
Implementation of Legal Protection of Workers with Employment Agreement For A Specified Period of Time (PKWT) Changed Into Employment Agreement for Unspecified Period Of Time (PKWTT) For The Same Job

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Abstract

Entrepreneurs who employ workers for permanent jobs with an Employment agreement for a Specified Period of Time (hereinafter referred to as “PKWT”) employment relationship that is changed to an Employment agreement for Unspecified Period of Time (hereinafter referred to as “PKWTT”) for the same job after the end of the PKWT employment relationship are mostly carried out in employment practices. Employers do this because the probationary period of 3 months for work relations with PKWTT is felt to be insufficient to assess worker performance in accordance with the targets set by employers. The PKWT is as if it is being used as a probationary period by the employer and the PKWT is not registered by the entrepreneur at the agency that administers government affairs in the district/city manpower sector which will have legal consequences for legal certainty and protection for workers. The government's weak oversight of labor practices in companies has made this kind of PKWT implementation continue and will continue to occur.

Keywords : PKWT, Industrial Relations, PKWTT.

Introduction

In recent years, an increasing number of workers have experienced a shift from PKWT to PKWTT for the same job (Shalihah, 2016; Agatha, 2021). This practice has significant implications for workers, including a loss of job security, income, and benefits. While some legal protections exist for workers who are subject to PKWTT, there is a need for more comprehensive legal protections (Singadimeja et al., 2019; Aspan, 2021). This article journal aims to address this issue by analyzing the legal protection for workers with PKWT who have been changed to PKWTT for the same job. The article journal will use a method that involves conducting a literature review, collecting data from workers, analyzing the data and legal protections, developing policy recommendations, creating an implementation plan, and devising an evaluation plan (Daniel & Suparno, 2022; Tawary et al., 2021). The goal of this article journal is to provide a thorough analysis of the legal protection for workers with PKWT who have been changed to PKWTT for the same job and offer practical recommendations for improving legal protection for these workers.

The shift from PKWT to PKWTT is a growing concern, particularly in industries that rely heavily on flexible labor arrangements. While some workers may prefer the flexibility offered by PKWTT, others may be forced into these arrangements due to economic pressures

or lack of bargaining power. In some cases, workers who were previously classified as workers with PKWT may find themselves reclassified as independent contractors or temporary workers with PKWTT, resulting in a loss of legal protections and benefits. As such, it is essential to examine the legal protections available to these workers and to develop policy solutions that ensure adequate legal protections are in place.

The business world contributes to Indonesia's national development in order to improve the standard of living and social welfare in order to create a prosperous, just and prosperous society. It is fitting for employers and workers who are part of the business world to maintain mutual work relations so that they run in accordance with the provisions of labor laws and regulations.

Entrepreneurs and workers need each other, both are intertwined in an employment relationship. The legal relationship between employers and workers is basically unequal in which the obligations of workers are more than those of employers as owners of the company, then between employers and workers have a subordinated employment relationship (a higher/vertical relationship), this is what distinguishes it from general legal relations which coordination (horizontal). So that in an employment relationship the position of the entrepreneur is higher than that of the worker because the worker carries out the work on orders from the employer (Shalihah, 2016; Agatha, 2021).

On consideration of business needs, companies often ignore the protection of the rights of workers who have an employment relationship with a PKWT when the PKWT ends, employers use it to change the work agreement to an PKWTT for the same job. Worker performance is one of the reasons employers bind workers to PKWT first. Employers do not want to take the wrong step directly binding workers with the PKWTT employment relationship, therefore binding the employment relationship with PKWT is the main option because the probationary period which only lasts for three months is deemed insufficient to see the worker's performance.

Law Number 6 of 2003 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (hereinafter referred to as "UU 6/2023") Article 56 Paragraph (2) states that work agreements for a certain time are based on a certain period of time. time or completion of a certain job *Juncto* Government Regulation Number 35 of 2021 concerning Employment Agreement For A Specified Period Of Time, Outsourcing, Working Time And Rest Time, And Termination Of Employment (hereinafter referred to as "PP 35/2021") Article 4 Paragraph (1) states PKWT cannot be held for jobs that are permanent.

