

## LEGITIMACY OF A FIXED-TERM EMPLOYMENT CONTRACT BASED ON REMOTE WORK CONCEPT FROM THE PERSPECTIVE OF THE JOB CREATION ACT

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### *Abstract*

*Labor issues are a social, political and economic phenomenon in modern countries, including Indonesia, and require a way that is no longer conventional in improving the system in employment. As such, remote working can be the solution. The implementation of Remote Working in Indonesia depends on three legal aspects, namely the Criminal Code, the Job Creation Act along with the Labor Law, and the ITE Law. This study aims to analyze the Fixed-Term Employment Contract (PKWT) work relationship based on remote work concept from the perspective of the job creation act and find out the implementation and problems of Fixed-Term Employment Contract. This study employs a normative legal research technique derived from laws and regulations employing a library research technique. According to the findings of this study, Fixed-Term Employment Contract with the Remote Working concept must also adhere to the Labor Law and the Job Creation Act. Besides, the parties who engages on the Fixed-Term Employment Contract must also consider a number of additional legal factors in order to ensure the agreement's legitimacy and the protection of each party's rights and obligations. Despite the passage of the Job Creation Act, it turns out that there are still several issues that require attention.*

*Keywords: Employment, Fixed-Term Employment Contract, Job Creation Act, Labor Issues, Remote Working*

### 1. INTRODUCTION

Labor issues are significant social, political, and economic phenomena, especially in contemporary nations. The responsibility of growth in the employment sector lies in the enhancement of a country's overall productivity as well as the improvement of the residents' quality of life. According to figures from the Central Bureau of Statistics from February 2019, Indonesia has a workforce of 136.18 million people, or roughly half of the entire population (Badan Pusat Statistik, 2019). According to the World Bank (2013), Indonesia has one of the strongest employment performances in East Asia and the Pacific (Wijayanto & Ode, 2019). Labor issues in Indonesia have been regulated in Law no. 13 of 2003 concerning Manpower which is the answer to the government's political will in the field of labor law which has a lofty goal of protecting workers using the existence of laws and regulations governing employment in Indonesia, employment problems are basically a correlation between individuals and between individuals using regulatory bodies, is no longer purely a private sphere, but also involves elements of the state in it.

The industrial revolution 4.0 has made every sector use news and communication technology (Kementerian Perindustrian Indonesia, 2018). This tendency has an effect on the rapid growth of international marketplaces. This phenomena is also the origin of the idea of

the industrial internet of things (Prasetyo & Sutopo, 2018). This notion refers to a gadget on the internet network that can be used to communicate with other individuals regardless of the distance between them (Matt Burgess, 2018). In the end, this concept will give birth to an internet-based production application that makes it easy for everyone. According to the Indonesian Minister of Industry, the Industrial Revolution 4.0 is one of the endeavors to revolutionize the industrial world by leveraging the growth of the Internet (Kementerian Perindustrian Indonesia, 2017). The existence of this Revolution era is an early sign of the development of the concept of remote work or what is often referred to as Remote Working (Eddleston & Mulki, 2017).

Remote Working is working with remote work control where the implementation of work can be done anywhere and anytime (Hardill & Green, 2003). The concept of remote working exists not only owing to the advancement of information technology, but also due to the nature of leadership, opinions, and diverse perspectives on the workplace. This work's personality, opinions, and viewpoints are heavily influenced by the era of birth, which is thus categorized as a multigenerational workplace.

The concept of remote working is gaining popularity in Indonesia, to the point where the Ministry of National Development Planning would implement it for its civil servants (CNBC Indonesia, 2019). There is a notion that remote working provides numerous benefits for both employers and employees. According to research conducted by Nicholas Bloom, remote working has a favorable effect on employees, and as a result, it is associated with high job satisfaction. Workers can also put more emphasis on their jobs, have a better family life, and save on transportation costs for travel to work (Greenbaum, 2019). From the perspective of the business owner, this has several beneficial impacts, including allowing for the recruitment of workers from a wider geographic area, eliminating the need to set up a dedicated office space, and reducing the need for transportation expenses. As such, remote work also establishes a legal relationship between employers and employees as a result of an agreement in the form of a work contract or agreement. Using an agreement, a correlation of rules is created that gives rise to each party's rights and responsibilities. In this instance, the legal correlation established by Indonesian Labor Law Article 1 Number 15 is referred to as labor correlation and consists mostly of work, wages, and orders. A work agreement must be established between employers and employees, either a Fixed-Term Employment Contract or an Unspecified Time Work Agreement (hereinafter referred to as PKWTT) (Yuli & Aryanti, 2018).

