their career path in the future. Article 56 paragraph (3) of Law No. 6 of 2023 has not been able to provide significant legal certainty for non-permanent workers because there is no clear and definite regulation on the maximum length of the working period for non-permanent workers. This has not yet engendered sufficient legal certainty to protect the rights of non-permanent workers. In the

absence of a clearly defined timeframe, it becomes challenging to ascertain the precise career trajectory that will be followed in the future.

Article 56 paragraph (3) of Law No. 6 of 2023 has not been able to provide significant legal certainty for non-permanent workers because there is no clear and definite regulation on the maximum length of the working period for non-permanent workers. This has not yet engendered sufficient legal certainty to protect the rights of non-permanent workers. In the absence of a clearly defined timeframe, it becomes challenging to ascertain the precise career trajectory that will be followed in the future.

Another significant challenge for the status of outsourced workers is the dissolution of Article 65 in Law No. 13/2003. Article 65 of Law No. 13/2003 explicitly delineates the provisions pertaining to outsourced workers, encompassing duration, workers' rights, and sanctions for employers who contravene these provisions. The purpose of this is to protect the labour force and provide legal security in the employment relationship. The abolition of this article will result in the deregulation of outsourced workers, as the limitations that have been designed to protect their rights and certainties will be removed.

3.2.2. The arrangement of the Specified Time Work Agreement is set out in the Constitutional Court Decision Number 168/PUU-XXI/2023

The repercussions of Constitutional Court Decision Number 168/PUU-XXI/2023 on the realms of labour, justice and welfare, as delineated in Law No. 6 of 2023, remain ambiguous. A series of amendments were made to articles in Constitutional Court Decision No. 168/PUU-XXI/2023, involving the alteration of articles or the separation of regulations for the labour cluster from Law No. 6 of 2023.

As outlined in the PKWT specification, workers are employed in non-main roles. Consequently, PKWT workers are only permitted to undertake non-main tasks that are not associated with the company's primary business activities. It is evident that the primary objective of this regulation is to underscore the significance of prioritising the role of permanent employees in assuming the primary responsibilities within the organisational structure.

The efforts made in Constitutional Court Decision No. 168/PUU-XXI/2023 underscore the clear distinction between non-permanent workers, non-permanent workers and outsourcing, which should not be equated. This mechanism also highlights the significance of the tourism sector, wherein non-permanent workers are often permitted to engage in roles that do not constitute the

primary function of the company. These roles may include security guards, gardeners, bellboys, drivers, and cleaning services. This is particularly evident in regional tourism companies, such as hotels, restaurants, and travel agents.

The Constitutional Court's decision in Case No. 168/PUU-XXI/2023 establishes legal certainty for non-permanent workers whose employment duration is limited to a maximum of five years. Consequently, non-permanent workers are protected from unilateral dismissal without a valid reason and are subject to a defined working time limit. Consequently, the existence of this decision serves as a means to mitigate losses incurred by workers. The Constitutional Court's decision in Case No. 168/PUU-XXI/2023 has resulted in amendments and adjustments to various provisions, which have been found to disadvantage workers previously regulated under Law No. 6 of 2023.

The affirmation of Constitutional Court Decision No. 168/PUU-XXI/2023 also contributes to the mandatory writing of employment agreements in writing. This mechanism underscores the necessity for achieving transparency between workers and companies, thereby ensuring workers' certainty. In the event of a written agreement being in place, it is possible to ensure that all forms of rights and obligations are carried out to the maximum extent and with greater certainty. This is done in order to achieve a satisfactory working status and to ensure clearer fulfilment of rights. It is imperative that the government allocates sufficient attention to this issue. In the event of the implementation of this regulation, it is evident that it will not function optimally in the absence of evaluation or strict supervision from the government. The position of workers is inherently vulnerable, rendering them susceptible to disadvantage.

3.2.3. Legal Certainty for Fixed-Term Contract Workers After Passing the Five-Year Work Period

Non-permanent workers who have been employed for a period exceeding five years cannot be extended and must be dismissed. This mechanism is referred to as Constitutional Court Decision No. 168/PUU-XXI/2023, which was issued subsequent to a review of Law No. 6 of 2023. The rationale behind the incompatibility of PKWT contracts with the PKWT arrangement is that the former contravenes the rules that are intrinsic to the latter. Moreover, the extension will result in the abrogation of workers' rights and the absence of legal certainty.

