

# Shift in The Characteristics of Certain Fixed-Term Work Agreements in Employment Contracts Post

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## SHIFT IN THE CHARACTERISTICS OF FIXED-TERM WORK AGREEMENTS IN EMPLOYMENT CONTRACTS POST THE OMNIBUSLAW WAS IMPLEMENTED IN INDONESIA

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### ABSTRACT

**Background:** labor issues are very complex and protracted. Since the first law governing labor was established in 1887 until the latest regulations governing fixed-term work agreements (PKWT) which were inaugurated in 2021, this has not been a solution to the issue of labor violations. The fixed-term work agreement (PKWT) was replaced with new regulations which underwent many changes in content. Therefore, this research examines the challenges and opportunities of fixed-term work agreements implemented in Indonesia.

**Methods:** This research method is a qualitative method with normative-descriptive analysis, based on identifying problems in the formal aspects of the substance of the Job Creation omnibus law, protection efforts, law enforcement and law enforcement.

**Result:** There must be an institution whose role is to correct the rules for Fixed Term Work Agreements, so that there is a check and balance mechanism in government, so that legislative planning is not arbitrary in making regulations.

**Conclusion:** Elaboration between stakeholders must be able to socialize the Job Creation Law and Government Regulations on Specific Term Work Agreements, so that both can become part of efforts to restore the national economy, encourage economic transformation to be able to create jobs and protect workers' welfare.

**Keywords:** omnibus law, fixed-term work agreement, permanent work agreement, legal protection, employment.

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## MUDANÇA NAS CARACTERÍSTICAS DE DETERMINADOS ACORDOS DE TRABALHO POR TEMPO EM CONTRATOS DE TRABALHO APÓS A OMNIBUSLAW FOI IMPLEMENTADA NA INDONÉSIA

### RESUMO

**Histórico:** as questões trabalhistas são muito complexas e prolongadas. Desde que a primeira lei que rege o trabalho foi estabelecida em 1887 até aos últimos regulamentos que regem os contratos de trabalho a termo certo (PKWT), que foram inaugurados em 2021, esta não tem sido uma solução para a questão das violações laborais. O contrato de trabalho a termo certo (PKWT) foi substituído por novos regulamentos que sofreram muitas alterações no conteúdo. Portanto, esta pesquisa examina os desafios e oportunidades dos acordos de trabalho a termo certo implementados na Indonésia.

**Métodos:** Este método de pesquisa é um método qualitativo com análise normativo-descritiva, baseado na identificação de problemas nos aspectos formais da substância da lei geral de criação de empregos, esforços de proteção, aplicação da lei e aplicação da lei.

**Resultados:** Deve haver uma instituição cujo papel seja corrigir as regras dos Acordos de Trabalho a Prazo Fixo, para que haja um mecanismo de controlo e equilíbrio no governo, para que o planeamento legislativo não seja arbitrário na elaboração de regulamentos.

**Conclusão:** A elaboração entre as partes interessadas deve ser capaz de socializar a Lei de Criação de Emprego e os Regulamentos Governamentais sobre Acordos de Trabalho a Prazo Específico, para que ambos possam tornar-se parte dos esforços para restaurar a economia nacional, incentivar a transformação económica para poder criar empregos e proteger o bem-estar dos trabalhadores.

**Palavras-chave:** lei omnibus, contrato de trabalho por tempo específico, contrato de trabalho permanente, proteção jurídica, emprego.

### 1 INTRODUCTION

Labor and labor issues are very complex and protracted. Since the first law governing labor was established in 1887 until the latest regulations governing fixed-term work agreements (PKWT) which were inaugurated in 2021, this has not been a solution that can prevent the issue of violations against labor (Devereux & Wadsworth, 2021; Perdana, 2021). Since the enactment of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) replacing Law Number 13 of 2003 concerning Employment, which was originally expected to become a legal umbrella that protects workers' welfare, in fact there are 9 (nine) regulations which can be said to be unfavorable to workers or laborers (Harryarsa & Hamid, Supardi, 2023).

