

JURIDICAL ANALYSIS OF PARTICULAR TIME WORKING AGREEMENTS TO REALIZE THE PROTECTION OF WORKERS' RIGHTS AND WELFARE (RESEARCH STUDY AT THE OFFICE OF PT. BERSAMA GEMILANG PROPERTY BATAM)

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ABSTRACT

Juridical Analysis of a Specific Time Work Agreement (PKWT) to Realize the Protection of Workers' Rights and Welfare (Research Study at the PT. Bersama Gemilang Property Batam Office), has been carried out as it should, in accordance with Law Number 11 of 2020 concerning Job Creation. There are factors related to the protection of the rights and welfare of contract workers. The qualifications/types of writing in this journal use normative legal writing, and then integrate it with sociological/empirical legal writing, and to analyze some of the problems in this journal, Lawrence M. Friedmen's big theory, Jeremy Bentham's middle theory, and application theory are used. / applied theory Mochtar Kusumaatmadja. The results of the analysis are still experiencing several obstacles both internally and externally. The obstacles faced have not been the implementation of rights and welfare, which have been prioritized and carried out but not yet perfectly. It is very necessary and improved in terms of supervision in terms of quality and quantity in order to suppress and not give space to violators who do not comply with contract workers. There is also a need for wider socialization in a timely manner regarding the implementation of the new law on the rights and welfare of contract workers.

Key words: Certain Time Employment Agreement, Workers' Rights, Welfare.

1. PRELIMINARY

In Indonesia, labor is divided into two agreements where legally the Employment Agreement is divided into two types of agreements, namely an Indefinite Time Work Agreement (PKWTT) or commonly called a permanent employee agreement and a Specific Time Work Agreement (PKWT) which is commonly referred to as a contract employee agreement. .

Certain Time Work Agreement (PKWT) is a work agreement whose validity period has been determined or referred to as contract employees. When the time period has expired, the employment relationship will automatically be terminated. However, if the company still needs it, it can be extended in accordance with the company's provisions based on the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, Supplement to the State Gazette of the Republic of Indonesia Number 6573 and its derivatives, where a work contract period of a maximum of 5 (five) years is carried out.

Some of the problems experienced by AZ who are contract employees with a contract period of 1 (one) year, When working for 7 (seven) months AZ was unilaterally dismissed by the company due to the rules during the Coronavirus Disease 2019 (COVID-19) without being given money compensation or whatever. Not infrequently humans are replaced by machines into workers who are temporarily or permanently dismissed without compensation or paid according to the preferred method. This can be detrimental to each individual

concerned. Cessation of income is the occurrence of life events that cause a person's inability to earn a living. In this case, as a countermeasure for the above impacts, it must be carried out in a systematic, planned and measurable manner with the existence of a protection for the workforce.

The phenomenon that occurs in the community, progress of development has increased production capacity, not infrequently it can expand employment or provide income levels so that the standard of living of workers can increase. The level of welfare increases. However, the situation is not permanent. Often it can reduce the capacity of the number of workers themselves. This is due to the advancement of technology itself.

Protection of contract workers with a Specific Time Work Agreement (PKWT) is very important, in accordance with the implementation of the mandate of Article 27 of the 1945 Constitution of the Republic of Indonesia as regulated in which: Every citizen has the right to work and a decent living for humanity. From this, legal protection for workers is an obligation in the fulfillment of basic rights that are inherent and protected by the constitution.

Realizing the importance of workers for companies, government and society. It is necessary to think so that workers can maintain their safety in carrying out their work. Likewise, efforts should be made to the maximum extent possible, so that vigilance in carrying out the work is guaranteed. Rights and welfare arise because it is natural that humans have a life that is not eternal. Often people are stricken with misfortune. Human life can be likened to a magnet which has two poles, namely the north and south poles. Where this is in accordance with the human condition that is in uncertainty.

