



Ensuring Legal Protection for Fixed-Term Workers Terminated Before Contract Expiration: Upholding the Principle of Justice

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Abstract

Termination of employment (PHK) of workers with a fixed-term employment agreement (PKWT) before the end of the contract period is a complex problem, especially in the context of legal protection. This study aims to analyze the ratio legis regulation of compensation and damages obligations for PKWT workers who are laid off before the end of the contract period and to develop a concept of legal protection based on the principle of justice. This study uses a normative research method with a statutory and conceptual approach. The theoretical approaches used include the theory of the welfare state law, the theory of legal protection, and the theory of legal objectives. The study results indicate that the ratio legis regulation of compensation and damages obligations aims to provide legal certainty for PKWT workers in a vulnerable position. Although Article 62 of Law No. 13 of 2003 concerning Manpower regulates compensation in the amount of wages until the end of the contract period, this provision conflicts with Article 17 of PP No. 35 of 2021 which regulates the obligation to provide compensation. This conflict of norms creates legal uncertainty that has the potential to harm workers. The concept of legal protection for PKWT workers must be based on the principle of justice that emphasizes the balance of rights and obligations between workers and employers. This protection includes the provision of rights to compensation, severance pay, and social security that are fair and proportional. The principle of equal protection is important to ensure that the rights of PKWT workers are equal to those of permanent workers in the context of layoffs before the end of the contract. This study concludes that the regulation of legal protection for PKWT workers requires harmonization of regulations to ensure legal certainty and justice in accordance with the principles of labor law.

Keywords: *Layoffs; Fixed-Term Workers; Legal Protection; Principle of Justice; Legal Certainty*

Introduction

Labor conflicts are common in workplaces and industries worldwide, and no country is immune to these challenges. Laws are enacted to address such disputes, aiming to balance the interests of workers on one side and employers on the other. These two sides, protected by legislation, are constantly tested for effectiveness through scientific and critical analysis. In Indonesia, labor laws have been continuously revised in response to feedback and criticism from various parties. A significant workplace issue is the perceived injustice juxtaposed with the ideal of justice. For example, permanent employees are entitled to

severance pay, long-service awards, and other compensations upon contract termination. However, these legal provisions are not always sufficient to resolve labor-related issues effectively.

Philosophically, Indonesia's labor laws are well-structured and rooted in the national constitution (UUD 1945), particularly Article 28D (2), which states, "Every person has the right to work and to receive fair and proper remuneration and treatment in an employment relationship." Realizing this ideal requires active and sustained collaboration among workers, employers, and the government. A harmonious and successful industrial relationship is unattainable without synergy among these three stakeholders. Ensuring job continuity through government and private sector initiatives is critical to national development. While the private sector is pivotal in creating new job opportunities, government oversight remains essential for systemic integrity and human resource development.

In Indonesia, labor agreements are categorized into Fixed-Term Employment Agreements (PKWT) and Indefinite-Term Employment Agreements (PKWTT). PKWT is used for specific jobs or timeframes, while PKWTT applies to permanent employment relationships. Labor agreements must comply with the Indonesian Civil Code (Staatsblad No. 23/1847) and Labor Law No. 13/2003, which was partially amended by the Job Creation Law (Law No. 6/2023). Article 170 of the Labor Law states that violations of specific provisions render termination invalid, obliging employers to reinstate affected employees and provide due compensation. Employees rejecting terminations must submit a written objection within seven days, initiating the dispute resolution mechanism as prescribed by law.

The legal basis for PKWT agreements lies in Article 56(2) of the Labor Law, which stipulates that such contracts are limited to specific tasks or timeframes. PKWT cannot be used for permanent roles involving continuous production processes. Instead, it applies to one-off or temporary tasks, jobs projected to be completed within three years, seasonal work, or new or trial products and projects.

The Job Creation Law, enacted on March 31, 2023, aims to expand employment opportunities across Indonesia. The focus areas include improving the investment ecosystem, enhancing worker protection and welfare, supporting cooperatives and MSMEs, and accelerating strategic national projects. The law strengthens worker protections, particularly for those under PKWT contracts and those facing termination. Under Government Regulation No. 35/2021, employers terminating PKWT contracts prematurely must provide compensation proportional to the employee's service duration. This regulation ensures fair treatment and reinforces the legal framework for labor relations in Indonesia. Despite these improvements, further research is needed to evaluate the law's effectiveness in safeguarding workers' rights, particularly for those under fixed-term agreements terminated before contract expiration.