The nine regulations that are being disputed are related to rest periods, leave, wages, severance pay, social security, layoffs (termination of employment), worker status, working hours, outsourcing, and foreign workers (Mahy, 2022). The form of rejection of the new Job Creation Law regulations is not only carried out through forum



debates or demonstrations, but is carried out by means of material tests or judicial reviews (Rawling, 2015). The material review resulted in a decision contained in <sup>27</sup> the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 and the rule was declared unconstitutional, but the law was still used (Gunadi et al., 2022).

In line with this, it has been declared unconstitutional but the legal regulations are still in effect until there is a revision with a grace period of two years from the decision or until November 25 2023. On the other hand, there are still many objections made by the president of the Labor Party who urges the DPR not to include the relevant regulations. employment cluster (DeVaro, 2020; Mahy, 2021). Then, there was a demonstration carried out by KSPI (Confederation of Indonesian Trade Unions) <sup>7</sup> regarding the prosecution of the Job Creation Law which was issued in the 2022 national legislation program because in the material review it was decided by the Constitutional Court that this law was conditionally unconstitutional (Widanarti, 2021).

Conditional unconstitutional declaration by the Constitutional Court but this law is still used as the basis for labor (Perdana, 2022). Workers must understand the existing rules. The basic cause of misuse of the rules that apply to workers is that the source is from the agreement or agreement with the employer, becoming one unit so that workers can understand the basis of the work agreement (Morgan, 2022). So, if there is a <sup>21</sup> termination of the employment relationship and the worker's status in the Job Creation Law, the PKWT status can be extended again (Irawati Handayani, 2021). This is something that entrepreneurs and companies are prone to using to act unfairly towards their workers (Lane, 2021).

The formation of a work agreement is a form of agreement between both parties, namely the job seeker and the employer, which results in an agreement which can be stated in written form or can be done orally (Cengiz, 2021). Collective agreements that produce work agreements certainly contain clauses between rights and obligations that explain and regulate the relationship between the two (Roychowdhury, 2019). In this arrangement, it is not permissible to benefit just one party, but neither should both be harmed (Robertson, 2021).

In line with this, the existence of a work agreement is a form of effort to explain the work conditions, obligations and rights of both parties involved (Schmidt, 2002). According to Santoso, the basis of an employment agreement usually contains the objectives, functions, principles and legal basis for the employment relationship (Sudin

et al., 2022). On the other hand, there are four conditions necessary for the validity of an agreement, namely as follows: The agreement of those who bind themselves; Ability to create an engagement; A Fixedthing; A halal cause (Hamid, 2021).

The four conditions above that have been written down, if there is a work agreement that does not include or deviate from these four conditions, it can be said that the agreement is invalid, this is stated in 1321 burgelijk wetboek (BW), namely that there is no valid agreement if the agreement was given due to mistake, or obtained by force or fraud (Collins et al., 2019a; Risfa Izzati, 2022). More specific rules regarding employment agreements are regulated in BW in Chapter VIIA concerning employment agreements which also relate to engagement. According to article 1601a BW, a work agreement is an agreement where the 1st (one) party/labourer or employee binds himself to be under the orders of another party, the employer for a Fixed-term to carry out work and receive wages (Mateescu & Ticona, 2020).

Work agreement (Ramli, 2020), which explains that a work agreement does not require a specific form. So it can be done orally, with a letter of appointment from the employer or in writing, a letter of agreement signed by both parties (Gelpern et al., 2019; Pedley, 2019). In line with this, another opinion expressed by Zaeni Ayshadie in her book is supported, namely that a work agreement is a "means" for creating a legal relationship between workers/laborers and employers in an employment relationship (Holland, 2022). Meanwhile, a work agreement according to government regulation number 35 of 2021 is an agreement between workers/laborers and entrepreneurs or employers which contains work conditions, rights and obligations of the parties (Schmidt, 2002).