However, a new problem arises when faced with a five-year working period in which the worker has not been able to complete the work. This mechanism underscores the regulations that

stipulate the grounds for dismissal by the company for employees who have been in service for a period of five years. This principle remains consistent irrespective of the state of completion of the work, as the agreement is predicated on the initial work agreement that has become the reference point.

Consequently, even in instances where the work has not been fully completed, the regulations stipulate that it must be terminated. This provision serves to ensure legal certainty for workers. In the event that PKWT workers are requested to continue their duties beyond a five-year period of service, it is imperative that their employment status is formally transitioned to that of an Indefinite Time Work Agreement (PKWTT) in accordance with prevailing legislation. This signifies that the worker cannot be unilaterally dismissed without a valid reason.[11] A work agreement is one of the attachments that can be established between workers and companies, and this attachment can concern the mechanism of work, wages and orders. This work agreement is a form of legal certainty that serves to strengthen the position of workers, enabling them to continue carrying out their work even in instances where the work has not been completed and must be stopped. This is due to the fact that, in the event that work is continued, it has the potential to result in losses for workers and profits for the company. This is due to the fact that the company does not fulfil the provisions of the law that guarantee the rights of workers who have been employed for more than five years. This also underscores the company's policy of implementing all legal- based initiatives to the greatest extent feasible. Furthermore, the company is obliged to meticulously plan the work in order to facilitate the seamless transition of responsibility to another party upon the completion of the work agreement.

In reference to the aforementioned phenomenon, an analysis can be conducted by employing the theoretical framework of legal certainty. The Constitutional Court Decision Number 168 / PUU-XXI / 2023, which underscores the five-year tenure and the non-extendability of the same, can be regarded as a manifestation of legal certainty. In accordance with the principles articulated by Lon L. Fuller, the fulfillment of these criteria is imperative to ensure that the law is not deemed unsuccessful in fulfilling its function. The following principles can be outlined as follows[12]:

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[11] MKRI.ID,*Pengaturan PKWT hanya untuk jenis dan sifat pekerjaan yang selesai dalam waktu tertentu*, https://www.mkri.id/index.php?page=web.Berita&id=21783&menu=2. Diakses Pada 1 Februari 2025.

[12] Rakhmat Akbar, 2024, *Pengembalian Kerugian Keuangan Negara Tanpa Pertanggungjawaban Pidana Melalui Lembaga Aparat Pengawas Internal Pemerintah (APIP)*, Jurnal Kewarganegaraan 8, no. 1, hal. 1048.

Firstly, the legal system places emphasis on regulations that are not based on decisions that are considered to be misguided. In this regard, it is imperative that all updated regulations are adhered to with the requisite rigour. Secondly, it is imperative that regulations are promulgated to the public in a manner that is comprehensible to workers. This can be achieved through a process of socialisation, thereby ensuring that individuals are aware of their entitlements.

Thirdly, it underscores the necessity for alterations to regulations that are considered to be of a permanent nature. In this particular labour cluster, there have been numerous amendments to the regulations due to the absence of adequate rights for workers[13]. However, following the identification of a mechanism that is capable of providing legal certainty for workers, the regulation should not be subject to facile modification so as to ensure that workers retain their rights. Fourthly, the formulation must be comprehensible. This is emphasised in various forms of regulation, with the objective being to ensure that the public is not ensnared by multi-interpretive legal clauses. In the fifth instance, the regulations are not in direct opposition to each other, thereby ensuring legal certainty for workers. Sixthly, there is a necessity for congruence between the established regulations and the prevailing practices. This underscores the necessity for a congruence between evaluation and supervision, thereby ensuring that companies are able to fulfil their obligations. Furthermore, it is evident that workers are frequently the subjects of disadvantage. Consequently, there is a necessity for evaluation and control mechanisms to ensure the effective implementation of regulations.

