
CHANGES IN THE STATUS OF CERTAIN TIME WORK AGREEMENT INTO UNSPECIFIC TIME WORK AGREEMENT AFTER GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION

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ABSTRACT

KEYWORDS
PKWT; PKWTT;
government regulation

The enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation removes the derivative regulatory provisions of Law Number 11 of 2020 concerning Job Creation related to the Employment cluster. The change in status of a Fixed Time Work Agreement (PKWT) to an Unspecified Time Work Agreement (PKWTT) is regulated by Law Number 13 of 2003 concerning Manpower which generally regulates violations of work agreements in writing and in Indonesian language as a minimum and extension of work agreements, the period of the work agreement can change the status of PKWT to PKWTT. The aims are; (1) analyze and explain the implementation of PKWT to become PKWTT before the Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation and Law Number 11 of 2020 concerning Job Creation come into effect, and (2) analyze and explain the change in PKWT status to PKWTT after the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation came into effect. This legal research is Normative/ Doctrinal Research. The results show provisions for changing PKWT to PKWTT are important because it relates to how workers have clarity in carrying out the daily work given by employers. Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation does not yet have derivative regulations and vacate the provisions of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment.

INTRODUCTION

In the economic development of each country, the government continues to strive to improve people's welfare in various aspects. This development also involves the participation of each company because companies always have a big influence on the world of business and business so that it affects the economic progress of everyone in it. In addition to seeking profit, the company also involves the lives of the people it employs, thus workers depend on the company for their economic life. Indonesia has workers and a very large work force, the condition of supplying labor of varying quality causes differences in wages which can become problems in employment (Budiono, 1995). However, economic expansion cannot be separated from legal development so that all elements within the state are involved (Shalihah, 2017).

In carrying out work relations, workers always have industrial relations with the company, where the company is represented by the organs driving the company to deal directly with the workforce. The workforce itself is divided into a Work Agreement for a Specific Time and a Work Agreement for an Unspecified Time, both of which have different meanings and rights in carrying out their industrial relations. A Fixed Time Work Agreement is a Work Agreement between a Worker/ Labourer and an Employer to enter into a work relationship for a certain time or for a certain time of work (Devina, 2023). Literally a Specific Time Work

Agreement (hereinafter referred to as PKWT) means that the workforce is bound in an agreement whereby the workforce performs a certain job for a period of time agreed from the start. PKWT is better known as contract labor which is regulated in laws and regulations. In the rules of Law Number 13 of 2003 concerning Manpower, the PKWT period is set for 2 (two) years and can be extended once for a maximum period of 1 (one) year, then it can be renewed only 1 (one) time for a working period maximum 2 (two) years (Febrianti et al., 2021). This provision has an interpretation that PKWT can be interpreted as having a working period of $2+1+2 = 5$ (five) years, and there are also those who argue that PKWT only has a period of 3 (three) years including its extension, but the renewal of the work agreement can only be done when certain obligations change in the work agreement and does not include PKWT extensions.

In practice, every company has different work contracts or agreements so they do not violate these provisions, although there are several companies that also do not heed these provisions so that workers do not know their work status and the result is that they are always extended and extended indefinitely so that they exceed more than 10 years of service. ten years. Legal consequences if these provisions are violated, then the status of the worker becomes an Unspecified Time Work Agreement (hereinafter referred to as PKWTT) or also called permanent workers. This is usually seen when the work period has passed as PKWT. At the end of 2022, a Government Regulation in lieu of Law Number 2 of 2022 was born, which was previously issued Law Number 11 of 2020 concerning Job Creation, which contains various laws and regulations that amend old regulations or commonly called the omnibus law (Kartika, 2020). The presence of the Omnibus law is a change from the previous rules, one of which is contained in the Manpower Act, which has become the pros and cons among the public, especially laborers/workers (Munawar et al., 2021). One of the clusters affected by the omnibus law is the employment cluster. Many of the provisions in the employment cluster actually have an impact on workers in Indonesia, especially PKWT. The impact of this regulation also regulates how to change the status of PKWT changes to PKWTT. With PKWTT status, every worker has rights that benefit more from PKWT status alone, then there are always industrial relations disputes that occur with how this PKWT status can be maintained or transformed. Based on the main issues above, the aims in this study include; (1) analyze and explain the implementation of PKWT to become PKWTT before the Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation and Law Number 11 of 2020 concerning Job Creation come into effect, and (2) analyze and explain the change in PKWT status to PKWTT after the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation came into effect.