The fixed-term work agreement (PKWT) according to the old rules, was then replaced with new rules, experiencing many changes in its contents, starting from adding and reducing the number of clauses contained in the new fixed-term work agreement (Lane, 2021; Widanarti, 2021). The PKWT rules of the old law were regulated in the Manpower Law, in more detail regarding PKWT in Chapter IX concerning Employment Relations starting from article 57 to article 65. These rules became one product in Law Number 13 of 2003 without any other derivatives such as the Law -The latest law is Law Number 11 of 2020 concerning Job Creation (Cengiz, 2021; Kesuma & Uwiyono, 2022).

In line with this, the Law on Employment is no longer valid due to new regulations, so currently the rules regarding fixed-term work agreements use Law Number 11 of 2020 concerning Job Creation which is more specifically regulated starting



from article 56 to article 66 (Airey et al., 2020). However, there is a new Government Regulation which explains in more detail about fixed-term work agreements, so in this case the rules for fixed-term work agreements also use 2 rules, namely Law Number 11 of 2020 and Government Regulation number 35 of 2021 concerning Fixed-Term Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (Kesuma & Uwiyono, 2022).

In Government Regulation Number 35 of 2021, it is explained that the new rules regarding PKWT are more complex and very different from the addition of articles from the previous Law, namely Law Number 13 of 2003 (Maul, 2020). This changes the work culture, where PKWT contract workers with an agreed probationary period will then change their status to permanent employees, because of the new regulations these workers cannot switch to permanent employees and will only become contract workers whose contract period will be extended. and updated again (Mulvey, 1994; Rohrs, 2023).

In line with this, this research focuses on the differences in regulatory characteristics that influenced the survival of contract workers before the latest PKWT regulations (Nebrensky & Herc, 2023). The meaning of characteristic is that it has special characteristics or characteristics and is different from the old regulations, namely Law Number 13 of 2003, which has a different character from Law Number 11 of 2020 and its derivative, namely Government Regulation Number 35 of 2021 concerning PKWT. There are approximately 9 (nine) differences in Law Number 13 of 2003 and Law Number 11 of 2020 Jo. Government Regulation Number 35 of 2021 (Collins et al., 2019a; Sudin et al., 2022).

The differences in characteristics as intended are regarding the type of work that uses a Fixed-Term Work Agreement (PKWT); PKWT period; Because of law; Probational period; PKWT registration; Compensation if PKWT ends; Monthly wages used as the basis for calculating compensation payments; Provisions for the transition period for compensation money; and Termination of employment before the PKWT ends (Nebrensky & Herc, 2023; Ramli, 2020). In line with this, we also look at it from the perspective of legal protection for PKWT workers in the event of termination of their employment relationship, either because the contract has ended or before the end of the PKWT contract (Schmidt, 2002).

## 2 THEORITICAL FRAMEWORK

### 2.1 FIXED-TERM WORK AGREEMENT (PKWT)

The existence of an employment relationship between an employee and an employer is due to the existence of an agreement where the contents of an agreement certainly contain various rules and provisions which are outlined in a clause and obligations between the employee and the employer (Gerver, 2022). The relationship between workers and employers of course also exists and is regulated in Employment Law, which is currently regulated in Law Number 11 of 2020 concerning Job Creation which is then regulated in detail in Government Regulation number 35 of 2021 concerning Fixed-term Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (Mulvey, 1994; Risfa Izzati, 2022).

Agreements are divided into two (2) types according to (Imam Soepomo, 2022), including work agreements for a Fixed-term (PKWT) and work agreements for a Fixed-term (PKWTT). In line with this, Edith Ratna supported the opinion that the two work agreements according to Law no. 13 of 2003 Article 1 paragraph 14, namely the agreement between the worker or laborer and the entrepreneur or employer which contains the work conditions, rights and obligations of the parties (Perdana, 2022). Meanwhile, according to article 1313 BW, an agreement is an act by which one or more people bind themselves to one or more other people, which is then continued in article 1314, an agreement is made free of charge or at a cost (Michael & Sudini, 2021).