The government supervises the implementation of the rules through the Manpower Office. However, in reality in the field, in the implementation of a Specific Time Work Agreement (PKWT) there are many deviations, especially in the fulfillment of legal protection and welfare for temporary workers or Certain Time Contract Workers (PKWT) who should meet the criteria that have been determined in the legislation used. as a reference for a basis in the implementation of a contract agreement for a certain time. Sometimes deviations are often overlooked.

2. FORMULATION OF THE PROBLEM

1. What is the legal arrangement for a Specific Time Work Agreement (PKWT) to realize the protection of workers' rights and welfare?
2. How to implement factors, constraints and solutions to a Specific Time Work Agreement (PKWT) to realize the protection of workers' rights and welfare?

3. LITERATURE SOURCES

Sources of data literature and data collection tools data sources in this study are secondary data. Secondary data collection is carried out through library research by reviewing books, journals, research results, conventions and laws and regulations as well as through internet media related to research problems.

4. METHODOLOGY

4.1 Research Approach

This research is a normative juridical approach where the approach is by studying legislation, theories and concepts and empirically which is carried out by observing research in the field, identifying, collecting, processing, and analyzing data in the field. Where it aims to find out the protection of the rights and welfare of workers in a work agreement for a certain time.

4.2 Data analysis

The data that has been obtained, both primary data from field research, and secondary data obtained from library research are generalized and then analyzed qualitatively. This data analysis is an effort to find and organize data systematically to increase the researcher's understanding of the problem under study and present it as a research finding. For secondary data collection, document studies are also carried out, data collection is also carried out through data searches on internet sites.

5. RESULTS AND DISCUSSION

1. Legal Arrangements for Specific Time Work Agreements (PKWT) to Realize the Protection of Workers' Rights and Welfare

Legal arrangements will be better if they pay attention to the basic things regarding an employment relationship. The employment relationship of a contract worker occurs on the existence of a Specific Time Work Agreement (PKWT). Some things that are always emphasized in the recruitment of contract workers with reminders according to the requirements in a Specific Time Work Agreement (PKWT) are guided by the legislation, specifically Law Number 11 of 2020 concerning Job Creation, State Gazette of the Republic of Indonesia of 2020 No. 6573 as follows:

- a. The employment agreement for a certain time is made in writing and must be in Indonesian and Latin letters.
- b. Cannot require a probationary period. If this occurs, the required probationary period will be null and void and the working period will still be counted.
- c. Based on the period as referred to in Article 5 paragraph (1), it can be made for a maximum of 5 (five) years.
- d. The work agreement for a certain time as referred to in paragraph (1) is based on: a. time period; or b. completion of a certain Job.
- e. Employers are required to provide compensation money to Workers whose employment relationship is based on a Specific Time Work Agreement. at the expiration or extension of the Specific Time Work Agreement.
- f. The employment agreement is made on the basis of:
 - 1) Both side agreement
 - 2) Ability or ability to carry out legal actions
 - 3) There is an promised job

As for an element contained in a Specific Time Work Agreement (PKWT) in that fulfill the elements of all written agreements based on Article 13 Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. Supplement to the State Gazette of the Republic of Indonesia Number 6647 which contains at least:

- a. Company name, address, and type of business;
- b. Name, gender, age, and address of the Worker;
- c. Position or type of work;
- d. Place of Work;
- e. The amount and method of payment of Wages;
- f. The rights and obligations of Employers and Workers are in accordance with the provisions of the legislation and/or working conditions stipulated in the Company Regulations or Collective Labor Agreements;
- g. Commencement and period of validity;

- h. Place and date created; and
- i. Signatures of the parties.

There is a right that must be granted by the Employer to the Contract Worker in the event that the Employer is obliged to provide:

- a. Time off; leave in accordance with applicable regulations.
- b. Every worker has the right to a decent living for humanity.