Nonetheless, in instances where prevailing regulations are not aligned with established practices within the industry, employees have the option to approach their trade union. In such scenarios, the trade union assumes a pivotal role in articulating and addressing the concerns of workers confronted with challenges. It is therefore vital that there is optimal communication between employers and trade unions, so that they can function in a harmonious and efficient manner. This is in accordance with the objectives of the establishment of trade unions, as set out in Article 4 paragraph (1) of Law No. 21 of 2000, which states that:

In the first instance, it is vital to ensure the protection of workers. In this regard, trade unions must be able to accommodate the full range of aspirations expressed by workers when their

[13] Mega Wulandari, M Syifa Fauzi Yulianis, 2023, *Perlindungan Hukum Bagi Pekerja Terhadap Perjanjian Kerja Waktu Tertentu (PKWT) 'Kajian Yuridis Putusan Mahkamah Konstitusi Nomor: 7/Puu-Xii/2014*, Syariah : Jurnal Ilmu Hukum 1, no. 1, hal. 191.

rights are not being fully upheld.[14] The realisation of this objective is contingent upon the establishment of a dialogue with the company in question, with the overarching aim of ensuring that the rights of workers are duly upheld. Secondly, it emphasises the defence of workers' rights and interests, in which case trade unions are at the forefront when workers are denied their rights. This is particularly pertinent in the context of non-permanent workers, who are susceptible to the terms of labour agreements and the unfulfillment of their rights. The presence of trade unions is crucial in ensuring the protection of workers' rights. Thirdly, enhancing the welfare of workers is imperative. In this regard, the various actions undertaken must culminate in the creation of a conducive environment that facilitates the realisation of their fundamental rights.

It can be concluded from the various explanations that have been conveyed that the PKWT working period cannot be extended, despite the existence of unfinished work. This underscores the company's commitment to meticulously planning a suitable work mechanism, thereby ensuring the seamless implementation of established regulations.

3.2.4. Rights and Obligations of PKWT Workers

Every citizen basically has the desire to live and work well in order to achieve a prosperous life. A prosperous life is the right of every individual. Every right comes from an obligation, so every citizen has a responsibility to realize a prosperous life. The 1945 Constitution of the Republic of Indonesia outlines that one of the main goals of the Republic of Indonesia is to create a just and prosperous national and state life in order to achieve social justice, and to ensure that all Indonesian people get decent work and a living. Strictly speaking, a prosperous life is achieved by fulfilling obligations as workers.

PP No. 35 of 2021 stipulates that workers with PKWT have the right to receive wages, leave, rest time, and Religious Holiday Allowances. To obtain these rights, PKWT workers must carry out their obligations in accordance with the provisions stated in the agreement.

Some of the obligations of PKWT workers include completing work with full responsibility, complying with applicable regulations, and maintaining company confidentiality. It should be noted that PKWT only applies to work that can be completed within a certain time. Workers bound by a PKWT contract do not need to undergo a trial period (probation). If a trial

[14] Muhammad Wildan, 2020, *Perlindungan Hukum Tenaga Kerja Kontrak Dalam Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan*, Jurnal Hukum Khaira Ummah 15, no. 6, hal. 68.

period is applied, the status of the worker's contract is legally void and changes to PKWTT (Indefinite Term Employment Agreement). If an employee extends the PKWT contract, compensation money will be given after the previous agreement ends. Furthermore, compensation money will be given back after the PKWT contract extension period is completed or ends.

All forms of rights received by workers are included in the legal protection mechanism contained in the Law. The concept of legal protection encompasses two fundamental principles: the respect for dignity and the recognition of human rights owned by legal entities. These principles are based on provisions of laws and regulations that aim to protect against authoritarian actions. Alternatively, legal protection can be defined as a set of rules designed to protect the legal entity from various sources. In Indonesia, the legal protection mechanism is fundamentally based on the principles of the Five Principles of the United Nations (UN), although the formulation of the concept is influenced by Western ideology that prioritises the protection of human rights. It is evident that the fundamental basis for the principle of legal protection for workers in Indonesia is predicated on the imperative to safeguard human dignity and respect.

The laws and regulations that govern the employment sector are characterised by a dual nature, encompassing both private and public dimensions. The private character is reflected in the individual legal relationship between workers and employers, who are bound by an employment agreement. Conversely, the public character is manifested through state intervention in the regulation of specific aspects of the employment relationship, including wage policies and termination mechanisms, with a view to safeguarding the public interest[15].