According to Agung Jaya Kesuma's opinion, a free agreement is an agreement in which one party provides a benefit to another party, without receiving any benefit for himself (Lane, 2021). Meanwhile, a burden agreement is an agreement that requires each party to provide something or not do something (Hulshof et al., 2021). Furthermore, this is supported by the opinion according to Shamad quoted by Danang Sunyoto in his book a work agreement where a person binds himself to work for another person by receiving compensation in the form of wages according to Fixedconditions (Risfa Izzati, 2022).

Changes in regulations related to fixed-term work agreements after the issuance of the Job Creation Law according to (Adhyaksa, 2022), namely changes to the time period for fixed-term work agreements; The legal consequences of a fixed term employment agreement are made unwritten; Legal consequences if a fixed-term work agreement requires a probationary period; Additional types of work that can be tied to a



Fixed-term work agreement; and, Extension and renewal of fixed-term employment agreements (Almeida et al., 2021; Devereux & Wadsworth, 2021; Mahy, 2021).

The Manpower Law regulates in Article 59 paragraph (4) that a fixed-term work agreement can be entered into for a maximum period of two years and can only be extended once for a maximum period of one year (Adhyaksa, 2022; Pedley, 2019). This period can be implemented with a longer time limit if the employer implements a work agreement renewal system, where a work agreement for a Fixedperiod of time can be executed once for a maximum of two years, provided that the new work agreement is executed after a grace period of thirty days has expired. the first fixed-term employment agreement (Collins et al., 2019b; Quinby & Wettstein, 2023).

In line with this, entrepreneurs can implement a renewal system within a maximum period of four years. Meanwhile, according to Article 81 point 12 of the Job Creation Law which amends Article 56 of the Employment Law, in paragraph (3) the article stipulates that the period for completing a work agreement for a Fixed-term is determined in the work agreement (Lane, 2021; Maul, 2020). The Job Creation Law also regulates that further provisions regarding fixed-term work agreements based on the time period or completion of a particular job are regulated in Government Regulations (Michael & Sudini, 2021).

A fixed-term work agreement must be made in written form and must also use Indonesian Latin letters (Hamid, 2021). Guaranteeing certainty of the rights and obligations of workers and entrepreneurs, as workers in Indonesia are mostly indigenous people, where if a dispute occurs in the future, it will be very helpful during the verification process (Risfa Izzati, 2022). Delgado et al (2023) said that work contracts that are implemented efficiently by considering the legal basis and respecting the regulations set by the government, the rights of workers and workers will be protected, so that workers will comply. This means that the consequences of a work agreement for a certain time which is made in unwritten form, causes the work agreement to become a work agreement for an indefinite time (Rohrs, 2023).

A Fixed-term work agreement is not permitted to require a work trial period. If there is a discovery of a Fixedterm work agreement that requires a work trial period, then the work probation period is declared null and void (Irawati Handayani, 2021; Mulvey, 1994). This provision was then confirmed in the Job Creation Law, where if a work agreement for a Fixedperiod requires a work trial period, then the work trial period is



absolutely null and void and the work period remains calculated from the start of the work agreement and becomes an indefinite work agreement ( Gerver, 2022).

A fixed-term work agreement can be made for work that will be completed within a Fixed-term, including temporary work, work that can be completed within a maximum of three years, temporary work that is seasonal (Ratti & Garcia-Muñoz, 2022). According to (Ramli, 2020), what is meant by work that has a permanent nature is work that is continuous, not intermittent, not limited by time and work that is Fixed to produce something with a clear quantity and purpose, and is not seasonal (Adhyaksa & Negara , 2022).