RESEARCH METHOD

This legal research is Normative/ Doctrinal Research. This paper discusses problems based on the literature on several laws and regulations as well as court decisions that give birth to new views in implementing a valid statutory regulation (Wibisana, 2010). The new situation can strengthen the old theory so that it is compiled into a new theory (Soekanto, 2010). In collecting the data that will be used in this study is secondary data, namely data obtained from the literature (Mamudji et al., 2005). This material consists of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, Decree of the Minister of Manpower and

Transmigration Number 100 of 2004 concerning Provisions for Implementing a Specific Time Work Agreement.

RESULT AND DISCUSSION

Implementation of PKWT to become PKWTT before the Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation and Law Number 11 of 2020 concerning Job Creation comes into force.

The regulations that contained the Employment Cluster prior to Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation were changes from the rules previously contained in Law Number 11 of 2020 concerning Job Creation. Even though the contents of the changes are not much different, these two regulations do not change the provisions regarding the article in the change of PKWT status. PKWT provisions have been regulated before the birth of the two regulations regulated in Law Number 13 of 2003 concerning Manpower, along with its derivative regulations and have been practiced by several companies that employ several workers. This change in status usually occurs when there is a court decision stating that the employment relationship will end. Termination of the employment relationship is also the right of workers and employers (Yurikosari, 2010). Article 57 of Law Number 13 of 2003 concerning Manpower regulates the change in PKWT status to PKWTT, namely: (1) a work agreement for a certain time is made in writing and must use Indonesian language and Latin letters, (2) a work agreement for a certain time certain things that are made unwritten contrary to the provisions referred to in paragraph (1) are stated as work agreements for an indefinite period of time, (3) In the event that a work agreement is made in Indonesian and a foreign language, if later there is a difference in interpretation between the two, then the work agreement made in Indonesian will apply.

PKWT as referred to in the Article in the Law can be interpreted as being able to change the status of workers from PKWT to PKWTT, meaning that PKWT workers who do not have a written work agreement or the work agreement does not use Indonesian with the employer/company can switch to become permanent workers or PKWTT (Maghfiroh, 2021). The problem of changing the status of PKWT to PKWTT is seen in several court decisions, namely:

- (1) Supreme Court Decision Number 999 K/Pdt.Sus-PHI/2016 (PT. Mes Sinergy vs Muhammad Yasir, et al.)
Page 4 point 9 states:
“...the status of the Plaintiffs was employed by Defendant I at the location of Defendant II with an unclear status without a work agreement. In this case, it is clear and undeniable that there was a breach of contract by not implementing the work agreement system in accordance with Law 13 of 2003 concerning Manpower...”
- (2) Central Jakarta District Court Decision Number 120/PHI.G/2011/PN.Jkt.Pst juncto Supreme Court Decision Number 324 K/Pdt.Sus/2012 (Shanthi Gopinathan Nair Vs PT. Application Solution)
Page 62 paragraph 3 states:
"considering that the facts were obtained by the trial, the PKWT between the Plaintiff and the Defendant was only made in English..."

- (3) Supreme Court Decision Number 620 K/Pdt.Sus-PHI/2014 juncto Bandung District Court Decision Number 119/G/2013/PHI/PN.Bdg (Enjay, et al. Vs PT. Rolman)
Page 7 point 25 states:
"Based on the legal fact between the Plaintiffs and the Defendants there was never a work agreement made for a certain time in writing (for the period as long as the Defendants employed the Plaintiffs), then based on the legal provisions of Article 57 paragraph (2) of Law Number 13 of 2003..."

The change in status is also due to the implementation of a work contract/work agreement that exceeds the extension limit or the type of work carried out is not in accordance with what is regulated by laws and regulations, this can be seen in Article 59 paragraph (7) of Law Number 13 of 2003 concerning Manpower is:

(7) A work agreement for a certain time that does not comply with the provisions referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6) then by law becomes a work agreement for an indefinite period of time

(8) Other matters that have not been regulated in this Article will be further regulated by a Ministerial Decree.

Provisions that have not been contained in Law Number 13 of 2003 concerning Manpower as referred to in Article 59 paragraph (8) of Law Number 13 of 2003 concerning Manpower are regulated in the Decree of the Minister of Manpower and Transmigration Number Kep.100/MEN/VI/2004 2004 concerning Provisions for the Implementation of Specific Time Work Agreements (Wildan, 2017). The change in PKWT status to PKWTT is emphasized in Article 15 of the Decree of the Minister of Manpower and Transmigration Number Kep.100/MEN/VI/2004 of 2004 concerning Provisions for the Implementation of Certain Time Work Agreements paragraphs (2), (3) and (4).