The right to adequate income, which is necessary for the enjoyment of a decent life for the individual and their dependants[16], is entrenched in the constitution. In order to guarantee these rights, the state, through wage policies, establishes legal instruments aimed at protecting workers or labourers so that they obtain income that is in accordance with a decent standard of living.

3.2.5. The nature of disputes between PKWT workers and companies in the tourism sector

It is evident that contentious issues frequently arise from the discord between workers and companies. This is primarily due to the perception that companies hold a superior position over their employees, thereby exerting undue pressure on the latter to fulfil economic imperatives. This

[15] Alwi Madjid Muttaqien and Haidan Angga Kusumah, 2024,*Mekanisme Perlindungan Hukum Bagi Perempuan Pekerja Hiburan Malam Korban Kekerasan Seksual Di Kota Sukabumi*, 17 no. 02, hal. 50.
[16] Ida Hanifah, 2020, *Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum,* Jurnal Legislasi Indonesia 17, no. 2, hal. 193.

phenomenon is a contributing factor to the erosion of employee rights, with companies leveraging their influence to circumvent their responsibilities.[17]

A pertinent antecedent in this regard pertains to the episode concerning the Federation of Independent Workers Unions (FSPM) Bali, which accorded due consideration to the termination of employment (PHK) by PT Hotel Indonesia Natour (HIN) against 380 workers at the Grand Inna Bali Beach Hotel. The workers assumed that the termination of their employment was carried out unilaterally and was not in accordance with the applicable labour law provisions, especially those related to the termination of employment procedures as regulated in laws and regulations. In response to this, the workers filed a complaint with the union to obtain legal assistance to fight for their rights and legal certainty to protect their employment relationships.

This mechanism is particularly susceptible to the experiences of PKWT workers, whose status as non-permanent employees often results in the suboptimal implementation of their rights, despite carrying out equivalent workloads to their permanent counterparts[18]. This has resulted in numerous losses, which in turn have led to disputes with the company. The various disputes include the following:

1. A divergence of opinion exists between workers and employers.
2. Dispute arising from discrepancies in terms of wage provision in the context of industrial relations.
3. Termination of employment of an individual without recourse to prior consultation.

The following discourse will examine the legal remedies available to workers and trade unions who have been deprived of their rights.

3.2.6. A discussion of legal remedies for workers who do not receive their rights.

In accordance with the stipulations outlined in Article 61 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 as Law, which amends the provisions of Article 61 of Law Number 13 of 2003 concerning Manpower, it is stated that the employment relationship is to be considered as having reached its conclusion in the following circumstances:

1) The worker/laborer dies;

[17] Equino Mikael Makadolang, Ronny Adrie Maramis, Lendy Siar, 2024, *Perlindungan Hukum Terhadap Pekerja Pada Perjanjian Kerja Waktu Tertentu (Pkwt) Yang Di Berhentikan Sebelum Waktunya*, Lex Privatum 13, no. 3, hal. 4.
[18] Budhiarta, *Op. Cit*. 73.

2) Termination of the mutually agreed upon period of work.

3) The conclusion of tasks that are either unique or specific in nature.

4) A court decision that is legally binding and/or a decision that has been reached through the process of industrial relations dispute resolution.

The fifth point pertains to a decision made by an authorised institution that possesses permanent legal force.

6) The existence of specific circumstances or events stipulated in the work agreement, company regulations, or collective work agreement, which have the potential to result in the termination of the employment relationship.

In accordance with the aforementioned provisions, the termination of an employment agreement may be attributable to the expiration of the agreed term or the fulfilment of a specific task. In the context of PKWT, the agreement may be terminated by the expiration of the employment agreement term or the completion of a specified project.

Upon the termination of an employment relationship, a fundamental question arises in relation to the legal protection afforded to workers. This issue arises due to the termination of the employment agreement, which naturally gives rise to concerns regarding the legal safeguards available to workers in such circumstances. It is evident that this subject is worthy of discussion, given the recent changes that have transpired since the enactment of Law No. 6 of 2023, in conjunction with PP No. 35 of 2021. The following categories of industrial disputes are to be considered[19]:

1. Rights disputes are those that arise due to the non-fulfilment of rights, which can result from discrepancies in the implementation or interpretation of legal provisions, employment agreements, company regulations, or joint work agreements.