In line with this, this means that by adding a new criterion for a fixed-term work agreement, namely work whose type and nature or activities are not permanent, then as long as the work in question is not continuous, it can be used as the object of a fixed-term work agreement (Imam Soepomo , 2022). Labor law provides rules regarding the extension and renewal of fixed-term employment agreements. Regarding extensions, they can be done a maximum of once for a maximum of one year, while renewals can be done a maximum of once for a maximum period of two years (Almeida et al., 2021; Shalihah et al., 2022).

On the other hand, renewal of the agreement can only be done after exceeding the grace period, which means thirty days at the end of a long, fixed-term work agreement (Mezei, 2019). Meanwhile, in the Job Creation Law, which will be regulated more clearly in Government Regulation Number 35 of 2021, the rules regarding the extension of fixed-term work agreements differ depending on the type of fixed-term work agreement used (Mahy, 2021; Ramadhan et al., 2021) .

Regarding fixed-term work agreements based on the extension period, it can be carried out several times in an unlimited number, however the maximum time between the commencement of a fixed-term work agreement is not allowed to exceed 5 (five) years (Mousavi, 2023; Sitompul et al., 2021). A Fixed-term work agreement is based on the completion of a Fixedwork, an extension can be made until the completion of Fixedother work whose type and nature or activities are not fixed, there is no regulation regarding extension because it uses a daily work agreement model (Allcock et al., 2023).

In line with this, there is no compensation money for a Fixed-term work agreement when the Fixed-term work agreement ends (Burgess, 1992). However, under the Job Creation Law, employers are obliged to provide workers' compensation money, the



amount of which is adjusted to the length of service (Perdana, 2022). Government Regulation Number 35 of 2021 regulates compensation for workers who have worked for at least 1 (one) month. With the condition of a fixed term work agreement for 12 (twelve) months on an ongoing basis, compensation is given in the amount of 1 (one) month's salary, with equal compensation if the specified term work agreement is made for less or more than 12 (twelve) months (Maul, 2020). This means that supervision and control are absolutely necessary to guarantee work discipline, both for employers and for the workers themselves so that their freedom and rights are protected from their interests and the illegal actions of employers (Kucher & Mohilevsky, 2023).

## 2.2 DYNAMICS OF LABOR LAW IN INDONESIA

Towards the era of progressive modernization, the development of laws related to labor in Indonesia continues to experience significant changes, starting in the past during the colonial era where native Indonesians were employed as workers or laborers based on pressure and compulsion by the colonialists without any sense of justice and compassion. (Michael & Sudini, 2021; Roychowdhury, 2019). Until now, problems related to labor can still be said to be rife, regardless of who is at fault, whether the workforce is at fault or whether the employers in industrial relations courts are still struggling with such cases (Barnard et al., 2022).

In line with this, labor regulations have experienced a shift in the characteristics of the law and problems between labor and companies still occur frequently to this day (Holland, 2022; Mulvey, 1994). The regulations relating to labor that have been in force in Indonesia have undergone several changes, due to inconsistencies between the rules that apply in law and the implementation of problems and solutions (Maul, 2020).

The implementation of the regulations to date, namely Law Number 11 of 2020 concerning Job Creation, and more specifically regarding Fixed-term work agreements (PKWT) is regulated in Government Regulation Number 35 of 2021 concerning Fixed-term Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (Sudin et al., 2022). It is also known that the new law, namely the Job Creation Law, has at least changed 31 (thirty one) articles, deleted 29 (twenty nine) articles, and inserted 13 (thirteen) new articles in the Employment Law (Hamid, 2021; Ramli, 2020).

According to (Nirmayani et al., 2022), the significant changes to the Job Creation Law have caused many people, especially laborers and employees, to reject it and give rise to disappointed opinions. In line with Kesuma Atmadja's opinion, supported by Husni's opinion that the existing changes have a prominent and interesting problem, namely the problem of opportunities for workers who will not become permanent employees after the passing of Law Number 11 of 2020 (Kesuma & Uwiyono, 2022; Lane, 2021 ).

