

Juridical Analysis of Providing Compensation Money for Certain Hours of Work by Outsourcing Companies Based on the Job Creation Constitution

Yana Indawati^{1*}

¹faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur

*e-mail: yanaindawati@gmail.com

ABSTRACT

The enactment of the Job Creation Law and its derivative regulations PP No. 35 of 2021, one of which is about contract workers reaping the pros and cons. The Job Creation Law changes, deletes and inserts new Articles in the Manpower Law. Purpose: This provision is something new, so the purpose of this research is to analyze normatively juridically regarding the rules starting from PKWT, Compensation Policy and Compensation according to experts in outsourcing companies. Method: The type of research used in the preparation of this paper is juridical analysis. Result: There is unclear source of funding for compensation and the provision of compensation is considered discriminatory. The source of compensation funding should have become a contribution that must be paid by employers and employers/users and is bound by the provisions of the law. Conclusion: Workers/laborers should be equally entitled to compensation money without any form of discrimination, this is in accordance with what is mandated by the 1945 Law, Article 28I paragraph (2) and Article 38 paragraph (3) of Law Number 39 of 1999 concerning Rights Human Rights

Keywords:

Specified Time; Work Agreements; Compensation; Outsourcing; Job Creation Law

1. Introduction

Employment is a very important part and cannot be separated from national development which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Mariyah et al. 2022). Workers/laborers have a very determining position and role as actors and goals of national development. The rights and obligations of workers are regulated in the Indonesian Employment Regulations, which also stipulate that worker protection is something that must be prioritized so that the dignity and humanity of workers/labourers is also raised. Protection of workers/labourers is intended to guarantee the basic rights of workers/laborers while still prioritizing the development of progress in the national and international business world. This is in accordance with what is stated in Article 28 D of the 1945 Constitution "that every person has the right to work and receive fair and decent compensation or treatment in employment relationships". More systematic arrangements are regulated in Law (UU) of the Republic of Indonesia Number 13 of 2003 concerning Employment.

In carrying out work or employment relations according to the provisions, an Employment Agreement must be made in accordance with Article 1601 of the Civil Code. A work agreement is an

agreement between the entrepreneur/employer and the laborer/employee who will carry out the work (Muttaqin and Uwiyono 2022). The agreement explains the work requirements, rights and obligations of workers as well as other provisions in accordance with Article 1 paragraph (14) of Law no. 13 of 2003 concerning employment. When making a work agreement, it can be in verbal or written form. Legally and legally, there are two work agreements known, namely the Certain Time Work Agreement (PKWT) and the Indefinite Time Work Agreement (PKWTT). In essence, PKWT is a work agreement that binds contract employees and freelance workers, while PKWTT is a work agreement that binds permanent employees which has no validity period. The implementation of the contract/PKWT system for workers in accordance with the Employment Law is usually called outsourcing.

In 2019 the government drafted a Job Creation Bill which revised Law 13 of 2003. The government implemented Law Number 11 of 2020 concerning Job Creation and its derivative regulations PP No. 35 of 2021 concerning PKWT, Outsourcing, Working Time, Rest Time and Layoffs, has drawn rejection from large circles of Indonesian society with varying levels of legal perception, from every cluster of society, especially the labor/employee cluster. The Job Creation Law replaces 31 (thirty one) Articles, deletes 29 (twenty nine) Articles, and inserts 13 (thirteen) new Articles in the Employment Law, hereinafter referred to as the Employment Law (Zulaiha 2022) . One of the new articles inserted in the Job Creation Law is Article 61A which regulates the provision of PKWT Compensation and is included in the third section in PP 35/2021, the mechanism for Providing Compensation Money. Article 15 point 1 states that entrepreneurs are obliged to provide compensation based on PKWT. Technically, compensation money is given to PKWT workers/laborers when their PKWT contract ends. Compensation money is given to workers/laborers who have worked for at least 1 (one) month continuously. Where PKWT compensation payments are made using 2 (two) stages. First, compensation money is given at the end of the PKWT period and before the contract is extended. Second, compensation money is given after the PKWT period ends after the extension. For example, the PKWT contract is valid for 2 (two) years, when the PKWT contract ends, the worker/labourer is obliged to receive compensation. Furthermore, if the contract is extended and the next compensation is given after the PKWT contract extension ends.