2. Disputes of interest are those that arise in employment relationships due to the absence of consensus on the establishment and/or modifications to the terms of employment stipulated in the employment agreement, company regulations, or joint work agreements.

3. Disputes pertaining to the termination of employment arise from a lack of consensus between the parties regarding the cessation of their employment relationship.

[19] Naufal Munawaroh, Hukumonline.com, *3 mekanisme penyelesaian perselisihan hubungan industrial,* https://www.hukumonline.com/klinik/a/3-mekanisme-penyelesaian-perselisihan-hubungan-industrial-lt4b82643d06be9/. Diakses pada 1 Februari 2025.

4. Disputes over termination between trade unions are disputes between trade unions/labor unions in one company due to differences of opinion regarding membership, implementation of rights, and obligations of the trade union.

In instances where workers and unions have not been granted their rights, the following measures may be employed:

The following point is to be considered: The following section outlines the non-litigation path.

The non-litigation path is an attempt to resolve disputes outside of the courts. The primary objective is to achieve a mutually beneficial agreement between workers/unions and employers. The following are some of the most common methods:

The first point to consider is the bipartite nature of the issue.

This mechanism constitutes the initial phase in the resolution of disputes, wherein workers and companies engage in dialogue to achieve a consensus. The objective of bipartite efforts is to achieve amicable resolution through the process of compromise, facilitated by discussions between the parties involved in the dispute. This is particularly relevant in instances of disagreement concerning the rights of workers and employers. The aim is to identify a solution that offers benefits to all parties, thereby facilitating a mutually acceptable outcome[20]. In accordance with the provisions stipulated in the bipartite agreement, the stipulated deadline for the settlement is 30 days, with no provision for extension.

In the event of bipartite negotiations reaching an impasse, one or both parties are required to register their dispute with the designated agency for local employment. This registration process must be accompanied by substantiating evidence, which attests to the efforts undertaken to resolve the dispute through bipartite negotiations. Following the receipt of registration from one or both parties, the local agency responsible for the field of employment is obliged to offer the parties the option of choosing a resolution through conciliation or arbitration. In the event that the parties concerned fail to reach an agreement on the selection of a resolution through conciliation or arbitration within a period of seven working days, the responsibility for resolving the dispute is transferred to a mediator, with this process applicable to all four categories of dispute.

[20] Adnan Hamid, Jln Srengseng Sawah, and Jakarta Selatan, 2021, *Arbitrase Sebagai Alternatif Dalam Penyelesaian Sengketa Perburuhan (Arbitration as an Alternative Dispute Resolution on Industrial Relations),* Jurnal Legal Reasoning 3, no. 2, hal. 116.

Secondly, the process of mediation is to be considered.

The process of mediation is initiated with the aim of resolving disputes by involving the various parties involved[21]. In this particular instance, the fulfilment of the agreement must be carried out with the aforementioned parties. This option has been designed to ensure that all disputes are resolved without the need for intervention by industrial court institutions. This underscores the stipulations outlined in Article 15 of Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes (hereinafter abbreviated as Law No. 2 of 2004), which stipulates that the mediator is obligated to resolve the conflict within a maximum duration of 30 working days. This forum serves as a platform for workers, labour unions and companies to explore effective strategies for the fulfilment of workers' rights that have not been realised[22]. This approach is likely to be mutually beneficial, obviating the need to resort to legal proceedings for dispute resolution. Furthermore, it is anticipated that this will expedite the dispute resolution process.

Mediation is regarded as a solution that facilitates ease and practicality, whilst optimising the use of time and costs. Mediation is defined as a comprehensive dispute resolution mechanism (Smith, 2019) that is designed to handle the four categories of industrial relations disputes. In contrast to arbitration or conciliation, which do not accommodate the entire spectrum of the dispute, mediation is a more inclusive process. Article 8 of Law No. 2 of 2004 stipulates that "Dispute resolution through mediation is to be conducted by mediators situated within the offices of the agency that is responsible for the field of employment in the district/city." Given the aforementioned advantages, it can be posited that mediation should serve as an effective modus operandi for the resolution of labour disputes.

The third point for consideration is that of conciliation.