The development of labor in Indonesia was also stated by Susilo Bambang Yudhoyono, that Indonesia adheres to a four-track development strategy, namely development that is pro-growth, pro-employment, pro-poverty and pro-environment. Indonesia also adheres to three economic pillars (Mahy, 2021). First, economics for welfare. Second, democracy is becoming more vibrant but dignified, and finally comprehensive justice, justice for all as stated in Pancasila regarding social justice for all Indonesian people (Mousavi, 2023; Steele, 2023).

### 3 METHODOLOGY

The research method used is a qualitative method with analysis and presentation carried out in a normative-descriptive manner (Marzuki & Sh, 2021). This research is also based on problem identification which is based on the formal aspects of the formation and substance of the Job Creation omnibus law which has the potential to weaken efforts to protect, enforce and fulfill human rights (Maul, 2020). This research uses a statutory approach, a conceptual approach, a case approach (Fadli, 2021).

The statutory approach is carried out by examining laws and regulations related to legal issues. This research examines and analyzes statutory regulations that correlate with fixed-term work agreements, both in labor law and job creation law, or in government regulation number 35 of 2021 concerning PKWT (Michael & Sudini, 2021). Secondary data relates to literature studies, namely theories and principles of employment law, industrial relations between companies and workers and/or labor unions, laws and regulations relating to industrial relations, resolution of industrial relations disputes (Schmidt, 2002; Sjaiful, 2021).

The conceptual approach is used to study and analyze the basic thinking or basic concepts that examine the normative basis for agreements in the agreement clauses that have been agreed upon by referring to concepts rather than existing rules and become the

basis for <sup>32</sup> creating a regulatory framework for protection in PKWT ( Gelpert et al., 2019). The case <sup>32</sup> approach is an approach taken by examining and discussing the application of PKWT in various cases and making comparisons of the facts and legal considerations in these cases (Adhyaksa & Negara, 2022; Sjaiful, 2021).

The data collection method that will be used in this research is through library research and interviews (Ratti & Garcia-Muñoz, 2022). Literature study is collecting data by searching, recording, inventorying, data from various materials contained in the library space, such as online news portals, books, documents, results of previous research and documentation relating to problems related to PKWT. Meanwhile, interviews were conducted with the Lamongan Manpower Service (Castiñeira, 2019; Imam Soepomo, 2022).

## 4 RESULTS AND DISCUSSION

### 4.1 CHARACTERISTICS OF FIXED-TERM EMPLOYMENT AGREEMENTS ON THE APPLICABILITY OF JOB COPYRIGHT LAW

PKWT regulations between before <sup>23</sup> the Job Creation Law and after the Job Creation Law, namely duration, type, registration obligations and compensation (Cengiz, 2021; Widanarti, 2021). <sup>43</sup> Prior to the Job Creation Law, PKWT was carried out for Fixedjobs based on <sup>13</sup> the type and nature or activities of the work to be completed within a Fixed-term <sup>3</sup> as follows: Work that was completed once or that was temporary in nature; work which is estimated to be completed within a short period of time and a maximum of 3 (three) years; seasonal work; and/or work related to new products, new activities, or additional products that are still under trial or exploration (Mulvey, 1994).

<sup>23</sup> In line with this, there is no significant difference between the two rules. However, in the Job Creation Law, the division of PKWT is clearer because it is divided into 2 sub-sections and adds "Fixedother jobs whose type and nature or activities are not permanent" (Adhyaksa & Negara, 2022; Pedley, 2019). It is hoped that a clearer division regarding PKWT will reduce the ambiguity in interpretation of PKWT (Holland, 2022).

Before the Job Creation Law, PKWT had a period of 2 years but could be extended <sup>3</sup> once for a maximum of 1 year. After the first 3 years are completed, the PKWT can be renewed once with a duration of 2 years, however the PKWT <sup>16</sup> can only be renewed after a grace period of 30 days after the first 3 years are completed (Kennedy, 2020; Maul, 2020). After the Job Creation Law, if a PKWT is carried out beyond 5 (five) years, then



by law it becomes a PKWTT and the worker's working period is still calculated from the time the employment relationship occurs based on the PKWT (Fadli, 2021).