The termination of employment, as stipulated in Article 17 of Government Regulation No. 35 of 2021, specifies that if one party ends the employment relationship before the expiration of a fixed-term work agreement (PKWT), the employer is required to provide compensation as outlined in Article 15, paragraph (1), calculated based on the duration of the PKWT that the worker has completed. Further clarification on the amount of compensation is provided in Article 16, paragraph (1) of the same regulation, which states: (a) If the PKWT is for 12 months or less, the worker is entitled to one month's salary as compensation. (b) If the PKWT lasts for at least one month but less than 12 months, the compensation is calculated proportionally, based on the formula: length of service \times 1 month of salary / 12. (c) If the PKWT lasts more than 12 months, the compensation is also calculated proportionally using the same formula.

Regarding termination, the Employment Law (UU Ketenagakerjaan) defines it in Article 1, point 25 as the cessation of the employment relationship due to specific reasons that lead to the cessation of rights and obligations between the employer and employee. In this regard, termination is understood as the termination of the employment relationship. Article 62 of the Employment Law stipulates that if one party ends the employment relationship before the expiration of the PKWT, they are obligated to pay

compensation, while Article 17 of Government Regulation No. 35 of 2021 mandates the employer to provide compensation as per the provisions in Article 16, paragraph (1). This creates a legal conflict, causing uncertainty, as Article 62 of the Employment Law explicitly refers to compensation, whereas Government Regulation No. 35 of 2021 calculates compensation differently.

A philosophical analysis of the legal protection for workers under PKWT who face termination before the completion of their contract involves considering the principles of justice, rights, and responsibilities in the employment relationship. Employment agreements reflect mutual consent between employer and employee, grounded in the principles of justice, respect for each other's rights and obligations. Philosophers like John Locke and Immanuel Kant offer insights into individual rights and morality in contractual relationships. Locke emphasized the natural rights to life, liberty, and property, which can be interpreted as the right to a job as agreed in the employment contract. When a PKWT worker is terminated without just cause before the end of their contract, their rights are violated, infringing not only the contract but also their human rights. Kant's principle of the categorical imperative stresses treating individuals as ends in themselves, not merely as means to an end. If an employer terminates an employee without proper cause, it treats the worker as a tool for economic efficiency, undermining the worker's dignity and moral rights. In addition, from a legal philosophical perspective, Aristotle's concept of distributive and retributive justice emphasizes that laws should ensure that individuals receive what is rightfully theirs and that no party is harmed without appropriate compensation. Therefore, the legal protection of PKWT workers facing termination before the contract's end should ensure their rights are upheld and they receive fair compensation for any losses incurred.

Furthermore, Government Regulation No. 35 of 2021 (a derivative of the Omnibus Law) introduces a formula for compensating PKWT workers who face termination before the contract ends, based on the duration of their employment. However, Article 62 of the Employment Law remains valid since it was not repealed or amended by the Omnibus Law. Article 4, paragraph (1) of PP No. 35/2021 establishes that PKWT is based on either (a) a specific period or (b) completion of a certain job. It further specifies in Article 5, paragraph (2), that PKWT for a specific job can be applied to short-term work, seasonal work, or work related to new products or activities under trial. Despite this, some employers still use PKWT for permanent jobs, creating a legal issue regarding whether permanent workers should fill such positions (PKWTT).

Under Article 164, the Employment Law allows employers to terminate workers due to company closure or continuous financial losses over two years, and workers are entitled to severance pay and compensation. The government plays a crucial role as a regulator and supervisor in the labor sector, ensuring neutrality and safeguarding the rights and obligations of both parties in the employment relationship. This responsibility aligns with the constitutional mandate in Article 27, paragraph (2) of the 1945 Constitution, which states, "Every citizen has the right to work and a decent living for humanity." Furthermore, Article 6 of the Labor Law reinforces that "Every worker is entitled to equal treatment without discrimination from the employer." To provide a more comprehensive and methodologically sound analysis of this issue, the author is motivated to write a dissertation titled: *"Legal Protection For Fixed-Term Workers Terminated Before The End Of Their Contract Based On The Principle Of Justice."* This study aims to explore the legal protection available to fixed-term workers (PKWT) who are terminated before the expiration of their contracts, focusing on ensuring fairness and justice in their treatment. By examining the application of legal principles and government regulations, this study will offer a fresh perspective on how the law balances the interests of employers and employees, emphasizing the importance of fair treatment and legal protection.

Related Literature Review

Welfare State Theory

A welfare state aims to ensure the well-being of its citizens by involving the state in addressing market and government failures. Indonesia's main goal is to achieve social welfare, as outlined in several articles of the 1945 Constitution. Despite having numerous provisions for welfare, its implementation has not been as optimal as in other countries with high Human Development Index (HDI) rankings, such as Norway, Japan, and the United States.

A welfare state provides a minimum income, social services, and protection of citizens' rights, regardless of their social status. This concept includes two definitions: first, focusing on household economic policies like healthcare subsidies, education, and social insurance; and second, covering broader public policies such as housing, labor, and environmental regulations.