2. Methods

The type of research used in reviewing this paper is normative legal research in general, namely by examining statutory regulations. Normative legal research or library research is research that examines document studies, namely using various secondary data such as statutory regulations, court decisions, legal theories, and can include the opinions of legal scholars and experts. This type of research is normative using qualitative analysis, namely by explaining existing data with words or statements, not with numbers (putra Anggien and Iskandar 2022).

3. Results and Discussion

1. Legal norms for fixed-term work agreements/PKWT based on the Job Creation Law.

The work agreement is based on the provisions of Article 1 paragraph 10 paragraph 11, Employment Law No.11/2021 concerning Job Creation through its derivative regulation PP No.35/2021 which states that work agreements are made for a certain time, and an unspecified time. Furthermore, the work agreement for a certain time as referred to in paragraph 10, states that the work agreement for a certain time, abbreviated as PKWT, is a work agreement between workers/laborers and employers to enter into a work relationship for a certain time or for certain work based on the time period or completion of a certain work. , whereas in paragraph 11 it states that the Indefinite Time Work Agreement, hereinafter abbreviated to PKWTT, is a work agreement contract between the worker/labourer and the employer in entering into a permanent work relationship. Regarding the rules for implementing a Specific Time Work Agreement/PKWT, it is regulated in PP 35/2021 articles 4 to article 17, the regulations start from wages, compensation and the end of the PKWT. The arrangements for implementing PKWT are explained in Article 4 point (1) PKWT is based on a time period; or completion of a particular job.

Meanwhile, number (2) emphasizes the terms of work time; PKWT contracts cannot be entered into for permanent work.

Furthermore, there is a clear separation between work which is categorized as PKWT based on the time period and PKWT which is based on the completion of certain work in accordance with article 5 in PP 35/21 which states:

a. PKWT based on time period, namely

1) Work that is estimated to be completed within a short time

2) Seasonal work depending on the season, weather conditions, as additional work or

b. Work related to new products, new activities or additional products that are still under trial or exploration. PKWT is based on the completion of a particular job, namely work that is completed once or work that is temporary in nature.

Article 6 regulates that the PKWT process does not take too long; Work which is estimated to be completed within a short period of time as intended in Article 5 paragraph (1) letter a, shall be carried out within a maximum of 5 (five) years. In this case, PKWT can be carried out for a minimum of 1 (one) day and a maximum of 5 (five) years.

In case of seasonal work arrangements or weather; regulated in Article 7 number "(1) Seasonal work as intended in Article 5 paragraph (1) letter b, is work whose implementation depends on:

a. Season or weather; or

b. Certain conditions.

In article 7 number (2) explains that; "Work whose implementation depends on the season or weather as referred to in paragraph (1) letter a can only be carried out in certain seasons or certain weather." Next, Article 8 regulates PKWT based on a time period that can be made no later than 5 (five) years, in the event that the PKW is about to end and the work carried out has not been completed then the PKWT can be extended with the entire term of the PKWT contract and the extension is no more than 5 (five) years. Furthermore, article 9 explains the agreement between the parties; that the parties' agreement contains;

- a. The scope of work and boundaries of a job are declared complete;
- b. The length of time for completing work is adjusted to the completion of a job.

Furthermore, article 10 explains the change in PKWT to "PKTT for daily workers/laborers if they are contracted for more than 3 consecutive months in accordance with number (4). In the event that workers/laborers work 21 (twenty one) days or more for 3 (three)) consecutive months or more, the daily work agreement as referred to in paragraph (21) becomes invalid and the employment relationship between employers and workers/laborers changes by law based on the PKWTT."

The regulation of workers/daily workers in making PKWT is confirmed in Article 11 in number (1). Entrepreneurs who employ workers/laborers on work as intended in Article 10 paragraph (1) make a daily work agreement in writing with the workers/laborers. In point (2), the daily work agreement referred to in paragraph (1) can be made collectively and at least contains the name of the address of the company or employer. Then include the name and address of the worker/laborer. In addition, include the type of work carried out. As well as containing the amount of wages given (Nasution and Suryandi 2021).