The Job Creation Law also regulates PKWT with daily work agreements, which states that workers who work for 21 (twenty one) days or more for 3 (three) consecutive months or more then the daily work agreement changes to PKWTT (Lane , 2021; Widanarti, 2021). It can be concluded that after the specified time period has passed, the two laws have changed the status of PKWT and PKWTT. The Job Creation Law regulates the status of daily work agreements which have not previously been regulated (Sjaiful, 2021).

Before the Job Creation Law, PKWT could not implement a work trial period so the trial period was considered null and void. After the Job Creation Law, PKWT cannot implement a work trial period so the trial period is considered null and void (Adhyaksa & Negara, 2022; Gelpert et al., 2019). If there is a probationary period then the probationary period is null and void and the working period continues to be counted. There is no difference between the two regulations, but the Job Creation Law more explicitly states that the trial period is still counted as part of the PKWT (Mateescu & Ticona, 2020).

Before the Job Creation Law, registration was mentioned in the explanation of Article 59 Paragraph (1) of the Manpower Law, namely that work agreements were registered with the agency responsible for the field of employment (Hamid, 2021). Meanwhile, after the Job Creation Law, companies have an obligation to report PKWT online to the Ministry of Manpower no later than 3 (three) days after signing the PKWT or if online PKWT registration is not yet available then PKWT recording is carried out no later than 7 (seven) days after the PKWT is signed to the district/city employment department in writing (Airey et al., 2020; Sudin et al., 2022). It is clear that there are differences considering that the previous regulations for PKWT registration did not fully regulate the procedures.

The provision of compensation money does not apply to foreign workers employed by employers in employment relationships based on PKWT (Risfa Izzati, 2022). It is clear that there is a difference considering that in the previous regulations compensation for PKWT that had been completed within the time period was not regulated (Dughera et al., 2022). Compensation is given as a form of protection to workers because generally the dispute that arises from the end of the PKWT is whether the worker



is entitled to severance pay or not. This is also reflected in the Surabaya District Court Decision No. 82/G/2014/PHI.Sby which has been explained in point 2.1. that PKWT is null and void and has implications for workers' rights to receive severance pay (Gunadi et al., 2022).

After the Job Creation Law, the employment relationship between outsourcing companies and the workers/laborers they employ is based on PKWT or PKWTT (Mahy, 2022; Rawling, 2015). In the event that the Outsourcing Company employs Workers/Labourers based on PKWT, the Employment Agreement must require the transfer of rights protection for the Workers/Labourers in the event of a change in the Outsourcing Company and as long as the object of employment remains. It is hoped that changes to the Job Creation Law related to PKWT can resolve the issues.

Table 1. Differences in Employment Cluster regulations before the Job Creation Law and after the Job Creation Law

Indicator	Before the Ciptaker Law (Employment Law)	After the Ciptaker Law (Creation Law and PP 35/2021)
<b>Time off</b>		
Weekly Break	1 day for 6 working days or 2 days for 5 working days.	1 day for 6 working days
Long break	Long breaks of at least 1 month each in the seventh and eighth years for employees who have worked continuously for 6 years at the same company.	There are no provisions, depending on company regulations and the agreement between the parties.
Menstruation leave	Allowed to take leave on the first and second day of menstruation.	There is no right to menstrual leave.
Maternity leave for childbirth	Regulated mechanisms for maternity leave, including in case of miscarriage.	Unregulated
The right to breastfeed	Have the right to breastfeed during work time.	Unregulated
Leave to carry out religious services	Workers have the right to take time off for worship.	Unregulated
<b>Salary</b>		
Unit wages for results and time	Unregulated	Upah satuan waktu: diatur berdasarkan waktu. Upah satuan hasil: diatur berdasarkan hasil yang telah disepakati.
Minimum wage	Determined at the provincial, district/municipality and sectoral levels	Regency/municipality and sectoral minimum wages are abolished
Bonus	Unregulated	Bonus according to the working period, a maximum of 5 times.
Minimum Wage Formula	$UMT + \{UMT \times (INFLASIt + \% \Delta PDBt)\}$	The current year's minimum wage plus components of regional economic growth and regional inflation
<b>Severance pay</b>		
Long service award money	Laborers who have worked for more than 24 years are entitled to receive an award of 10 months' wages.	Deleted
<b>Social Security</b>		