The definition of welfare has four main aspects: (1) social welfare as a condition where material and non-material needs are met; (2) social services to meet basic needs such as education and healthcare; (3) social benefits for the impoverished; and (4) efforts to improve the quality of life through social programs.

The welfare state is also associated with social policies aimed at protecting citizens through social security and safety nets. This concept was introduced by Jeremy Bentham and popularized by Alfred Zimern. Bentham proposed that the government has the responsibility to ensure the happiness of its citizens, which led to reforms in law and social policy (Bentham, 1789; Zimern, 1936).

The welfare state theory emphasizes that the government is responsible for maintaining security and ensuring social justice and citizens' well-being. The characteristics of this state include government intervention in people's lives, equitable social services, and legal regulations that support welfare. The welfare state also emphasizes efficiency and management in the implementation of social and economic policies, with a greater role for the state in social and economic life.

Legal Protection Theory

Immanuel Kant argued that the state must protect its citizens' natural and eternal rights and freedoms, such as the right to life, family, security, and well-being. This protection is also reflected in the Covenant on Civil and Political Rights and the UN Declaration of Human Rights affirming that everyone is entitled to legal protection without discrimination (Kant, 1797).

According to Salmond, the purpose of law is to integrate and coordinate the interests of society, as the protection of rights can only be achieved by limiting other conflicting interests. B. Arief Sidharta further added that the goal of law is not only order but also true peace in society (Sidharta, 1999).

Legal protection also aims to protect individuals who are socially, economically, and politically vulnerable, as well as to seek social justice for marginalized groups. In practice, the law aims to provide protection, justice, and welfare for all citizens. Setiono and Muchsin emphasized that legal protection is an effort to shield society from arbitrary actions by authorities or other parties that cause harm. The function of law includes protection, justice, and peace in society, as outlined in Law No. 39 of 1999 on Human Rights.

Labor contracts are regulated under Law No. 13 of 2003 on Manpower, which stipulates that fixed-term contracts (PKWT) may only be made for specific temporary jobs or those expected to be completed within a certain period. Furthermore, fixed-term contracts cannot be used for permanent jobs.

One of the main principles in PKWT is that it must be written and must not contain a probationary period. If this principle is violated, the PKWT can be converted into an indefinite-term employment contract (PKWTT) (Government of the Republic of Indonesia, 2003).

It is also important to note that PKWT cannot include a probationary period. If a probationary period is included, that provision is null and void, converting the contract into a PKWTT. Additionally, the terms of the PKWT cannot be lower than the applicable company regulations or collective labor agreements.

On the other hand, workers' rights related to wages are guaranteed by law, including the right to a fair wage in accordance with existing regulations. The basic wage and benefits provided to workers, whether permanent or temporary, must comply with applicable regulations and must not be discriminatory based on gender. Protection of workers' rights is based on the principles of social justice and law that protect all citizens.

In the context of the rule of law, as explained by Immanuel Kant, the state serves as the guardian of law and the protector of citizens' rights. A state governed by law has characteristics such as a constitution that regulates the relationship between the government and the people, separation of powers, and recognition and protection of individual freedoms. Indonesia, as a democratic state, embodies these characteristics as reflected in its constitution, namely the 1945 Constitution, which guarantees constitutional rights, freedoms, and equality before the law (Government of the Republic of Indonesia, 2003).

The division of powers aims to prevent the concentration of power in one entity. Excessive power held by a ruler tends to restrict freedoms and equality, which are the hallmark of a state governed by law. These characteristics of the Rechtsstaat are also inherent in Indonesia as a rule-of-law state.

Legal Purpose Theory

Gustav Radbruch's theory of legal purpose includes three main elements: justice, legal certainty, and utility. When law fulfills these three elements, its purpose is considered achieved. These elements support each other in creating an ideal law. Law is considered just if it has legal certainty and provides utility. Legal certainty is created when the law is just and beneficial. Meanwhile, law is beneficial if it is just and has legal certainty (Radbruch, 1946).

Justice, as reflected in the fifth principle of Pancasila, "Social Justice for All the People of Indonesia," is the foundation for the formation and enforcement of law in Indonesia. Pancasila guarantees social justice for all citizens, and this must be reflected in the law. The spirit of justice must be the basis for every legal process.

Just law will create legal certainty, which is important to prevent arbitrary actions by law enforcement. Legal certainty provides assurance that the rights and obligations of individuals are clear, so everyone knows what to do according to the law. Legal certainty can be achieved with clear regulations in legislation.