Provisions for changing PKWT status due to violations committed in work agreements have become a problem for many workers in Indonesia, this can be seen in several court decisions, namely:

- (1) Bandung District Court Decision No. 79/Pdt.Sus-PHI/2016/PN.Bdg (Yudi Permadi, et al. Vs PT. SMAP Indonesia)
Page 24 paragraph 2 states:
"...with his position as a welding operator, the Panel of Judges is of the opinion that the position of welding operator carried out by the Plaintiffs is a type of work that is continuous, uninterrupted, not limited in time and is part of a production process in one company or work that is not season, then the work agreement for a certain time between the Defendant and the Plaintiff by law changes to a Work Agreement for an Unspecified Time (PKWTT)..."
- (2) Decision of the Central Jakarta District Court Number 147/Pdt.Sus-PHI/2015/PN.Jkt.Pst. (Sahari vs PT. Telecommunication Cellular)
Page 63 paragraph 4 states:
"... has been going on continuously (permanently), then the work agreement violates the provisions in Article 59 paragraphs (1) and (2) of Law No. 13 of 2003..."
- (3) Bandung District Court Decision No. 17/Pdt.Sus-PHI/2016/PN.Bdg (Heru Wibowo, et al. VS PT. Tsukasa Manufacturing of Indonesia)
Page 48 paragraph 1 states:
"Considering, that the Specific Time Work Agreement made by the Plaintiff and the Defendant violates Article 59 paragraph (2) of Law Number 13 of 2003 concerning

Manpower, namely "Specific Time Work Agreements cannot be held for permanent jobs..."

- (4) Bandung District Court Decision Number 20/Pdt.Sus-PHI/2019/PN.Bdg juncto Supreme Court Decision Number 902 K/Pdt.Sus-PHI/2019 (Sukara vs PT. Saranapratama Pembangunan Kota)

Page 23 paragraph 2 states:

"... because the PKWT between the Plaintiff and the Defendant does not comply with the provisions of Article 59 paragraph (5) of Law Number 13 of 2003 concerning Employment, the Panel of Judges is of the opinion that the PKWT between the Plaintiff and the Defendant for the sake of law becomes a PKWTT starting from the existence of a working relationship between the Plaintiff and Defendant"

PKWT status changed to PKWTT after the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation came into effect.

The working relationship is basically binding between the worker/worker and the entrepreneur that arises because of a work agreement, but theoretically the rights of the parties who try to end it in their own way (Shamsuddin, 2001). The ending of this working relationship cannot be separated from demanding the status of workers who want to end up becoming PKWTT or permanent workers from PKWT, especially being hit by the Covid-19 pandemic which is vulnerable to having far-reaching consequences for work relations. One of the issues circulating in the formation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation in the Employment Cluster is the abolition of PKWTT status, but the Minister of Manpower of the Republic of Indonesia, Ida Fauziah, explained through a Twitter account: @kemnaker, that PKWTT status still exists (Gift, 2013). The regional regulations contains provisions regarding the transformation of PKWT into PKWTT which are explained in the Employment cluster. Based on Article 81 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which replaces the provisions of Article 57 and Article 59 in Law Number 13 of 2003 concerning Manpower.

Article 57:

- (1) A work agreement for a certain time is made in writing and must use the Indonesian language and Latin letters.
- (2) If a work agreement for a certain time is made in Indonesian and a foreign language, if later there is a difference in interpretation between the two, the work agreement for a certain time made in Indonesian will apply.

The existence of this article aborts the change in PKWT status to PKWTT if there is a violation committed in paragraph (1), it can be interpreted that workers employed by employers do not have work agreements or have work agreements in foreign languages as stipulated previously in Law Number 13 of 2003 regarding employment, it does not make the worker's status a PKWTT.

Article 59:

- (1) Work agreements for a certain time can only be made for certain jobs which according to the type and nature or work activities will be completed within a certain time, namely as follows:
 - a. Work that is completed once or is temporary in nature;
 - b. Work that is estimated to be completed in the not too distant future;
 - c. Seasonal work;

- d. Work related to new products, new activities or additional products that are still in trial or exploration or
 - e. Jobs whose type and nature or activities are not permanent.
- (2) Work agreements for a certain time cannot be held for permanent jobs.
 - (3) Work agreements for a certain time that do not comply with the conditions referred to in paragraphs (1) and (2) by law become work agreements for an unspecified time.
 - (4) Further provisions regarding the type and nature or activity of work, time period, and deadline for extending work agreements for a certain time are regulated in Government Regulations.