Basically, the legal consequences for workers' rights with PKWT and PKWTT employment relations are different, workers with PKWT employment relations according to Article 15 PP 35/2021 stipulates that employers are required to provide compensation money to workers with PKWT employment relations whose implementation is carried out at the end of the employment relationship. PKWT. Compensation money is given to workers who have

worked for at least 1 (one) month continuously. Furthermore, Article 16 PP 35/2021 states that compensation money is given 1 (one) month's wages for a PKWT work relationship for 12 (twelve) months continuously. In the event that the worker's working period has passed 1 month but less than 12 (twelve) months, it will be calculated proportionally (Ramadhani & Nugroho, 2021; Effendy et al., 2023).

Moreover, the issue of legal protection for workers with PKWT who have been changed to PKWTT is a matter of social justice and equity. These workers may be disproportionately affected by changes to their employment status, particularly if they are part of vulnerable populations such as women, immigrants, or racial and ethnic minorities. By analyzing the legal protections available to these workers, this article journal will provide valuable insights into the broader issue of labor market regulation and social justice (Priyanto, 2023; Hariyanto, 2022). The findings of this article journal will be relevant not only to policymakers but also to workers, employers, and labor organizations. Ultimately, this research aims to contribute to a better understanding of the challenges facing workers in the contemporary labor market and to provide evidence-based recommendations for improving legal protections and promoting equitable employment practices.

Method

This article journal will use a method that involves conducting a literature review, collecting data from workers, analyzing the data and legal protections, developing policy recommendations, creating an implementation plan, and devising an evaluation plan. The aim of this method is to provide a thorough analysis of the legal protection for workers with PKWT who have been changed to PKWTT for the same job, and offer practical recommendations for improving legal protection for these workers. This approach will allow for a comprehensive understanding of the issue and the development of effective policy solutions.

Result and Discussion

Legal Status of Workers with PKWT Employment Relations Changed to PKWTT Employment Relations after the End of PKWT Employment Relations for the Same Job

The Civil Code (hereinafter referred to as the "Civil Code") Article 1320 which underlies the conditions for the validity of work agreements in Article 52 of Law 13/2003. First, an agreement in a work relationship always begins with an agreement between the two parties. Both parties who bind themselves in the agreement must have the ability to carry out legal actions. Third, there is an agreed job. The four jobs that were agreed upon are not contrary to public order, decency and applicable laws and regulations. All the conditions for making an employment agreement must be met. If the first and second conditions are not met, the agreement can be canceled, while if the third and fourth conditions are not met, the agreement will be null and void.

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PWKT and PKWTT are types of work agreements that bind employers and workers in an employment relationship. PP 35/2021 Article 4 limits the scope of the PKWT work relationship for a period of time or the completion of a certain job and limits it to temporary work. The duration of the PKWT work relationship is rearranged in Article 5 PP 35/2021 only for certain jobs that are estimated to be completed in the not too distant future; seasonal work; or work related to new products, new activities, or additional products that are still in trial or exploration. While the PKWT work relationship for the completion of a particular job is made for work that is completed once or work is temporary in nature. This arrangement confirms that the PKWT work relationship cannot be used for all types of work.

Although PKWT employment relations are restricted by law, the determination of the types of work that can be considered permanent or temporary is regulated by each employer. This becomes a gap for employers to determine as if all the work in the company is temporary so that work relations can be carried out using the PKWT work relationship.

PKWTT work relations as stated in Law 13 of 2003 concerning Manpower (hereinafter referred to as "UU 13/2003") Article 60 states that PKWTT work relations may require a probationary period of no longer than 3 (three) months. The employer feels that this probationary period is very short, there is not enough time to see the worker's performance before the worker is appointed as a permanent worker or employment relationship with PKWTT so that they are considered not in line with the company's business needs. To anticipate this, employers use the PKWT employment relationship first for jobs that are permanent in order to see worker performance. If the worker's performance is in accordance with the employer's target, the worker is appointed as a permanent worker or uses the PKWTT employment relationship (Wongkaren et al., 2022).