Regarding the purposes of law, there are three major schools of thought: first, utilitarianism, which emphasizes the utility of law (usefulness of law); second, positivism, which emphasizes legal certainty (legal certainty) and legal predictability; third, natural law, which emphasizes justice (substantial justice). These often conflict between legal certainty and justice (Radbruch, 1946).

Legal certainty means that legal rules must be clear, not subject to arbitrary changes, and applied without subjective influence. In Indonesia, the constitution guarantees legal certainty as the right of every

citizen to obtain recognition and protection under the law. However, legal certainty is not always absolute; it must be considered according to the existing circumstances.

According to Gustav Radbruch, there are four basic principles of legal certainty:

1. Law must be positive, meaning it is regulated by legislation.
2. Law must be based on actual facts.
3. Law must be formulated clearly to avoid misinterpretation.
4. Positive law should not be easily changed (Radbruch, 1946).

The utility of law aims to create order and welfare, and to avoid conflicts between individuals. Law must be obeyed, even though it may not always be just. Good law must bring benefits to society, creating happiness for the majority. Proponents of utilitarianism, such as Jeremy Bentham, argue that the purpose of law is to bring the greatest happiness to the greatest number (Bentham, 1789).

Justice, as a legal purpose, often becomes the primary focus of legal philosophy. Radbruch argued that justice should be law's primary goal, surpassing legal certainty and utility. According to him, justice means equality in treating similar cases. He also distinguished between distributive justice and commutative justice (Radbruch, 1946).

Concept of Compensation

Compensation refers to the losses arising from breach of contract or non-performance. Yahya Harahap explains that compensation is a "real loss" caused by the act of non-performance, where the amount of compensation is determined by comparing the failure of the debtor to meet the performance with the value of the performance that should have been fulfilled. Harahap also states that compensation must align with reasonable value, referring to the actual loss suffered by the injured party, which is the creditor, resulting in the shortfall of expected profits (Harahap, 2000).

Article 62 of the Labor Law stipulates that if one party terminates the employment relationship before the end of the fixed-term employment contract (PKWT), the terminating party is required to pay compensation to the other party equivalent to the employee's wages up to the agreed termination period. If the employee resigns before the contract ends, the employee must pay compensation to the employer, and the employer is obligated to provide compensation based on the duration of the PKWT that has been completed. Similarly, if the employer terminates the employment relationship (PHK) before the contract ends, the employer must pay compensation to the employee and provide proportional severance (UU No. 13, 2003).

Compensation funds replace rights granted to fixed-term employees (PKWT) when their employment contract ends. Employees who have worked continuously for at least 1 month are entitled to compensation. If the PKWT is extended, the employee is still entitled to compensation based on the work duration. Compensation is not only in the form of salary but can also include health benefits, holiday allowances, and other benefits as per government regulations (PP No. 35, 2021).

The amount of compensation is calculated based on the PKWT duration as follows: • For a 12-month PKWT, 1 month's wages are given; • For a PKWT longer than 1 month but less than 12 months, it is calculated proportionally (work duration/12 x 1 month wages); • For a PKWT longer than 12 months, it is calculated proportionally (work duration/12 x 1 month wages) (PerMen No. PER-02/MEN, 1993).

Concept of Termination of Employment

Termination of Employment (PHK) refers to ending the employment relationship that results in the cessation of rights and obligations between the employee and employer. According to Article 1, number 25 of the Labor Law, PHK may occur for various reasons, whether initiated by the employer or the employee. Reasons for PHK include serious violations by the employee (e.g., theft, fraud, or abuse of authority), or economic reasons such as efficiency and cost reduction by the company (UU No. 13, 2003).

PHK is often considered a necessary step, but it must be carried out with a fair procedure, providing appropriate compensation to affected employees. In addition, the company must notify the employee in advance, offer opportunities to seek alternative employment, and provide severance pay calculated based on work duration, position, and employee contributions. Some countries also provide social protection programs for employees who are terminated, such as unemployment insurance or job training programs (PP No. 35, 2021).

1. Primary Legal Materials

Primary legal materials refer to the types of legal sources in the form of laws and regulations related to the subject of this research. The primary legal materials used in this research consist of applicable legislation as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law No. 13 of 2003 on Manpower;
3. Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes;
4. Law No. 11 of 2020 on Job Creation;
5. Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law;
6. Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation;
7. Government Regulation No. 35 of 2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours, Rest Periods, and Termination of Employment;
8. Minister of Manpower Regulation No. PER-02/MEN/1993 of 1993 on Fixed-Term Employment Agreements;
9. Minister of Manpower and Transmigration Decree No. KEP.100/MEN/VI/2004 on the Implementation of Fixed-Term Employment Contracts;
10. Constitutional Court Decision No. 168/PUU-XXI/2023 on the judicial review of Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law against the 1945 Constitution of the Republic of Indonesia;
11. Supreme Court Circular No. 3 of 2023 on the Implementation of the Plenary Meeting Results of the Supreme Court in 2023 as Guidelines for Court Task Execution.
12. Staatsblad No. 23/1847 on the Civil Code (KUH Perdata);

2. Secondary Legal Materials

Secondary legal materials refer to all legal publications that are not official documents. Legal publications include textbooks, legal journals, and other scholarly works on law (Salim & Turmudi, 2019).