In accordance with the provisions that are applicable in this case, the parties concerned are required to submit a written request for dispute resolution to the conciliator who has been appointed and mutually agreed upon. In the event that an agreement has been reached through the conciliation mechanism, the parties concerned are obliged to draw up a joint agreement, which must then be registered at the Industrial Relations Court of the District Court that has jurisdiction over their respective jurisdictions. This process results in the production of a valid deed of

[21] M. Sohibi, 2023, *Penyelesaian Sengketa Gadai Syariah Atas Jaminan Barang Gadai Syariah*, Indonesia Berdaya 4, no. 4, hal. 1453.
[22] Jimm Sembiring, 2011, *Cara Menyelesaikan Sengketa Di Luar Pengadilan*, Visi Media Jakarta, hal. 73.

registration evidence[23]. The parties concerned are obliged to submit a written request for dispute resolution to the conciliator who has been appointed and agreed upon. In the event that an agreement is reached through the conciliation mechanism, a joint agreement will be drawn up[24]. This agreement must then be registered at the Industrial Relations Court of the District Court that has jurisdiction over the parties in question. This will result in a valid deed of registration evidence being produced. However, should an agreement not be reached, the conciliator will issue a written recommendation, which must receive a response from the parties, stating their agreement or rejection. In the event that the parties concerned reach a consensus on the recommendation, a joint agreement will be formulated and subsequently registered with the Industrial Relations Court. In the event that one of the parties fails to implement the joint agreement, the injured party is entitled to file an execution application.

The fourth point for consideration is that of arbitration.

Arbitration can be defined as a dispute resolution mechanism that is situated outside of the courtroom, particularly within the domain of industrial relations. Its primary function is to adjudicate disputes of interest and conflicts that arise between labour unions within a corporate entity. Settlement through arbitration is carried out on the basis of a written agreement, whereby the parties agree to submit the dispute that arises to the arbitrator. The arbitration decision is regarded as final and binding on all parties, and the arbitrator is selected independently by the parties from a list determined by BANI (Indonesian National Arbitration Board) [25].

b) The following essay will provide a comprehensive overview of the litigation process.

Should the non-litigation path prove unsuccessful, workers or labour unions may resort to litigation through the industrial relations court. The Industrial Relations Court (IRC) is a judicial institution that specifically handles disputes between workers (or labour unions) and employers[26]. The litigation path at PHI is a step that is taken when non-litigation dispute resolution efforts are unsuccessful. The Industrial Relations Court was established in accordance with Law No. 2 of

[23] Joni, Emirzon, 2001, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan : Negosiasi, Mediasi, Konsiliasi Dan Arbitrase*, Gramedia, Jakarta, hal. 28.
[24] Endang Hardian, 2022, *Penyelesaian Sengketa Melalui Perdamaian Pada Sistem Peradilan Perdata Sebagai Penyelesaian Rasa Keadilan Di Indonesia*, Depok, Rajawali Press, hal. 43.
[25] Harahap, M. Yahya, 2006, *Arbitrase*, Sinar Grafika, Jakarta, hal. 17.
[26] Pangaribuan Juanda, 2010, *Tuntunan Praktis : Penyelesaian Perselisihan Hubungan Industrial Edisi Revisi*, Bumi Aksara, Jakarta, hal. 12.

2004[27]. It is evident that the PHI is endowed with the authority to adjudicate a wide range of disputes pertaining to employment relations. A lawsuit to the Industrial Relations Court is an available course of action, which may be pursued by initiating legal proceedings through the Industrial Relations Court. This course of action is available to the party who rejects the recommendation of the conciliator and/or mediator. The remit of the Industrial Relations Court is to adjudicate industrial relations disputes that occur, including disputes over layoffs, and to accept applications and execute the violated Joint Agreement[28].

The litigation path in the Industrial Relations Court is a significant step for workers and unions to pursue the enforcement of their rights. Notwithstanding the challenges associated with this process, including time-consuming and costly constraints, it offers legal certainty and the prospect of attaining justice. It is therefore imperative for workers and trade unions to comprehend this process and prepare themselves thoroughly prior to initiating legal action.