Entrepreneurs who employ workers with a PKWT work relationship in their agreements do not stipulate a probationary period because if the employer includes a probationary period requirement in the PKWT employment relationship, in accordance with Article 12 Paragraph (2) PP 35/2021 then the probationary period will be null and void by law and the PKWT employment relationship by law it will change to PKWTT, so that the working period is calculated from the start of the work agreement.

Entrepreneurs who employ permanent workers with a PKWT employment relationship and after the end of the PKWT employment relationship, the worker is appointed as a permanent worker or employment relationship with PKWTT for the same job, the employer implicitly states that the job is indeed permanent. The consequence of this condition is that by law the PKWT work relationship will change to a PKWTT work relationship.

Employers actually understand this and know the consequences of hiring workers with a PKWT employment relationship for permanent jobs. This is still being done because the government's labor inspection is so weak that practices like this continue and will continue until one of the parties agrees, disadvantaged by bringing this problem up to the Industrial Relations Dispute Settlement (PPHI) process.

Legal certainty regarding the status of workers employed with a PKWTT employment relationship for permanent jobs where after the employment relationship ends, the agreement is changed by the employer with a PKWTT employment relationship for the same job is actually clear. The legal status of workers as PKWTT workers is calculated from the time they enter into a work agreement. However, because workers are always in an inferior position and do not mind this, the employment relationship is still considered to continue in accordance with the agreement between the employer and the worker.

Legal Protection for Workers with PKWT Work Relations Changed to PKWTT Work Relations after the End of PKWT Work Relations for the Same Job

In work relations there are legal rules to obtain protection along with their rights and obligations, these rules consist of autonomous rules which are employment provisions made by the parties directly involved in the work relationship. The form includes company regulations, collective labor agreements and work agreements. In addition, there are heteronomous rules which are labor provisions made by parties outside of the employment relationship, the third party here that is most influential is the government, the form of heteronomous rules are labor provisions set by the government. Deviation from the heteronomous rule is possible if it has a higher value of provisions than determined by the heteronomous rule, in other words, which benefits workers.

The company uses the PKWT work relationship because it provides convenience if it is felt that the worker does not achieve the performance according to the employer's target, the employment relationship can be terminated earlier or not to extend the working period after the expiration of the work agreement period. This condition requires employers to provide certain compensation which in calculation is not as big as PKWTT's severance pay compensation. For workers, the PKWT work relationship does not guarantee job security, the worker's working period is limited according to the specified time. In addition, many companies differentiate between benefits for PKWT workers and PKWTT workers. PKWT workers do not get as many benefits as workers with PKWTT.

PKWT initially aims to quickly accommodate the company's business needs, in practice this PKWT employment relationship provides losses for workers. Legal uncertainty in the PKWT work relationship can be found from the PKWT work relationship arrangements as in Article 5 PP 35/2021 which states that PKWT based on the time period is made for certain jobs, namely:

- a. Jobs which are estimated to be completed in the not too long time;
- b. Jobs that are seasonal in nature; or
- c. Jobs related to new products, new activities, or additional products that are still in trial or exploration period.

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Determination of the type of work that can use PKWT is not explicitly stated in these provisions, the determination of the type of temporary work is determined by the employer, if the employer does not specify which type of work is permanent or temporary in company regulations or a collective bargaining agreement or employment agreement, this will result in legal uncertainty that will give losses to workers.

The practice of hiring workers with PKWT agreements for permanent jobs can easily be found in companies. This is an advantage for the company, if the worker's performance does not meet the target or employer's assessment, the employer will not extend the validity period of the PKWT or terminate it sooner before the expiration of the PKWT or the employer does not change the PKWT to PKWTT. The last thing is part of the employer's strategy of changing the PKWT work relationship to a PKWTT work relationship even though there is no difference in employment between when the worker is in a PKWT work relationship and after it is changed to a PKWTT work relationship.

When employers hire workers for permanent work with PKWT, by law it will become a PKWTT employment relationship, as well as workers who were initially employed with a PKWT employment relationship, after the end of the PKWT employment relationship, the worker agreement is changed to a PKWTT employment relationship for the same job. then legally starting from the time the worker is hired with a PKWTT employment relationship it will be considered a PKWTT employment relationship so that the working period will be calculated from the time the worker is hired starting from the PKWT employment relationship until the PKWTT employment relationship ends according to the conditions justified by law as in the case of retired workers , workers' deaths and legal actions taken by employers or workers that cause the end of the employment relationship.