Furthermore, number (3) explains "Employers as intended in paragraph (1) are obliged to fulfill the rights of workers/laborers including the right to social security programs". Article 12 explains that if an entrepreneur carries out a PKWT with a trial period, the required trial work period is null and void and the permanent work period or PKWTT is calculated.

Creation of PKWT d It is explained in Article 13 that in presenting the PKWT agreement it should at least contain the following things:

- a. Contain the name, address of the company and type of business;
- b. Name of worker/laborer, gender, age and address;
- c. Include position or type of work;
- d. Describe the place of work;
- e. State the amount and method of payment of wages;

f. Contains the rights and obligations of Employers and workers/labourers in accordance with the provisions of statutory regulations and/or work conditions regulated in Company Regulations or Collective Labor Agreements;

g. Contains when the PKWT starts and the period for which the PKWT is valid;

h. Contains the place and date the PKWT was created; And

i. There are signatures of the parties in the PKWT.

Furthermore, PKWT must be registered at the Ministry of Manpower. This is confirmed in PP 35/201 in Article 14 numbers (1) and (2): (1) states that PKWT must be registered by entrepreneurs at the ministry that carries out government affairs in the field of employment via online no later than 3 (three) working days from the signing of the PKWT contract. Next, number (2) states that when recording PKWT contracts online is not yet available, the recording of PKWT contracts must be carried out by the Entrepreneur in writing at the office that handles government affairs in the district/city employment sector, no later than 7 (seven) working days from the signing of the PKWT contract. done.

Furthermore, Law No.11/2020 concerning Job Creation amends articles in Law No.13/2003 concerning Employment. One of them is Article 61 of the Law

Employment is Article 61, 61A of Law No.11/2020 concerning Job Creation. Article 61A regulates PKWT compensation, contained in Part Three of PP 35/2021 regulating the provision of compensation money. In article 15 number 1, employers are obliged to provide compensation money to workers/laborers based on the PKWT contract. The mechanism for providing PKWT compensation money is implemented at the end of the PKWT contract. Furthermore, compensation money is given to workers who have worked for at least 1 (one) month continuously/uninterruptedly. Technically, PKWT compensation payments are carried out in 2 (two) stages. First, compensation is given at the end of the PKWT contract period before extension. Second, compensation is given after the end of the PKWT contract period after extension (Sengkey 2021). For example, a PKWT contract is for 2 (two) years, when it ends you get PKWT compensation money. Then an extension is carried out, and the next compensation is given after the PKWT extension is completed.

If the PKWT is extended, compensation money is given at the end of the PKWT period before the extension and for the PKWT extension period, the next compensation money is given after the extension of the PKWT period ends or is completed (Purnomo et al. 2022).

The amount of severance pay for PKWT workers/laborers has been regulated in Article 16 in the number "(1) The amount of compensation money given is in accordance with the provisions that the PKWT Contract is for 12 (twelve) months continuously, given in the amount of 1 (one) month's wages. Then the PKWT Contract for 1 (one) month or more but not yet 12 (twelve) months, is calculated proportionally by calculating: work period x 1 (one) month Wage; As well as PKWT for

more than 12 (twelve) months, calculated proportionally by calculating: work period x 1 (one) month of wages.

And it is emphasized that the basis for the calculation is the number "(2) Wages as intended in paragraph

(1) which is used as a basis for calculating compensation payments consisting of basic wages and fixed allowances.

Further explanation in the last article of the regulation regarding PKWT in article 17 states "In the event that one of the parties ends the employment relationship before the end of the period specified in the PKWT, the Employer is obliged to provide compensation money as intended in Article 15 paragraph (1) the amount of which is calculated based on the period PKWT time that has been implemented by the Worker/Labourer".