In the event that the wage component consists of basic wages and fixed allowances, the amount of basic wages is at least 75% (seventy five percent) of the total basic wages and fixed allowances. Based on article 7 paragraph (1) Government Regulation Number 36 of 2021 concerning Additional Wages in the State Gazette of the Republic of Indonesia Number 6648. Compliance with the basic wage consists of the following components:

- a. Wages without benefits;
- b. Basic wages and fixed allowances;
- c. Basic wages, fixed allowances, and non-fixed allowances; or
- d. Basic wages and allowances are not fixed.

From the occurrence of these events as well as guarantees for family allowances and Law Number 11 of 2020 concerning Job Creation and its derivatives regarding Workers' rights to welfare which is more precisely regulated further in Government Regulation of the Republic of Indonesia Number 37 of 2021 concerning Implementation of the Additional Job Loss Guarantee Program. Republic of Indonesia Number 6649 will be registered obligations. Employers are required to include Workers as Participants in the JKP program. JKP is a Job Loss Insurance managed by the government through the Social Security Administering Agency (BPJS) for Employment, in which a Worker must be registered no later than 30 (thirty) days from the date the Worker starts working.

As for the rights of workers in the Labor Social Security Law Number 11 of 2020 concerning Job Creation and Its Derivatives. The labor social security program consists of:

- a. Welfare guarantee in the form of money which includes:
 - 1) Work accident;
 - 2) Death;
 - 3) Retirement and
 - 4) Pension time.
- b. Welfare guarantees in the form of services, namely Health.

Both are the same - the same guarantee but with a different body. Where the Social Security Administration Agency (BPJS) Manpower transformation from PT. Jamsostek (Persero). Its task is to provide protection for Indonesian workers, both those who work informally and non-formally. Meanwhile, the Social Security Administration Agency (BPJS) for Health is a transformation of PT Health Insurance (Askes) (Persero). The task of BPJS Health is to provide basic health protection for all Indonesian people, without exception.

The sanction if a company other than a state administrator does not carry out the obligation to register its workers as participants in the social security program organized by the Social Security Administering Agency (BPJS) for employment and health, namely administrative sanctions. Administrative sanctions in the form of:

- a. written warning; performed by Social Security Administration Agency (BPJS).
- b. Fine; and/or performed by Social Security Administration Agency (BPJS).
- c. Not getting certain public services is carried out by the Government or Regional Government at the request of the Social Security Administration Agency (BPJS).

Employment relationship is the termination of the employment relationship due to a certain matter which results in the termination of the rights and obligations between the Worker and the Employer. based on the applicable laws, it is explained that there are several things that cause a Specific Time Work Agreement (PKWT) to end if:

a. Worker Side

- 1) Worker Dies
- 2) Expiration of the Term of the Employment Agreement
- 3) Completion of a Specific Job
- 4) There are court decisions and/or decisions of industrial relations dispute settlement institutions that have permanent legal force; or
- 5) There are certain circumstances or events listed in the work agreement, company regulations, or collective labor agreement that can cause the employment relationship to end.

b. Company Side

- 1) The Company changes its status or merges, consolidates, takes over, or separates the company and the Worker is not willing to continue the Work or the Employer is not willing to accept the Worker.
- 2) The company performs efficiency followed by closing the company, due to losses.
- 3) The company closed because the company suffered losses continuously for 2 years.
- 4) The company went bankrupt.
- 5) The company closed due to circumstances (Force Majeur)

In connection with the law on job creation, it has been explained that the contract system can only be carried out for work that is continuous in nature and may not be carried out for work that is continuous. It can be seen that this Specific Time Work Agreement system relates to the relationship between Workers in the context of carrying out a temporary Job.

When a Specific Time Work Agreement (PKWT) expires, the following steps will be taken:

- a. If the employment relationship ends due to the expiration of a work contract period, whether extended or not, the company will provide compensation money where if the work period is one year, you will get one month's basic salary. However, if it is less than one month, it will be calculated on a prorata basis.
- b. If the employment relationship ends before the end of the employment contract period by the company where the company is obliged to pay compensation in the amount in accordance with the wages he gets for the period of work that has not been carried out.

