



Implementation of The Principle of Balance in Standard Clauses in Certain Time Employment Agreements (PKWT)

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Abstract

Based on the description above, the authors conclude that in the formation and implementation of agreements, including the Specific Time Work Agreement (PKWT), it is necessary to pay attention to the balance of rights, obligations, and achievements of each party that binds itself, even when the employer includes standard clauses in it. So that there is no deviation because the PKWT in it is inseparable from the standard clause, in this case, it only benefits the employer because the clause has been stipulated unilaterally and the worker can only accept or reject it. Thus, the goodwill of the employer is required not to include standard clauses that lead to the exoneration clause and not to forget to pay attention to the rights of the workers, not only to pay attention to the obligations of the workers towards the employer. Meanwhile, from the beginning of the formation of the Specific Time Work Agreement (PKWT) until the end of the agreement period, it must be carried out based on the applicable regulations.

Keywords: *Implementation; PKWT*

Introduction

Work is a form of activity that involves human consciousness to achieve results that are in line with expectations. Awareness to carry out activities and understanding the goals to be achieved are important things in work. The purpose of work is to meet the needs of human life. Furthermore, humans also work to gain a sense of security, seek satisfaction, and actualize themselves at work. This goal can be fulfilled if you have got a job according to the criteria and abilities you have. According to the Big Indonesian Dictionary, work is livelihood; which is used as the basis of livelihood or something that is done to earn a living.¹

After getting a job every worker does not necessarily get a sense of security as the purpose of work. However, they also need protection in carrying out their work, one of which is legal protection which can be used as a basis for fulfilling the rights and obligations that workers must fulfill. Thus the working relationship between workers and employers as employers can be accounted for if in the future there is a dispute between the two parties. This is stated in the work agreement between the employer or employer and the worker, one of which is through a Specific Time Work Agreement (PKWT).

¹ Aplikasi Kamus Besar Bahasa Indonesia Edisi Kelima, KBBI V 0.4.1 (41).

Article 1 number 10 Government Regulation Number 35 of 2021 concerning Work Agreements for a Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations explains that a work agreement for a certain time or hereinafter abbreviated as PKWT is a work agreement between workers or laborers and employers to hold a working relationship for a certain time or a certain job.² This understanding is also in line with the Decree of the Minister of Manpower and Transmigration No. KEP.100/MEN/VI/2004 concerning Provisions for the Implementation of Certain Time Work Agreements.³ Based on this understanding, it can be concluded that the implementation of PKWT must fulfill two elements that must be met, namely objectively and subjectively. The subjective element consists of workers and employers as employers. While the objective element consists of a working relationship and a particular time or job.

PKWT generally includes standard clauses made by the company, considering the nature of the standard clause itself, take it or leave it, where the clause has been unilaterally predetermined which is binding and must be fulfilled by the other party, in this case, the worker. This is risky if the standard clauses outlined in the PKWT and the company do not pay attention to the rights of its workers, so this causes a dilemma for workers as parties who inevitably accept it because they need work.

After being declared accepted as an employee at the company, the prospective worker is then given a form to fill out and sign (usually only filled in with personal identification data) stating that the worker with all the consequences agrees to everything stated in the contents of the PKWT clause. Workers who agree to commit themselves, in this case, take it. Conversely, if the worker does not agree with the contents of the clause in the PKWT, he can refuse to sign it, in this case, do leave it.

Standard agreements that were born due to developments in the business world emerged because of demands for practicality and convenience. Even so, the standard agreement still prioritizes legal certainty in its implementation. Its standard nature allows for an imbalance of position between one party and another in agreeing. Most of the standard agreements are made by parties who have a 'higher position', in this case the company as the employer.⁴

Based on the description above, a balance is needed regarding the needs of workers and companies so that neither party feels disadvantaged. The company can use the services of workers and on the other hand workers get their rights such as salaries and other welfare guarantees.