PKWT often causes problems in practice. PKWT, or commonly known as Fixed-Term Employment Contract or an Unspecified Time Work Agreement often dominates the several employment cases handled by the Office of Manpower and Transmigration (Kabar Banten, 2020). With the passage of the Job Creation Act in 2020, labor provisions will no longer have a legal basis based solely on the Labor Law. In relation to the concept of this study, it is known that previous research has addressed the following topics: the implementation of work agreements in a limited liability company, PKWT analysis, an analysis of the legal relationship between employers and freelancers who are not bound by an employment relationship, but bounded by a legal relationship based on a service agreement, and an evaluation of the rise of remote work and its implications for welfare and work-life balance (Felstead & Henseke, 2017) as well as protection of workers in the 4.0 era and the enforceability of employment contracts via electronic transactions. PKWT with the notion

of remote working is also inextricable from other legal issues, such as the Civil Code and the Electronic Information and Transaction Law, due to the electronic nature of agreement making. This normative analysis of PKWT seeks to determine the optimal structure of PKWT between companies and workers based on the concept of remote work and the Job Creation Act.

## **2. RESEARCH METHOD**

This study was a normative legal research method. Normative legal research was the subject of study, namely law that was conceptualized as norms or rules that apply to people's lives and used as a reference in behaving for society so that research that used this type of method focuses on inventorying positive law, legal doctrinal principles, legal discoveries in *in concreto* cases, legal systematics, level of legal synchronization, comparative law and legal history (Abdulkadir, 2004). This study used primary legal materials, namely applicable legal norms and secondary legal materials, namely books/literature and scientific journals (Fajar & Achmad, 2010). The approaches to this research were the case approach, the statutory approach and the facts approach.

## **3. RESULT AND DISCUSSION**

### **3.1. Work Relations of PKWT based on Remote Work Concept from the perspective of the Job Creation Act**

#### **1) Fixed-Term Employment Contract for a Specific Time After the Issuance of the Job Creation Act**

Regulations regarding work relations are in Article 50 of Law Number 13 of 2003 concerning Manpower, which states, "Work relations occur because of an employment agreement between employers and workers/laborers". In Article 51 Paragraph (1) explains "A work agreement is made in writing or orally". The working relationship, namely as a (legal) relationship between employers and workers/laborers (employees) based on work agreements, so that it is something abstract. There are elements of a working relationship, namely a job, wages, and orders. Regarding work agreements, on the other hand, is something concrete or real. The existence of a work agreement will later create a bond between employers and workers. An employment relationship can be defined as this connection that is established as a result of the presence of an employment agreement (Sutedi, 2006).

Article 1 number 14 regulates work agreements, namely "Work agreements are agreements between workers/laborers and employers or employers which contain work conditions, rights and obligations of the parties". There are conditions for the validity of work agreements referring to the legal requirements of civil agreements in general, namely:

- a. There is an agreement between the parties (no elements of coercion, misdirection/oversight, or fraud)
- b. The parties concerned have the ability or ability to (act) carry out legal actions (capable of age and not under guardianship / guardianship).
- c. There is an agreed job (object).

- d. (*Causa*) the agreed work does not conflict with public order, decency, and applicable laws and regulations.