Termination of Employment (PHK) Regulations Based on Law No. 6 of 2023 on the Ratification of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law

Termination of Employment (PHK) in the context of Law No. 6 of 2023, which ratifies Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, introduces several

significant changes concerning the protection of workers in Indonesia, particularly for workers with Fixed-Term Employment Contracts (PKWT). This Job Creation Law modifies several provisions previously included in Law No. 13 of 2003 on Manpower, particularly regarding the flexibility of employment contracts and the resolution of PHK cases.

However, until now, the Job Creation Law remains a subject of debate and is currently being reviewed by the Constitutional Court with four cases in process. The first case is Case No. 40/PUU-XXI/2023, submitted by 121 Petitioners, consisting of 10 Trade Unions and 111 workers. The second case is Case No. 41/PUU-XXI/2023, filed by the Indonesian Prosperous Workers Confederation (KSBSI). The third case is Case No. 46/PUU-XXI/2023, filed by 14 legal entities, and the fourth is Case No. 50/PUU-XXI/2023, submitted by the Labor Party.

The government has made various efforts to create and expand job opportunities in order to reduce unemployment, accommodate new workers, and promote the development of Cooperatives and Micro, Small, and Medium Enterprises (UMKM) to enhance the national economy and public welfare. Although the open unemployment rate continues to decline, Indonesia still needs to create quality jobs. The labor force in February 2022 was recorded at 144.01 million people, an increase of 4.20 million from the previous year. Of this number, 81.33 million people (59.97%) worked in the informal sector.

The COVID-19 pandemic affected 11.53 million working-age people, including the unemployed, those not in the labor force, and workers experiencing reduced working hours. Therefore, efforts to increase wages in line with economic growth and worker productivity are needed. The government is also committed to expanding social security and assistance programs to enhance competitiveness and strengthen the quality of human resources while reducing poverty and income inequality. Through this program, the benefits are not only received by workers but also by the workers' families.

The central government needs to adopt strategic policies to create and expand job opportunities through investment growth and the development of UMKM. Achieving this requires stable and consistent economic growth every year. However, the challenge faced is the weakening of economic growth coupled with inflation (stagflation phenomenon).

There are 11 clusters in the Job Creation Law that regulate various sectors, including labor. Some laws that have undergone changes through the Job Creation Law include:

1. Law No. 24 of 2011 on Social Security Organizing Body.
2. Law No. 40 of 2004 on the National Social Security System.
3. Law No. 13 of 2003 on Manpower.

The Job Creation Law is expected to benefit all parties, both employers and workers, and contribute to the improvement of Indonesia's economy. Additionally, this law is expected to protect the welfare of workers, who are a crucial asset for the sustainability of business operations.

Workers are individuals who are of working age and capable of performing work, including those who are seeking employment or managing household tasks. According to Sumitro Djojohadikusumo, workers are those who work for themselves, family members who do not receive payment, or those who work in exchange for wages or salary. In the employment relationship between workers and employers, legal protection for workers must be guaranteed by law to ensure the fulfillment of the workers' fundamental rights.

Law No. 13 of 2003 on Manpower serves as the main regulation in Indonesian labor law, but after the enactment of Law No. 6 of 2023, various changes have occurred, particularly regarding work

training permits, the use of foreign workers (TKA), Fixed-Term Employment Contracts (PKWT), outsourcing, and PHK.

Law No. 6 of 2023 aims to support investment while also considering worker protection. One of the significant changes is related to PKWT, which now mandates the provision of compensation for workers whose contract period ends prematurely. Previously, there was no such obligation. Additionally, the regulations regarding outsourcing have been revised, specifying the types of positions that can use the outsourcing mechanism and requiring outsourcing companies to be legally established and have licenses.

The Job Creation Law regulates several changes in labor aspects, including:

1. More detailed regulation regarding work training institutions.
2. Increased licensing obligations for private work training institutions, particularly those involving foreign capital.
3. Changes in the regulation of the use of foreign workers (TKA) and their permits.

These changes are expected to create a more dynamic labor market, provide greater protection for workers, and encourage better economic growth.