A. Standard Clause in Certain Time Employment Agreement (PkwT)

1. Standard Clause

Standard clauses are separate and permanent (standard) provisions of an agreement that are added to or included in the main agreement. Regarding the meaning of standard clauses, there is no uniformity, but Law Number 8 of 1999 concerning Consumer Protection explains that standard clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document. and/or agreements that are binding and must be fulfilled by consumers.⁵ The Consumer Protection Act also stipulates that a standard clause may not lead to an exoneration clause.⁶

² Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

³ Pasal 1 Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor KEP.100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

⁴ Fahdelika Mahendar dan Christiana Tri Budhayati, Konsep *Take It or Leave It* dalam Perjanjian Baku Sesuai dengan Asas Kebebasan berkontrak, *Jurnal Ilmu Hukum Alethea*, Volume 2 Nomor 2, Februari 2019, hlm. 98-99.

⁵ Pasal 1 Nomor 10 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

⁶ Pasal 18 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

According to William Statsky, who has been quoted in the book *Legal Explanation of Standard Clauses*, the characteristics of a standard contract are as follows:⁷

- a. Standardized form
- b. Concerning consumer goods and services
- c. The seller is in a stronger position in the bargain
- d. The buyer has no real opportunity to haggle over the terms, so the agreement is rendered on a 'take it or leave it' basis.
- e. The buyer has no real opportunity to seek a more favorable agreement elsewhere.

The characteristics above when associated with this discussion, the seller is analogous to the company as the employer and the buyer is analogous to the worker.

Also known as the exoneration clause as the author has mentioned above, or also known as the exclusion clause, this term refers to a type of standard clause that contains exemption or exclusion of certain responsibilities as stated in the clause. An exoneration clause or exclusion clause is a provision in an agreement that stipulates that one party will not be liable for losses, when normally he or she should be liable.⁸

According to Munir Fuady, who has been quoted in the book *Legal Explanation of Standard Clauses*, writing exoneration or exclusion clauses in contracts usually includes the following conditional method:⁹

- a. The method of reducing or even eliminating legal obligations that are usually borne by one of the parties. For example, efforts are made to broaden the meaning of force majeure.
- b. Methods of reducing or even eliminating legal consequences due to improper implementation of obligations. For example, the reduction or elimination of compensation in the event of default by one of the parties to the contract.
- c. The method of creating certain obligations to one of the parties to the contract. For example, the responsibility of one of the parties is borne by the other party in the event of a loss to a third party who is outside the contract.

2. Specific Time Work Agreement (PKWT)

Certain Time Work, hereinafter referred to as PKWT, is a work agreement between workers/laborers and employers to enter into a working relationship for a certain time or a certain job.¹⁰ The PKWT must be registered by the entrepreneur with the agency responsible for manpower affairs at the local regency/municipality no later than 7 (seven) days after signing it.¹¹ PKWT cannot require a work probation period and if work probation is required in the PKWT, the required probationary period is null and void and the working period is still counted.¹²

⁷ Ahmad Fikri Assegaf, *Penjelasan Hukum Tentang Klausula Baku*, (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2014), hlm. 33.

⁸ Ahmad Fikri Assegaf, *Penjelasan Hukum Tentang Klausula Baku*, (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2014), hlm. 24-25.

⁹ Ahmad Fikri Assegaf, *Penjelasan Hukum Tentang Klausula Baku*, (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2014), hlm. 26-27.

¹⁰ Pasal 1 angka 1 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

¹¹ Pasal 13 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

¹² Pasal 12 Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

The Specific Time Work Agreement (PKWT) contains at least:¹³

- a. Name, company 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 by statutory provisions and/or working conditions outlined in company regulations or collective labor agreements;
- g. Start and period of validity of the PKWT;
- h. Place and date the PKWT was made; And
- i. The signatures of the parties in the PKWT.

Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: KEP. 100/MEN/VI/2004 concerning Provisions for the Implementation of Specific Time Work Agreements has divided PKWT into 3 (three) types:

a. PKWT for One-Time or Temporary Work¹⁴

PKWT for work that is completed once or temporarily is a PKWT based on the completion of certain jobs. This PKWT is made for a maximum of 3 (three) years, but if the work can be completed more quickly then the PKWT is terminated by law and also includes a time limit for the work to be completed. However, if the work has not been completed by the specified deadline, renewal can be made after exceeding the grace period of 30 (thirty) days after the end of the agreement and as long as the grace period does not have a working relationship between the worker and the employer, these provisions are also included in the PKWT. Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment also regulates the terms of the entire term of this type of PKWT and its extension, namely no more than 5 (five) years.¹⁵

b. PKWT for seasonal work¹⁶

PKWT for seasonal work can only be done for one type of work in a certain season, including work to fulfill certain orders or targets for workers who do additional work, provided that the employer must include a list of workers' names. PKWT for this seasonal work cannot be renewed.

c. PKWT for Work Related to New Products¹⁷

This type of PKWT can be carried out to carry out work related to new products, new activities, or additional products that are still being tested for a maximum period of 2 (two) years, can be extended once for a maximum of 1 (one) year and cannot be renewed.

¹³ Pasal 13 Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

¹⁴ Pasal 3 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

¹⁵ Pasal 8 Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

¹⁶ Pasal 4, Pasal 5, Pasal 6, Pasal 7 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

¹⁷ Pasal 8, Pasal 9 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: KEP. 100/MEN/VI/2004 concerning Provisions for the Implementation of Specific Time Work Agreements also regulates the change from PKWT to PKWTT (Unspecified Time Work Agreement), as follows:¹⁸

- a. PKWT is not made in Indonesian and Latin letters, since the employment relationship has changed to PKWTT;
- b. If the PKWT for work that is seasonal is not carried out for one type of work in a certain season and is not even carried out for workers who require additional work, then the agreement changes to PKWTT since the existence of an employment relationship;
- c. If the PKWT for work related to new products in its implementation deviates regarding the terms of the period and the renewal of the agreement, then the PKWT changes to PKWTT since the deviation is made;
- d. PKWT renewal for work that is completed once or temporarily does not go through a grace period of 30 (thirty) days after the expiration of the PKWT extension and is not agreed upon, then the agreement changes to PKWTT since these conditions are not fulfilled.

B. Implementation of the Principle of Balance in the Standard Clause in Certain Time Employment Agreements (Pkwt)

Article 1313 of the Civil Code explains that an agreement is an act in which one or more people bind themselves to one or more other people. Besides that, Article 1320 of the Civil Code states four conditions for the validity of an agreement, namely:

1. The agreement of those who bind themselves;
2. The ability to agree;
3. A certain subject matter;
4. A cause that is not forbidden.

The first two conditions are subjective requirements because it concerns the parties or their subjects who agree, if the agreement is not fulfilled, it remains valid or binding as long as it has not been declared invalid by the Judge at the request for annulment of the party that does not meet these conditions. Meanwhile, the third and fourth conditions are objective because they concern the contents of the agreement itself or the object of the legal action taken and if these conditions are not fulfilled then the agreement is null and void, which is an agreement that was originally canceled and never had such an agreement.

In the economic field, contracts are the most important instrument for realizing economic changes in the distribution of goods and services. The rationale for the contract refers to the objective of a fair shift of assets and raises legal consequences for the enrichment (process, method or act of enriching) the parties equally. Contracts aim to create better conditions for both parties.

In making a contract, the rights of the parties involved must be considered, the contract must be fair for each party and to reflect this fairness, a balance is needed between the two parties in the agreement. However, in practice there are still many standard clauses that tend to be considered one-sided, unbalanced and unfair, including the Fixed Time Work Agreement. Sehingga menyebabkan pekerja mau tidak mau menerima perjanjian tersebut karena membutuhkan pekerjaan terlebih bagi pekerja *fresh graduate* yang dituntut untuk segera mendapatkan pekerjaan.

¹⁸ Pasal 15 Keputusan Menteri Tenaga Kerja dan Transmigrasi RI Nomor: KEP. 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu.