Work agreements under the Labor Law are classified as Work Agreements for Specified Time (PKWT) and Work Agreements for Unspecified Time (PKWTT). The primary distinction between a Work Agreements for Specified Time (PKWT) and Work Agreements for Unspecified Time (PKWTT) is the duration of the employment. A PKWT is a contract between employees and employers to hold a period of time. PKWT is an agreement between workers and employers to begin a temporary working relationship, whereas PKWTT is an agreement to begin a permanent working relationship (Santosa & Gede, 2021). The provisions that have undergone many changes in Law Number 11 of 2020 concerning Job Creation are those that regulate PKWT, namely:

- a. Changes in the time period for work agreements for a certain time  
Article 81 point 12 of the Job Creation Act, which replaces Article 56 point 3 of the Labor Law, stipulates that the duration of a work contract must be included in the work contract. In addition, the Job Creation Act stipulates that the Government Regulations would govern further PKWT measures based on the duration or completion of a certain job. Government Regulation No. 35 of 2021 provides more guidance on Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. This law distinguishes between work agreements for a specific time based on a period of time, work agreements for a specific time based on the completion of a specific job, and work agreements for a specific time for other specific occupations whose kind and nature of activities are not defined. Work agreements for a specific period of time consisting of work that is expected to be completed within a reasonable amount of time, seasonal work, or work related to new products, new activities, or additional products that are still undergoing testing or exploration may be implemented for up to five years. Work agreements based on the completion of a given task consist of work that is completed once and work that is temporary in nature and can be conducted for a length of time determined by the parties' agreement. Daily labor agreements may be made for a maximum of 3 (three) consecutive months for other jobs whose kind, character, or activities are not described.
- b. Legal consequences of informal Fixed-Term Employment Contract  
In the event of a future dispute, formal labor agreements provide greater confidence regarding the rights and responsibilities of employees and employers, thereby facilitating the process of verification. The result of a verbal work agreement for a specific period of time (PKWT) is that it becomes a work agreement for a specific period of time. Article 57 paragraph 2 of the Labor Law regulates this. Meanwhile, in the Job Creation Act, this legal consequence is no longer recognized. The Job Creation Law still requires that a certain time work agreement be made in written form (formal), but there are no legal consequences for not fulfilling these conditions.
- c. Legal consequences if the work agreement for a certain time requires a probationary period  
It is not legal to impose a probationary period, and if one is discovered, it is considered null and void. The Job Creation Act emphasizes that if a work contract

for a specified duration provides a probationary period, not only is the probationary period null and void, but the working duration is counted from the start of the work contract.

- d. Additional types of work that can be bound by work agreements for a certain time  
According to Article 59 of the Labor Law, work agreements can be made for jobs that will be finished in a specific amount of time, including jobs that are temporary or one-time, whose completion is anticipated to take no more than three years, seasonal work, and jobs related to new products, new activities, or additional products that are still undergoing testing or exploration. Work agreements can also be made for jobs that are seasonal or involve new products that are still in the research and development stage. This employment, to which the Job Creation Act has added one more category, are not permanent in their type, nature, or activity. According to the Job Creation Act's clarification, "permanent work" is defined as "work that is continuous, uninterrupted, not time restricted, and is part of an organization's production process or work that is not seasonal." In other words, as long as the work in issue is not continuous and does not form a part of a production process within a single organization, it can be the topic of a work agreement for a defined length of time by adding one new requirement, namely work whose kind and character of activities are not fixed.
- e. Extension and renewal of work agreements for a certain time  
The Job Creation Act, which is then further regulated in Government regulation (PP) No. 35 of 2021, has provisions for the extension of work agreements for a limited period that vary based on the type of work agreement for a limited time employed. Extension in a certain time work agreement based on a period can be done several times with an unlimited amount, but the maximum time between the start of a certain time work agreement and the entire extension must not exceed 5 (five) years. An extension of a work agreement for a specific period of time depending on the performance of a specific task may be granted until the work is completed, but the maximum extension period is undetermined. Because it follows the model of daily work agreements, there is no law regarding the extension of work agreements for a set period of time for other specific tasks whose kind, nature, or activities are not established.
- f. Compensation money for a certain time work agreement  
When a work contract expires after a certain amount of time, there are no compensation regulations in the Labor Law. According to the Job Creation Act, when a fixed-term employment contract expires, the employer is required to offer workers with financial compensation, the amount of which is determined by the employee's duration of service. Workers who have worked for at least one month are entitled to compensation, according to Government Regulation No. 35 of 2021. Work agreements for a certain period of time shall be compensated continuously for 12 (twelve) months in the amount of 1 (one) month's salary; if the work agreement is carried out for fewer than 12 (twelve) months or for longer than 12 (twelve) months, compensation is granted proportionately.