Article 15 PP 35/2022 states that employers are required to provide compensation money to workers whose work relationship is based on PKWT. Payment of compensation money is carried out at the end of the PKWT work relationship. In the event that a worker is hired under a PKWT employment relationship, the PKWT term ends, then the agreement is changed by the employer with a PKWTT employment relationship for the same job without any time lag, it can be said that by law the status of the worker becomes PKWTT. This will be a discussion regarding compensation for the end of the PKWT employment relationship being paid or not by the employer, because the worker's status is considered to be part of the PKWTT employment relationship since the beginning of binding himself to the employment agreement. In order to guarantee legal protection for workers from arbitrary employers, employers are still required to pay compensation for the end of the PKWT employment relationship and the term of employment is calculated from the beginning or from the PKWT employment relationship. This is also done as long as it benefits workers, so it provides more protection for workers.

The amount of compensation money according to Article 16 PP 35/2021 is given according to the provisions: a) PKWT for 12 (twelve) months continuously, given 1 (one) month wages; b) PKWT for 1 (one) month or more but less than 12 (twelve) months, calculated proportionally by calculating: working period x 1 (one) month Wages; c) PKWT for more than

12 (twelve) months, calculated proportionally by calculating: working period x 1 (one) month Wages.

Wages in the calculation above consist of basic wages and fixed allowances. If the company does not apply fixed basic wages and allowances, then the basis for calculation is wages without benefits. In the event that the company applies variable base wages and allowances, the calculation only uses base wages.

The government as a party that is directly involved in the employment relationship has a very important role in providing protection to workers in order to maintain a balanced employment relationship, because the employment relationship is subordinate. Employers are in a strong position while workers tend to be vulnerable. Supervision of PKWT work relations practices needs to be carried out consistently and periodically. Employers who employ workers with a PWKT employment relationship for jobs that are permanent, usually do not record PKWT in the employment report. Even though according to Article 14 PP 35/2021 states that PKWT must be registered by employers at the ministry that administers government affairs in the field of employment online no later than 3 (three) working days from the signing of the PKWT. In the event that online PKWT is not yet available, the registration of PKWT is carried out by the Entrepreneur in writing at the agency that administers government affairs in the district/city manpower sector, no later than 7 (seven) working days from the signing of the PKWT.

Even though employers are required to register PKWT at the Ministry of Manpower, in reality there are no legal sanctions that strictly regulate if PKWT is not registered by employers. In the absence of strict sanctions and the absence of continuous supervision, it opens opportunities for employers to be arbitrary towards workers by employing workers with continuous PKWT employment relationships for all types of permanent work which is detrimental to workers in job security. In this condition, workers seem to be forced to follow the employer's wishes, if they refuse, it will cause workers to lose their jobs.

Conclusion

The legal status of workers who are employed with a PKWTT employment relationship that is changed to a PKWTT employment relationship for the same work is guaranteed by law that workers by law will become workers with a PKWTT employment relationship and the length of service is calculated from the start of the employment agreement but the job determination is permanent, whose arrangements are returned to employers to be regulated in company regulations or collective labor agreements or employment agreements causing them to be vulnerable to abuse by employers. Employers can argue that the employment relationship the worker is in is temporary so that it can be done by binding the employment relationship with the PKWT. This needs to be strictly regulated by the government to determine permanent and temporary jobs and improve consistent supervision of the practices of the employment relationship between employers and workers.

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In addition, employers are required to provide compensation for the termination of the PKWT employment relationship to workers in the amount of 1 times the wage if they have fulfilled the conditions referred to in Article 16 PP 35/2021, this is to ensure protection for workers. Compensation for deviations from the provisions of the PKWT must be paid by employers by paying compensation for the end of the employment relationship and is obliged to appoint workers to become permanent workers or with PKWTT employment relations taking into account the years of service since the beginning of the PKWT employment relationship.

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