The principle functions as a guideline or direction of orientation based on which the law can be implemented. Meanwhile, according to the Big Indonesian Dictionary, the word 'balance' means a state of balance; a condition that occurs when all the existing forces and tendencies are exactly balanced or neutralized by the same but opposing forces and tendencies; a person's ability to control the balance of the body in some way.¹⁹ The principle of balance is one of the principles that must be stated in the agreement, namely a principle intended to harmonize legal institutions and the main principles of contract law known in civil law which are based on thoughts and backgrounds of individualism on one side and ways of thinking on another party.²⁰ In this case the principle of balance is intended to provide a balance between the interests of workers, employers and the government in the material and spiritual sense.

The principle of balance is the principle of operationalization of the principle of contract law, the application of the principle of balance, for example, can be seen from the necessity to refer to decency, good faith, propriety and appropriateness in carrying out the rights and obligations arising from an agreement. Therefore, the principle of balance can be seen and operated as a point of harmonization of efforts to develop Indonesian contract law against modern demands, which opens doors and becomes a filter for accepting ideas or modern legal institutions originating either from the civil law system, as well as the common law system or other legal systems and processing them to become part of the Indonesian national legal system, to create a modern national contract law system, while maintaining the characteristics of the identity of the Indonesian nation.

The standard clauses in a Fixed Time Employment Agreement mean that workers are not allowed to change the contents or negotiate any of the articles contained therein. Workers can only accept or reject it. Thus the principle of balance is needed to create a balanced situation between the two parties in a contractual relationship. Herlien Budiono mentions three interrelated aspects of the agreement that can be used as test factors related to the working power of the principle of balance, namely the actions of the parties; contents of the contract/agreement; and implementation of the contract/agreement.²¹

The first factor related to the working power of the principle of balance above is the actions of the parties, in the Specific Time Work Agreement (PKWT) to fulfill the principle of balance, it should be seen from the beginning of the formation of the agreement, namely the employer in including the standard clause in the PKWT does not lead to an exoneration clause which the entrepreneur shifts his responsibility because this does not reflect the principle of balance and has also been prohibited in Law Number 8 of 1999 concerning Consumer Protection.

The second factor is the contents of the contract/agreement, the Specific Time Work Agreement (PKWT) in its formation must be based on the Civil Code, Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment as well as Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP.100/MEN/VI/2004 concerning Provisions for the Implementation of Certain Time Work Agreements and other regulations that are still valid. Thus there is no deviation in the making of the PKWT including the inclusion of the rights and obligations of each party and in including standard clauses that do not lead to exoneration clauses or exclusion clauses.

The third factor that can be used as a test for the workability of the principle of balance is the implementation of the contract/agreement, the implementation in question is from the signing until the end of the Specific Time Work Agreement (PKWT). The fact shows that people closing contracts are usually based on a specific purpose or purpose, through an agreement changes can be made regarding the distribution and exchange of economic goods and services. The achievement of the objectives of an

¹⁹ Aplikasi Kamus Besar Bahasa Indonesia Edisi Kelima, KBBI V 0.4.1 (41).

²⁰ Niru Anita Sinaga dan Tiberius Zalucu, "Peranan Asas Keseimbangan dalam Mewujudkan Tujuan Perjanjian", 2017, *Jurnal Ilmiah Hukum Dirgantara*, Volume 8 Nomor 1, hlm. 49-50.

²¹ Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian di Indonesia*, (Bandung: Citra Aditya Bakti, 2006), hlm. 334-338.

agreement is based on the will that has been expressed, namely in the form of promises between the parties involved.

Conclusion

Based on the description above, the authors conclude that in the formation and implementation of agreements, including the Specific Time Work Agreement (PKWT), it is necessary to pay attention to the balance of rights, obligations and achievements of each party that binds itself, even when the employer includes standard clauses in it. So that there is no deviation because the PKWT in it is inseparable from the standard clause, in this case it only benefits the employer because the clause has been stipulated unilaterally and the worker can only accept or reject it.

Thus, the goodwill of the employer is required not to include standard clauses that lead to the exoneration clause and not to forget to pay attention to the rights of the workers, not only to pay attention to the obligations of the workers towards the employer. Meanwhile, from the beginning of the formation of the Specific Time Work Agreement (PKWT) until the end of the agreement period, it must be carried out based on the applicable regulations.

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