In accordance with Law Number 11 of 2020 concerning Job Creation, Supplement to the State Gazette of the Republic of Indonesia Number 6573 and its derivatives. In general, law can be divided into two, namely imperative law (*dwingend rector* coercive law) and facultative law (*regelend recht* or *aanvulend recht* or additional law). The law requires that every worker has the right to obtain protection for occupational safety and health, morals and decency as well as treatment in accordance with human dignity and values and religious values. Literature - existing literature, as well as regulations - regulations that have been made by many countries. Occupational safety and health is intended to protect workers against exploitation (exploitation) of workers by employers, for example to get cheap labor, to employ slaves, forced laborers, children and women for heavy work and for an indefinite period of time. Worker protection can be carried out either by providing guidance,

Protection of workers is intended to guarantee the basic rights of workers and ensure equal opportunity and treatment without discrimination on any basis to realize the welfare of

workers and their families while taking into account the progress of the business world. Where every Worker has the right to receive equal treatment without discrimination from the Employer. As stated in Law Number 11 of 2020 concerning Job Creation, Supplement to the State Gazette of the Republic of Indonesia Number 6573. So every Worker has the right to receive the same treatment without difference from the Employer, it is just a matter of how the Employer realizes it. Both from the time the Worker is accepted as an Employee until the placement and at the time the Worker carries out the Work in the company.

2. Implementation of Obstacles or Barriers and Solutions to Specific Time Work Agreements (PKWT) to Realize the Protection of Workers' Rights and Welfare

Based on the research, there are many obstacles in providing protection for workers who work with a certain time work agreement (PKWT) system, among others, as has also been stated previously, that nowadays many employers are increasingly interested in recruiting workers with a certain time work agreement system. (PKWT), because Employers consider it more efficient to use Workers with a Specific Time Work Agreement (PKWT) system when compared to the Indefinite Work Agreement (PKWTT) system.

This situation then caused unrest among workers with a certain time work agreement (PKWT) system, where it is known that two thirds of their number in Indonesia, namely workers with a certain time work agreement (PKWT) system do not provide certainty to continue to work, they easily dismissed for various reasons.

Apart from that, it has several advantages, including:

- a. Employers can reduce labor costs
- b. more practical,
- c. No need to spend more money to recruit prospective new workers

In fact, in the world of work, a worker who will start working in a company will make an agreement with the form of a work agreement, with the company that will have a work agreement that has usually been provided unilaterally by the company that will employ the worker, where the contents of the work agreement have already been agreed. made unilaterally by the company and the Workers only need to sign it as a form of agreeing or rejecting the work agreement. In connection with the contents of the employment agreement that has been made unilaterally by the company beforehand, the contents usually tend to be one-sided and provide more benefits to the Employer, and the Worker is in a disadvantaged position.

This situation, according to Sri Gambir Melati Hatta, arises because the position of the Employer is strong both in terms of economy and power, even though the Workers are in a weak position because they are parties who need work. Monopoly position This entrepreneur opens up opportunities for him to abuse his position.

In addition to being an effort to protect workers, labor inspection has a social purpose, to improve the welfare and social security of workers, to encourage the performance of the business world, and to improve the welfare of society in general. The scope of labor inspection include:

1. Supervise the enactment of labor laws and regulations in particular;
2. Collecting materials regarding manpower issues for the purpose of perfecting or drafting the Manpower Act;
3. Carrying out other work in accordance with the law.

In the Extension of a Specific Time Work Agreement (PKWT) if there is a company that wants to extend the contract to the Worker, even though the Worker does not want to temporarily the work has not been completed. This question can be answered by first asking about the status of the Worker. If the status of the Worker is a Worker who is bound by a

Specific Time Work Agreement (PKWT), it is also necessary to know whether the Certain Time Work Agreement (PKWT) in the company is included: Certain Time Work Agreements (PKWT) based on the completion of certain Jobs, or Specific Time Work Agreements (PKWT) for seasonal Jobs, or Certain Time Work Agreements (PKWT) for Jobs related to new products.