Regarding the two articles above, they do not yet regulate further regarding Government Regulations which explain work activities, time periods, and PKWT limits. The Regional Regulations itself was only promulgated on December 30, 2022. However, there is no difference in the provisions for the transition from PKWT status to PKWTT, which was previously regulated in the Law. Law Number 11 of 2020 concerning Job Creation, this Law already has derivative regulations, namely Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment, this derivative rule explains the points -points that have not been regulated from Article 59 above

PKWT status changes to PKWTT can be made if they do not comply with Article 81 of Law Number 11 of 2020 concerning Job Creation which replaces the provisions of Article 59 paragraphs (1) and (2) in Law Number 13 of 2003 concerning Manpower. Changes in PKWT status due to violations committed in work agreements have become a problem for many workers in Indonesia, this can be seen in several court decisions, namely:

- (1) Decision of the Industrial Relations Court at the Bandung District Court Number 73/Pdt.Sus-PHI/2022/PN.Bdg
(Yadi Junaedi vs PT. SS Danisa Nusantara)
Page 29 paragraph 3 states:
“... it is proven that the time and type of work contradicts Article 4 and Article 6 of Government Regulation Number 35 of 2021 ... then by law it becomes PKWTT since the employment relationship occurred”
- (2) Supreme Court Decision Number 1044 K/Pdt.Sus-PHI/2022
(PT. Sinar Baturusa Prima vs Su'ud)
Page 4 paragraph 3 states:
"Whereas the Plaintiff was employed by the Defendant since November 10 2017 based on PKWT, it turns out that PKWT was not implemented according to the provisions, then PKWT changed to PKWTT"
- (3) Decision of the Industrial Relations Court at the Bandung District Court Number 86/Pdt.Sus-PHI/2022/PN Bdg
(Ence Sukma Gumilar Purnama, S.Ip vs PT. Sinar Mas Multifinance)
Page 16 paragraph 1 states:
"... then for the sake of law changing to PKWTT and the Defendant in carrying out the termination of the Plaintiff due to the end of the contract period is an incorrect reason and based on law..."
- (4) Supreme Court Decision Number 1429 K/Pdt.Sus-PHI/2022
(PT. Home Center Indonesia vs Robi Septian)
Page 4 paragraph 5 states:

"That the Plaintiff works at a job that is permanent and continuous, then based on Article 59 paragraph (3) of Law Number 11 of 2020 concerning Job Creation in the Employment Cluster Article 81, the working relationship between the Plaintiff and the Defendant for the sake of law changes from PKWT to PKWTT since the occurrence of employment relations, namely January 2, 2012..."

Some of the new provisions contained in this Government Regulation, which clearly stipulate work agreements and contracts that have a maximum period of up to 5 (five) years, and do not explain whether they can be extended or renewed as stipulated in the previous Law, but because they have been promulgated for 5 (five) years at the longest, provisions for extending and renewing do not violate any provisions as long as the working period does not exceed 5 (five) years. Since the promulgation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, there has been a vacancy because it automatically replaced Law Number 11 of 2020 concerning Job Creation along with Government Regulation Number 35 of 2021 concerning Work Agreements for a Specific Time, Outsourcing, Working Time and Time off.

It is important for workers to know this, especially if it has become a dispute in the industrial relations court, the dispute also does not rule out the possibility of involving employers, investors outside of Indonesia, especially those who have an interest in advancing their business sector and potentially defeating global or broader interests (Sumanto, 2014). In practice, the Supreme Court as the owner of the judicial power that carries out judicial functions is still guided by Law Number 11 of 2020 concerning Job Creation and its derivative regulations, so that the legal vacuum can be filled with old regulations without violating the substance of the Substitute Government Regulation in the slightest. Law Number 2 of 2022 concerning Job Creation which regulates PKWT to become PKWTT. Workers and laborers have certainty about their inherent status so that there are no irregularities in the work agreements made with employers or companies.

CONCLUSION

The provisions for changing PKWT to PKWTT are important because it relates to how workers have clarity in carrying out the daily work given by employers. Law Number 13 of 2003 concerning Manpower stipulates that there are limitations in work agreements with workers by considering the work agreement in writing and using the main language, namely Indonesian, and paying attention to the work contract not being carried out repeatedly nor exceeding the limit. prearranged extension. If these conditions are not fulfilled, the status of the employment relationship becomes PKWTT.

After the Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, the status of the PKWT change to PKWTT is no longer because the PKWT is not written and is not written in language, at least there is Indonesian. This rule also does not regulate the extension of PKWT many times, but violations of the type of PKWT that are committed can result in changing to PKWTT. This has not yet been regulated as a derivative regulation from Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. There are no fundamental changes to Law Number 11 of 2020 concerning Job Creation, but the impact is so broad that it aborts several derivative regulations under it such as Government Regulation Number 35 of 2021 concerning Work Agreements for a Specific Time, and Outsourcing.

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