### **3.2. The Legitimacy of the Remote Working Concept with PKWT in the Perspective of the Job Creation Act.**

In practice, work agreements, both PKWT and PKWTT, are made unilaterally by the employer/employer, without negotiation with the prospective worker. Prospective employees have the option of accepting or rejecting the employment agreement. The conditions of a work agreement must not conflict with business policies, collective bargaining agreements, or other laws and regulations, according to paragraph 2 of Article 54 of the Labor Law. The question is whether the substance of the work agreement contains aspects that are prohibited by the Labor Law and the Job Creation Act, are irrational, and improper. The provisions of the work agreement in the Labor Law and the Job Creation Act are coercive, which means that the parties bound by the work agreement cannot form a work agreement that deviates from the provisions of the labor laws and regulations (Anggraeny & Hidayah, 2021). Employers are required to consider PKWT provisions of the Labor Law when drafting the agreement's terms. This is a consequence of the government's participation in the PKWT's system of law enforcement. The Indonesian government is committed about preserving employees' rights by enforcing punishments on firms who try to violate their commitments to workers' rights, including providing social security.

Article 1320 of the Civil Code, which serves as the legal basis for assessing the legitimacy of an agreement, governs the formation of work contracts in general. Linking Article 1320 of the Civil Code with Article 52 (1) of the Labor Law, a valid work agreement before the law is one that satisfies four conditions: the agreement of the parties; the ability of the parties to take legal action; the existence of a specific object, namely the agreed work; and lawful causes/causes, namely that the work does not conflict with public order, decency, and statutory regulations. On the basis of the nature of the requirements in Article 1320 of the Civil Code, the prerequisites in Article 52 (1) of the Labor Law can likewise be classified as subjective or objective. Subjective terms contain conditions connected to the agreement's subject matter, such as the agreement's terms and the parties' abilities. Among the objective conditions are those pertaining to the aim of the agreement, such as the presence of a particular object and a valid reason. A violation of one of these requirements renders the agreement unenforceable or voidable by operation of the law. This is also consistent with the provisions of Article 52 Paragraphs (2) and (3) of the Labor Law, which are subject to cancellation or nullification. The parties must, of course, identify compliance with the legal parameters of the agreement at the outset of the agreement-making process or during the preparatory phase of contract design. Before consenting to a contract (in this case, an employment contract), the parties should have understood who they were contracting with and the reason and purpose of the contract.

Making PKWT with the concept of remote working needs to pay attention to 3 (three) legal aspects, namely, the Civil Code, the Job Creation Act along with the Labor Law, and the ITE Law. There are 4 (four) aspects that must be considered by the parties in making PKWT, namely:

- 1) PKWT which is written and legally agreed through electronic media;
- 2) The rights and obligations of each party as regulated in the Labor Law and the Job Creation Act;
- 3) Clear description of the Remote Working work system in the PKWT; and
- 4) Things that are prohibited by law related to PKWT.

The ratification of the work agreement, in this case the signing of the parties, requires to pay respect to the ITE Law in order for the legal force of the work agreement formed electronically to become strong and to be able to be used as evidence in a court of law.

### **3.3. Implementation and Problems of Fixed-Term Employment Contract**

Permanent employment is not permissible under fixed-term employment contract, which must be based on a time frame or the completion of a specific project. Employers are not obligated to designate permanent workers for works with a limited completion time, as the Labor Law permits for arrangements for work agreements for a specific time, a type of work agreement that can be utilized to limited duration labor.

The previous Labor Law required that employment agreements for a specific duration be made in writing using both Indonesian and Latin script. The purpose of the PKWT must be made in formally is to provide legal certainty for the parties including certainty regarding the rights and obligations of workers and employers. It is also intended that if a dispute occurs at a later date, the work agreement made in writing can be used to assist in the evidentiary process (Permatasari, 2018). However, in real field practice, it is not unusual to encounter specific time work agreements that are carried out informally and simply on the basis of confidence and without a written agreement.