Compensation for Fixed-Term Employment Contract (PKWT) Workers Terminated (PHK)

The termination of employment (PHK) for workers with Fixed-Term Employment Contracts (PKWT) before the contract period ends is strictly regulated in Law No. 13 of 2003 on Manpower. This is due to the nature of PKWT, which differs from Permanent Employment Contracts (PKWTT), where the employment relationship lasts according to the agreed duration. If PHK occurs before the contract period ends, the employer is required to provide compensation in the form of wages the worker should have received until the end of the contract.

Article 62 of the Manpower Law explains that if either party terminates the employment relationship before the agreed time, the terminating party must pay compensation in the form of the worker's wages until the contract period concludes. For example, if a PKWT worker is terminated after working for six months on a one-year contract, the employer must pay wages for the remaining six months of the contract.

In addition to wages, the employer must also account for additional components such as fixed allowances and incentives as stipulated in the employment agreement. The settlement of this compensation is typically done through negotiations between the worker and the employer. If no agreement is reached, the worker may take the matter to the Manpower Office or the Industrial Relations Court to claim their rights.

A worker who is terminated is also entitled to additional compensation, such as the Religious Holiday Allowance (THR), annual bonuses, or payment for unused leave. Furthermore, the employer is required to fulfill the worker's rights related to social security, such as BPJS Employment.

The compensation regulation reflects the principle of distributive justice in the employment relationship, ensuring that more vulnerable workers are afforded fair protection from unilateral PHK. In this regard, the state plays a role in ensuring that employers do not abuse the flexibility of employment relations and that workers receive compensation commensurate with their work.

Analysis of Protection for PKWT Workers' Rights

The regulation requiring compensation for PKWT workers who are terminated before the contract period ends is rooted in the principle of protecting the more vulnerable workers' rights. Its philosophy is based on distributive justice, ensuring a balance between the interests of workers and employers. In labor law, this provision protects PKWT workers, who have a lower job security level than permanent employees. Compensation acts as a safeguard for workers against economic uncertainty resulting from unilateral PHK.

As John Rawls proposed, Social Justice Theory supports this regulation with the difference principle, which prioritizes the welfare of vulnerable groups, such as PKWT workers, who are at risk of exploitation. Furthermore, Classical Contract Theory emphasizes that agreements should be honored by both parties, and a violation of this (including unilateral PHK) requires compensation.

This regulation also reflects the state's effort to maintain a balance between the flexibility of the business world and the protection of workers' rights. The state grants flexibility to employers but ensures that workers are not disadvantaged by unilateral PHK without fair compensation. In the context of a welfare state, this compensation obligation also ensures workers' rights to decent work, including fair compensation in the event of PHK.

The obligation to provide compensation for PKWT workers who are terminated before the agreed contract period aims to create justice in the employment relationship and protect workers' rights from financial uncertainty.

Sociological Analysis

The regulation requiring compensation for PKWT workers who are terminated before the contract period ends reflects the state's response to the uncertainty of the modern labor market. Due to globalization and technological changes, many companies now rely more on short-term employment contracts. PKWT workers, with their more vulnerable status, often face job insecurity and are more prone to unilateral PHK. This compensation obligation aims to balance the power imbalance between employers and workers.

Karl Marx's Conflict Theory explains the power imbalance between employers and workers, where workers are often seen as commodities that can easily be replaced. Through labor law, the state plays a role in protecting PKWT workers, who are more vulnerable to economic uncertainty. Jean-Jacques Rousseau's Social Contract Theory is also relevant here, where the state must protect the interests of all its citizens, particularly those who are socially and economically weaker.

Additionally, the protection of workers facing job insecurity and unemployment risks underscores the importance of safeguarding workers' rights and welfare.

Legal Analysis

From a legal standpoint, the regulation of compensation obligations for workers under Fixed-Term Employment Contracts (PKWT) who are dismissed before the agreement ends is aimed at ensuring fairness and legal certainty. These provisions are outlined in Law No. 13 of 2003 and Government Regulation No. 35 of 2021. Article 62 of the Labor Law stipulates that the party who terminates the employment relationship must pay compensation to the other party, in order to prevent unilateral termination of the employment contract.

The contract law principle requires that agreements be executed as agreed upon, and if an employer terminates the contract prematurely, they are obligated to provide compensation. The liability theory explains that employers must compensate the damages borne by the worker due to the unilateral termination of the employment relationship. This also reflects the principle of distributive justice in law, where the worker's loss should be compensated proportionally.

This regulation demonstrates the commitment of labor law to protect workers under Fixed-Term Employment Contracts (PKWT), who are often more vulnerable and lack bargaining power. The payment of compensation aims to restore the position of the worker who has been harmed. Labor law serves as an instrument of substantive justice in fair and equitable labor

Overlapping Regulations and Interpretations

The differences between the Labor Law and the Omnibus Law (Cipta Kerja) have resulted in overlapping regulations, particularly concerning the termination of employment (PHK). The Labor Law sets stricter procedures for PHK, requiring negotiations, a dispute resolution agency's approval, and worker rights such as severance pay. In contrast, the Omnibus Law provides more flexibility for employers to carry out PHK for efficiency or restructuring purposes, without complex procedures. This overlap creates legal uncertainty regarding which regulations apply.