4. Conclusion

In light of the findings from the research and deliberations that have been outlined, the following conclusions can be drawn: 1. It is vital to establish legal certainty regarding any changes to the status of fixed-term employment agreements for workers who have completed a work period of five years. This is in accordance with the Constitutional Court Decision Number 168/PUU-XXI/2023, which states that the period for completion of a certain job is no longer than five years, including in cases of an extension. Previously, in Law No. 6 of 2023 concerning Job Creation and in PP No. 35 of 2021 concerning the period of the PKWT work period regarding "the completion of a certain job" did not have a clear limitation on the work period and was only based on the agreement of the parties. The Constitutional Court's Decision Number 168/PUU-XXI/2023 stipulates that the employment term for PKWT workers is five years, including any extensions. However, this ruling still fails to provide a definitive legal framework for PKWT workers, as it merely addresses the duration of employment and does not explicitly regulate the status of PKWT workers in the event of a violation by the company regarding the working time limit for PKWT

[27] Lilik Mulyadi, 2011,*Penyelesaian Perkara Pengadilan Hubungan Industrial Dalam Teori Dan Praktik*, PT. Alumni, Bandung, hal. 16.
[28] Dela Feby, 2007, *Praktek Pengadilan Hubungan Industrial : Panduan Bagi Serikat Buruh,* Trade Union Right Centre, Jakarta, hal. 19.

workers, which is also five years, and the status of PKWT workers. This is related to the principles that must be fulfilled by law so that there is legal certainty in the law itself.

Firstly, the legal system places emphasis on regulations that are not founded on decisions that are regarded as misguided. In this regard, all updated regulations must be adhered to strictly.

Secondly, it is imperative that regulations are promulgated to the public in a manner that is comprehensible to workers. This can be achieved through socialisation, thereby ensuring that the public is aware of their entitlements.

Thirdly, emphasis should be placed on alterations to regulations that should not be readily altered. In this employment cluster, there have been numerous amendments to regulations due to the lack of conformity of rights for workers. However, following the identification of a mechanism that is capable of providing legal certainty for workers, the regulations should not be subject to facile modification so as to ensure the continued enjoyment of their rights by workers.

Fourthly, the formulation must be comprehensible. It is evident that all forms of regulations emphasise various formulations that are easy to understand, with the hope that the public will not be trapped in multi-interpretable legal clauses.

The fifth point to consider is that the regulations do not contradict each other insofar as this emphasises legal certainty for workers.

Sixthly, there is a demonstrable level of congruence between the regulations in place and the practices that characterise everyday life. This underscores the necessity for a harmonious balance between evaluation and supervision, thereby ensuring that companies are able to fulfil their obligations. Furthermore, workers are the parties who are always disadvantaged. Consequently, evaluation and control measures are imperative to ensure the effective implementation of regulatory frameworks.

2. In the event of workers' rights being violated, there are several legal avenues available to them and companies alike. These include non-litigation and litigation, which are legal efforts aimed at obtaining legal certainty and protection against disputes arising from applicable law. In accordance with Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, there are several stages and mechanisms for resolving industrial relations disputes. The resolution of disputes is achieved through the process of bipartite negotiations. In this particular mechanism, it represents the primary step and is one which the company and its workforce must undertake in order to resolve any disputes that may arise. The company and its workforce engage

in internal discussions through deliberation with the objective of achieving a consensus. Moreover, the mechanism in question encompasses a tripartite series of negotiations, encompassing a variety of actions, including but not limited to mediation, conciliation, and arbitration. In conclusion, it should be noted that the initiation of legal proceedings in the Industrial Relations Court can be a viable course of action in such cases. The court has the authority to impose sanctions on parties who reject the recommendations of the mediator and conciliator. In such instances, the aggrieved party has the option to file a lawsuit with the Industrial Relations Court, invoking the provisions that are deemed applicable in such circumstances.

5. Recommendations

The following recommendations are posited in this study: firstly, the government should periodically/routinely supervise and socialise labour law directly with companies. It is imperative to conduct observations on the manner in which the implementation of applicable labour law regulations is congruent with the implementation of existing regulations within the company. It is incumbent upon the Company to ensure that it complies with all applicable labour legislation without seeking to exploit legal loopholes that could result in harm to or the reduction of workers' rights. It is imperative that workers and labourers be more proactive in acquiring knowledge regarding applicable labour legislation and in offering input and suggestions to the company in a bipartite manner (deliberation to reach consensus) in instances where company policies are not in accordance with applicable labour law regulations.

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