One of the reasons for this is a lack of available human resources, and another reason is the widespread nature of the problem (Tampongangoy, 2013). Considering that Article 57 paragraph (2) of the Labor Law specifies that a verbal commitment to work for a set period of time is legally understood as a verbal agreement to work for an endless period of time, this is undoubtedly extremely dangerous. This means that the duration of the agreement is unrestricted, and when the employment connection is terminated, the employer is entitled to provide severance pay, long service awards, or other work-related entitlements based on an indefinite time work agreement. Before the passage of the Job Creation Act, a number of additional problems plagued Indonesia's implementation of unspecified time work agreements. These problems included infringements on the nature of the work and the time frame of the work agreement, the covert extension or renewal of work agreements for a specified time, and the absence of payment at the end of the specified time work agreement.

After the promulgation of the Job Creation Act, there are several new problems related to work agreements for a certain time that deserve attention, such as:

- a. There is no limit regarding the maximum time period for PKWT based on the completion of a specific job

The maximum duration of an agreement may be regulated by Government Regulation No. 35 of 2021, although for some types of work agreements dependent on the completion of a project, the maximum duration of an agreement may not be regulated. Only that work agreements for a specified amount of time based on the completion of a task can be carried out within a period of time based on the parties' agreement and adjusted to the length of time the work is completed are mentioned in the government legislation. Projects that take years to finish raise a concern. As a result, a specific time work agreement will also be implemented for a number of years after the project's completion. Likewise, with this kind of work contract, it is also possible to extend it with no time limit based on the completion of the work. In

this scenario, there is legal ambiguity over the maximum duration that can be established for this form of work contract for a defined time.

- b. There are no legal consequences if the PKWT is made informally

A verbal labor agreement for a set period of time becomes a verbal work agreement for an unlimited period, according to Article 57, paragraph 2, of the Labor Law. There are no legal repercussions if a verbal agreement for a certain duration is made because this regulation was repealed by the Job Creation Act. The Job Creation Act just requires written labor agreements to be formed for a specific amount of time and there are no legal consequences for noncompliance. As a result, it may become common practice to carry out work agreements for a specific duration without a written contract, which reduces legal certainty and makes it challenging to establish the existence of a working relationship between employees and employers for a specific duration.

- c. There are no arrangements regarding notifications from employers regarding the extension and renewal of the PKWT

For a specific period of time, the Labor Law governs the extension and renewal of employment contracts. Renewals are only allowed once for a maximum of two years, whereas extensions are only allowed once for a maximum of one year. After a set amount of time has gone since the end of the labor agreement's grace period of thirty days, the agreement can only be renewed. Since the Position Creation Law does not contain this clause, the only regulation governing the extension of work agreements for a set duration of time and work agreements for a specific job is Government Regulation No. 35 of 2021. This government regulation does not require companies to notify employees before extending an employment agreement for a set period of time. The absence of provisions regarding prior notification of an extension will result in workers not having the opportunity to prepare to seek other job opportunities when it turns out that the agreement has not been extended. Conversely, when the worker feels that his work agreement for a certain time has expired, it turns out that on the last day the worker only finds out that his work agreement for a certain time will be extended. As a result, workers' capacity to obtain information about the continuation of their existing employment is limited. It is appropriate for the government to confront and resolve these challenges. This is intended to assure the continuity of a system of harmonious working relations by providing legal certainty for the protection of workers (Azis et al., 2019).

#### **4. CONCLUSION**

In essence, PKWT or Fixed-Term Employment Contract that refers to the labor law and Job Creation Act is the same (office working) PKWT that adheres to the broad concept of PKWT. The Civil Code, the Job Creation and Labor Laws, and the ITE Law must all be taken into account while creating PKWT with the idea of remote working. PKWT that is legally agreed to through electronic means and is written (formal), the rights and obligations of each party as stated in the Labor Law and the Job Creation Act, a detailed explanation of the Remote Working work system in the PKWT, and things related to the PKWT that are banned by law.

The Job Creation Act has solved the problem of compensation after the conclusion of an employment relationship by mandating companies to give workers with monetary compensation commensurate to the length of service. Following the passage of the Job Creation Act, it became clear that there are still a number of issues that need to be addressed, including the fact that there is no maximum period of time for certain types of work agreements based on the completion of a specific job, there are no legal consequences if a work agreement for a specific period of time is made verbally, and there is no regulation regarding employer notifications regarding the extension and renewal of work agreements.

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