If the PKWT is made based on the completion of certain Works, the work agreement may not be terminated by anyone before the agreed Work is completed. However, if the Work can be completed sooner than agreed, the Specific Time Work Agreement (PKWT) is terminated by law. And if the work has not been completed due to certain conditions, even though the agreed time has expired, it can be renewed and a Specific Time Work Agreement (PKWT) can be extended by the company. make a loss.

Furthermore, if the work agreement is determined based on the season, it cannot be renewed. So, this type of Specific Time Work Agreement (PKWT) is very much determined by the season. Likewise, certain time employment agreements (PKWT) relating to new products, new activities, or additional products that are still under trial or exploration; also cannot be updated.

Then the unilateral termination of the employment agreement where one of the parties in the agreement terminates the employment relationship before the expiration of the period specified in the work agreement for a certain time, the party terminating the employment relationship is required to pay compensation to the other party in the amount of the employee's wages until the expiration of the term of the employment agreement. . So if a Worker is bound in a Specific Time Work Agreement (PKWT) for two years, if he has only worked for two months and wants to end the employment relationship, the Worker is obliged to provide compensation to the Employer in the amount of 24 months (two years) minus two months, which is 22 months multiplied salary for one month.

Labor inspection is the activity of supervising and enforcing the implementation of laws and regulations in the field of manpower. Furthermore, labor inspection is carried out by competent and independent labor inspectors to ensure the implementation of labor laws and regulations.

Labor inspection is an important element in the protection of workers, as well as an effort to enforce labor law as a whole.

Legal remedies that can be taken by contract workers in labor disputes are conflicts between employers and workers who are members of labor unions, due to the absence of a conformity of understandings regarding work relations, working conditions, and labor conditions in a company. This definition of labor disputes is further known as industrial relations disputes.

1. Through Bipartite

Bipartite settlement is carried out so that disputes can be carried out amicably, which is hoped that each party does not feel that someone has been defeated or won, because the Bipartite settlement is binding. into Bipartite negotiations is considered a failure. If the negotiations reach an agreement, a Collective Agreement must be drawn up containing the results of the negotiations. On the other hand, if an agreement is not reached, minutes of negotiations must be made as evidence that Bipartite negotiations have been carried out.

2. Through Mediation

Basically, the settlement of industrial disputes through mediation is mandatory, when the parties do not choose a settlement through conciliation or an arbitrator after the agency responsible for manpower has offered it to the disputing parties.

6. CONCLUSION

With the agreement, it is required to provide guarantees to Workers for written certainty to obtain welfare certainty. A Worker's right which focuses on wages as guided by the rules which are explained in detail in its derivatives, namely Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages, Supplement to the State Gazette of the Republic of Indonesia Number 6648. Then in terms of welfare where a guarantee for Workers to work safely as a welfare improvement in the form of guarantees managed by a government-owned agency with a detailed description contained in the Government Regulation of the Republic of Indonesia Number 37 of 2021 concerning the Implementation of the Additional Job Loss Guarantee Program in the State Gazette of the Republic of Indonesia Number 6649.

In the implementation of obstacles or barriers to workers in a certain time work agreement (PKWT), problems are still found where regulatory factors, cultural factors, both workers, employers or employees, as well as law enforcement. Although theoretically, the employer and the recipient of work are in a balanced position, in practice they tend to recruit workers with a certain time work agreement so that it is difficult for an employee to have certainty of a permanent job where the company's ability to fulfill workers' rights is a reality. .

7. SUGGESTION

Workers in a Specific Time Work Agreement (PKWT), the author suggests an increase in knowledge or education and socialization of workers to Law Number 11 of 2020 concerning Job Creation, Supplement to the State Gazette of the Republic of Indonesia of 2020 No. 6573. Contract workers must understand more about a Specific Time Work Agreement (PKWT) because if there are discrepancies in their practice, contract workers can know and take appropriate steps.