The principle of *lex posterior derogat legi priori* holds that the newer Omnibus Law overrides the provisions of the older Labor Law, but the objectives and legal context still influence its application. This could potentially disadvantage workers, especially regarding the lower compensation provided under the Omnibus Law. The role of the judiciary is crucial in interpreting and deciding which regulations apply. This overlap generates complex legal issues, particularly concerning the protection of workers' rights.

Paradigm Shift in the Constitutional Court Decision No. 168/PUU-XXI/2023

The Constitutional Court amended 21 provisions in the Omnibus Law through Decision No. 168/PUU-XXI/2023. This change reflects the government's effort to align regulations with economic dynamics and create a conducive investment climate. Several significant changes between the Labor Law and the Omnibus Law include:

- **Fixed-Term Workers (PKWT):** The contract period has been extended to five years, offering more flexibility to employers, but creating uncertainty for workers.
- **Worker Rights and Welfare Protection:** The definition of a decent living has been expanded to include the basic needs of workers and their families.
- **Termination of Employment (PHK):** Changes in PHK procedures require negotiations for mutual agreement, with a final legal determination from the Industrial Relations Court (PPHI) if negotiations fail, offering more protection to workers.
- **Severance and Other Worker Rights:** Updates regarding severance pay emphasize the minimum amount that must be provided, though further details will be regulated in implementing regulations.

Legal Actions Available for Workers Terminated Due to Employers' Failure to Fulfill Workers' Rights

Termination of Employment (PHK) is a significant issue in labor law in Indonesia. According to the Indonesian Dictionary (KBBI), PHK refers to the cessation of the employment relationship between

an employer and a worker. In general, PHK can occur for various reasons, such as voluntary resignation, dismissal, retirement, or termination. However, in practice, many workers face PHK due to the employer's inability to fulfill workers' rights according to applicable laws and regulations. This article discusses the legal actions that can be taken by workers who experience PHK due to the employer's failure to meet their rights.

Changes in the Labor Law and the Omnibus Law

The Labor Law and the Omnibus Law serve as the legal framework governing employment relationships in Indonesia, including employment contracts. One significant change pertains to Fixed-Term Employment Contracts (PKWT). Previously, the Labor Law stipulated that PKWT could only be extended for up to three years. However, following the enactment of the Omnibus Law, this provision was removed, and now it awaits further regulation in Government Regulations.

In practice, it is often found that employers extend PKWTs without explicitly stating that the contract has been extended, instead doing so through contract renewals. This violates the Labor Law, which requires PKWTs to be in writing. If this is not done, the employment contract will automatically be converted into a permanent contract (PKWTT).

Legal Actions That Workers Can Take

For workers who feel their rights have not been fulfilled by their employer and have been terminated, several legal actions can be pursued, including:

1. Submitting Complaints to the Employer or Relevant Authorities

Workers may initially file complaints with the employer regarding the non-fulfillment of their rights. A responsible employer will attempt to find a solution to avoid PHK and fulfill the worker's rights.

2. Approaching the Local Manpower Office

If internal resolution with the employer fails, workers can report the issue to the local Manpower Office. The office can mediate between the worker and the employer to reach an agreement.

3. Filing a Case in the Industrial Relations Court (PHI)

Workers can file a case in the Industrial Relations Court (PHI) if mediation efforts do not yield results. This court has the authority to resolve disputes between workers and employers, including matters related to PHK and workers' rights.

4. Settling Through Arbitration

In some cases, workers and employers may agree to resolve the dispute through arbitration. In arbitration, an independent third party listens to both sides' arguments and makes a binding decision.

Legal Examination of Fixed-Term Employment Contracts (PKWT) in Remote Working Context (No. 17/PKWT/PT-A/VIII/2019)

This legal analysis aims to assess whether the employment agreement complies with the applicable laws. The employment contract between Company A and Worker B has been identified as conflicting with the Labor Law and the Omnibus Law and needs to be reviewed from other legal aspects,

such as the Civil Code and the Information and Electronic Transactions Law (UU ITE), to ensure its legal validity.

In practice, the employer often creates employment agreements unilaterally without negotiation with the worker. Although the Labor Law mandates that employment contracts must comply with applicable regulations, clauses that are irrational or inappropriate should be scrutinized. Employment contracts must adhere to mandatory provisions under the Labor Law and the Omnibus Law, which aim to protect workers' rights through government supervision.