2. Policy for Providing Compensation for Specific Time Work Agreements (PKWT) Based on the Job Creation Law.

The provision of compensation is regulated in Article 61A of the Job Creation Law regarding the provision of compensation for PKWT workers/laborers. The article is as follows: (1) explains that when a certain term work agreement ends as intended in Article 61 paragraph (1) letters b and c, employers are obliged to provide money compensation for workers/labourers. (2) Compensation money as intended in paragraph (1) is given to workers/laborers according to the length of service of the worker/laborer at the company concerned. (3) Further provisions regarding compensation money are regulated in Government Regulations.

The explanation in PP 35/2021 regarding the provision of compensation is regulated in Article 15 as follows; (1) Employers are obliged to provide compensation money to workers/laborers whose employment relationship is based on PKWT. (2) Giving money.

4. Conclusion

Changes in PKWT labor norms after the issuance of the Job Creation Law and its derivative regulations PP Number 35 of 2021, there is a clear separation between work which is categorized as PKWT based on the time period and PKWT which is based on the completion of certain work, there is an update to the article, namely Providing Compensation Money. Employers are obliged to provide compensation money to PKWT workers who have worked for at least 1 (one) month continuously. The calculation of the amount and amount of compensation funds that can be provided is regulated in Article 16 PP No.35/2021. The unclear source of compensation funding and the arrangements for providing compensation are still considered discriminatory because they are not in accordance with the 1945 Constitution, Article 28I paragraph (2) and Article 38 paragraph (3) of Law Number 39 of 1999 concerning Human Rights. Based on the opinion of experts at outsourcing companies, entrepreneurs have not implemented the provisions for providing compensation because users do not want to be billed. In the work agreement for PKWT workers, the employer has not included a

component of providing compensation according to the provisions, and the outsourcing entrepreneur has taken the initiative to make a statement letter to the PKWT worker to be willing not to be given compensation money, this is clearly detrimental to the worker and the worker is always in a weak position. If an outsourcing company violates PKWT provisions, there will be no warnings in accordance with administrative sanctions for entrepreneurs who do not pay PKWT compensation in the labor law.

5. References

Book :

Heck, R. H. (2004). *Studying Educational and Social Policy - Theoretical Concepts and Research Methods*. London: Lawrence Erlbaum Associates.

Barrow, R., & Woods, R. (2006). *An Introduction to Philosophy of Education (4th ed.)*. New York: Routledge.

Russell, B. (2010). *Education and the Social Order*. London: Routledge.

Journal :

Hawkman, A. M. (2019). "Let's try and grapple all of this": A snapshot of racial identity development and racial pedagogical decision making in an elective social studies course. *Journal of Social Studies Research*, 43(3), 215–228. <https://doi.org/10.1016/j.jssr.2018.02.005>

Fitzpatrick, C., van Hover, S., Cornett, A., & Hicks, D. (2019). A DBQ in a multiple-choice world: A tale of two assessments in a unit on the Byzantine Empire. *Journal of Social Studies Research*, 43(3), 199–214. <https://doi.org/10.1016/j.jssr.2018.09.004>

Hawley, T. S., & Whitman, G. M. (2020). Fear and learning in student teaching: Accountability as gatekeeper in social studies. *Journal of Social Studies Research*, 44(1), 105–115. <https://doi.org/10.1016/j.jssr.2019.04.003>

Conference:

Mokshein, S. E. (2019). Education for Sustainable Development (ESD) in Malaysia: Policy, Program and Evaluation. *3rd International Conference on Current Issues in Education (ICCIE 2018)*, 326(ICCIE 2018), 6–12. <https://doi.org/10.2991/iccie-18.2019.2>

Dutt, A., & Ismail, M. A. (2019). Can We Predict Student Learning Performance from LMS Data? A Classification Approach. *3rd International Conference on Current Issues in Education (ICCIE 2018)*, 326(ICCIE 2018), 24–29. <https://doi.org/10.2991/iccie-18.2019.5>

Supriyanta, E. Y., Mustadi, A., Wangid, M. N., & Suhardi. (2019). Sociocultural-Based Reflective Picture Storybook: Urgency in Social Skill Development. *3rd International Conference on Current Issues in Education (ICCIE 2018)*, 326(ICCIE 2018), 162–166. <https://doi.org/10.2991/iccie-18.2019.29>