To realize the protection of rights and welfare in the office, the author suggests that it is necessary to improve supervision by the Government, in this case the Manpower Office, needs to be improved in terms of quality and quantity, so that violations against Workers with a Specific Time Work Agreement (PKWT) can be suppressed. Then seriousness is needed from the government to take action or impose sanctions on entrepreneurs who are proven to have violated the applicable regulations where if a problem arises in the employment relationship, it must be resolved fairly.

8. REFERENCES

BOOK

- Anwar, Syamsul, 2017, *Hulum Perjianjian Syariah*, Jakarta: PT. King Grafindo Persada.
- Arifin, Syamsul, 2020, *Methods for Writing Scientific Papers and Legal Research*, Medan: Medan Area University Press.
- Asyhadie, Zaeni, 2019, *Legal Aspects of Labor Social Security*, Jakarta: PT. King Grafindo Persada.
- Badruzaman, Mariam Darus, 2020, *Compilation of Engagement Law*, Bandung: PT. Image of Aditya Bakti.
- Hadjon, Philipus, 2017, *Protection Against Safety Assurance*, Surabaya: Bina Ilmu.
- Hamzah, Andi, 2017, *Criminal and Criminal System in Indonesia*, Jakarta: PT. Pradnya Paramita.
- Harahap, Yahya, 2016, *Aspects of Agreement Law*, Bandung: PT. Alumni.

- Hasan, Salim, 2016, Contract Design and Memorandum of Understanding (MoU), Jakarta: Sinar Graphic.
- Hatta, Sri Gambir Melati, 2018, Buy Lease As an Unnamed Agreement Public Views and Attitudes of the Indonesian Supreme Court, Bandung: PT. Alumni.
- Idham, 2019, Postulates and Construction of Political Paradigm of Law on Complete Systematic Land Registration (PTSL), To Realize a Welfare State, Bandung: PT. Alumni.
- _____, 2020, Legal Political Dimensions of Land Consolidation Implementation in Protected Forest Areas, Bandung: PT. Alumni.
- _____, 2021, Constitutionalism of Land with Ownership Rights on Land with Management Rights, Bandung: PT. Alumni.
- _____, 2021, Paradigm of Political Legal Construction of Consolidation of Rural Land Agricultural Land in Karimun Regency, Riau Islands Province Critical Analysis to Strengthen People's Economic Growth in Rural Areas, Bandung: PT. Alumni.
- Husni, Lalu, 2019, Introduction to Labor Law, Jakarta: PT. King Grafindo Persada.
- Kosidin, Koko, 2017, Employment Agreement, Labor Agreement and Company Regulations, Bandung: CV. Forward Mandar.
- Pitasri, Diana, 2021, A Meaning in the Latest Edition of the Employment Agreement, Jakarta: The First King.
- Rajaguguk, Eman, 2017, Arbitration and Court Decision, Bandung: CV. Forward Mandar.
- Saydam, Gouzali, 2021 Human Resource Management, Jakarta: Djambatan.
- Soedjono, Wiwoho, 2018, Employment Contract Law, Sutendi, Adrian, 2019, Labor Law, Jakarta: Sinar Graphic.

REGULATIONS

- 1945 Constitution of the Republic of Indonesia.
- Law Number 11 of 2020 concerning Job Creation, Supplement to the State Gazette of the Republic of Indonesia of 2020 No. 6573.
- Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing. Working Time and Rest Time and Termination of Employment, Supplement to the State Gazette of the Republic of Indonesia Number 6647.
- Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages, Supplement to the State Gazette of the Republic of Indonesia Number 6648.
- Government Regulation of the Republic of Indonesia Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program, Supplement to the State Gazette of the Republic of Indonesia Number 6649.