PKWT is governed by Article 59 of the Omnibus Law and covers temporary or seasonal work. A contract is considered valid if it meets four conditions listed in Article 1320 of the Civil Code and Article 52 of the Labor Law: mutual consent of the parties, legal capacity of the parties, a clear job description, and lawful purpose.

Termination of Employment (PHK) must follow proper procedures, given its nature as a last resort. Employment termination may occur by law, by the worker's own will, by the employer, or based on a court ruling. Any PHK that violates legal provisions, such as discrimination or employer fault, is considered legally invalid. In the case of PHK, workers are entitled to severance pay and other rights according to the applicable provisions.

Legal Analysis of the Objectives, Legal Protection, and Welfare State for Workers with PKWT Terminated Before Contract Expiration Based on Justice Principles

In the context of employment, legal protection for workers with Fixed-Term Employment Contracts (PKWT) who are terminated before the contract expires is a crucial issue. Regulatory changes, such as those stipulated in Law No. 6 of 2023 on the Omnibus Law, have altered the protection previously provided under Law No. 13 of 2003 on Labor. This has affected the balance between workers' rights and employers' freedoms, particularly concerning the compensation workers receive when they are terminated before the contract ends.

The Legal Protection Theory emphasizes the importance of a legal framework that safeguards workers' rights. The previous Labor Law required employers to provide full compensation if PKWT was terminated unilaterally. However, the Omnibus Law changed this provision to compensation based on the length of service, potentially disadvantaging workers. Professor Jimly Asshiddiqie reminds us that the law should aim to achieve social justice, which risks being disrupted by these changes.

The Justice Theory, both distributive and procedural, is also crucial in this analysis. Distributive justice mandates that workers who are terminated before the end of their contract receive fair compensation. However, with the new changes, workers are only entitled to compensation based on their length of service, which is less than previously. Procedural justice requires a fair process in making termination decisions, including allowing workers to defend themselves.

Legal protection for workers with PKWT who are terminated before the end of their contract must be based on the principle of justice. While the Omnibus Law offers flexibility to employers, it is essential to continue fighting for fair compensation and transparent processes. Supreme Court Circular No. 3 of 2023 provides guidelines to ensure that compensation for PKWT workers remains in line with Article 61 of Law No. 13 of 2003, ensuring fairness for workers who are terminated.

Labor law aims to create social justice and protect workers' rights, balancing workers' rights with employers' obligations. As the regulatory and supervisory authority in employment relations, the state must ensure that workers receive their rights fairly. Protection for workers, particularly those terminated before their contract ends, must be guaranteed to ensure workers' welfare in a welfare state.

Conclusion

Regulations regarding the obligation for compensation and damages for workers under fixed-term employment contracts (PKWT) who are terminated before the contract ends aim to provide clear legal certainty regarding the rights of PKWT workers. This is crucial, as PKWT workers are often in a more vulnerable position compared to permanent employees. Fixed-term employment contracts place workers in a more precarious situation if they face termination that does not align with the terms of their contract. The provisions in the Labor Law, the Omnibus Law on Job Creation, and the Government Regulation on Fixed-Term Employment Contracts provide legal protection, although conflicts in the norms still lead to legal uncertainty.

Legal protection for PKWT workers who are terminated before their contract ends must be based on the principle of fairness, prioritizing a balance between the rights of workers and employers. This principle demands that employers provide protection for PKWT workers, including rights to severance pay, unpaid wages, and other social protections. Termination of PKWT workers must be carried out for legitimate reasons, following proper procedures, and provide compensation equivalent to the duration they were supposed to work. Equal protection for PKWT workers, comparable to permanent workers, is crucial in this context.

Recommendations

Based on the provisions in the Labor Law, the Omnibus Law on Job Creation, and the related government regulations regarding legal protection for PKWT workers, there are still conflicts in the norms that create legal uncertainty regarding the obligations of employers toward workers terminated before the end of their contract. This conflict could lead to various issues in practice, especially since PKWT workers are often in a weaker position in the employment relationship. Therefore, it is recommended that a technical guideline be created to resolve this legal uncertainty.

Given the existing legal uncertainty due to conflicts in the existing regulations, it is recommended that the President and the Indonesian Parliament (DPR RI) immediately draft and enact a new Labor Law, along with related government regulations. The regulations should clarify the applicable PKWT procedures, including setting the maximum extension period of a PKWT from 3 years to 5 years. Additionally, if a termination occurs before the PKWT ends, workers should be entitled to proportional compensation and damages, considering the time they have worked. A revision of the 21 Omnibus Law on Job Creation articles, which the Constitutional Court has approved, is also necessary to enhance protection for PKWT workers.

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