Job Loss Guarantee	Unregulated	There is Job Loss Guarantee (JKP) in the form of cash, access to job market information and job training. <span style="float: right;">45</span>
<b>Work termination</b> <span style="float: right;">2</span>		
Reason	<ul style="list-style-type: none"> <li>• Company goes bankrupt;</li> <li>• The company closes due to losses;</li> <li>• Changes in company status;</li> <li>• Workers/laborers violate work agreements;</li> <li>• Workers/laborers make serious mistakes;</li> <li>• Workers/laborers are entering retirement age;</li> <li>• Workers/laborers resign;</li> <li>• Worker/laborer dies;</li> <li>• Workers/laborers are absent.</li> </ul>	There are additional reasons: <ul style="list-style-type: none"> <li>• The company makes efficiency;</li> <li>• The company carries out a merger, consolidation, takeover or separation of companies;</li> <li>• The company is in a state of postponement of debt payment obligations;</li> <li>• The company commits acts that are detrimental to workers/laborers;</li> <li>• Workers/laborers experience prolonged illness or disability due to work accidents and are unable to carry out their work after exceeding the limit of 12 (twelve) months.</li> </ul>
<b>PKWT</b> <span style="float: right;">19</span> <span style="float: right;">5</span>		
Type	Work agreements are made for a Fixed-term or for an indefinite time. The work agreement for a Fixed-term is based on: a. time period; or b. completion of a particular job <span style="float: right;">18</span>	PKWT based on the time period as intended in Article 4 paragraph (1) letter a is made for fixed jobs, namely: a. work that is estimated to be completed within a short period of time; b. seasonal work; or c. work related to new products, new activities, or additional products that are still under trial or exploration. (2) PKWT based on the completion of Fixedwork as intended in Article 4 paragraph (1) letter b is made for Fixed work, namely: a. once completed work; or b. temporary work
Duration	A fixed-term work agreement based on a Fixedperiod of time can be entered into for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year. <span style="float: right;">18</span>	PKWT is based on a maximum valid period of 5 years, the PKWT can be extended several times if the work carried out has not been completed, provided that the overall term of the PKWT and the extension is not more than 5 years
Temporary Period	PKWT cannot apply a work probation period so the probation period is considered null and void.	PKWT cannot apply a work probation period so the probation period is considered null and void. If there is a probationary period then the probationary period is null and void and the working period continues to be counted.
Registration	Explanation of Article 59 Paragraph (1) of the Employment Law, namely that employment agreements are registered with the agency responsible for employment <span style="float: right;">65</span>	Companies have an obligation to report PKWT online to the Ministry of Manpower no later than 3 (three) days from the signing of the PKWT or if online PKWT registration is not yet available, PKWT recording is carried out no later than 7 (seven) days after the PKWT is signed to the district/city manpower department in person. Written



PKWT compensation that ends according to the time period	There is no compensation obligation in the PKWT which ends according to the term	If PKWT is carried out for more than 12 (twelve) months, it is calculated proportionally by calculating the service period multiplied by 1 (one) month's wages
PKWT compensation that is terminated by one of the parties before the term	The party who terminates the employment relationship is obliged to pay compensation to the other party in the amount of the Worker/Labourer's wages until the end of the term of the employment agreement	Employers are obliged to provide compensation based on the time served.
<b>Working hours</b>		
Working hours	Maximum overtime is 3 hours per day and 14 hours per week.	Maximum overtime is 4 hours per day and 18 hours per week.
<b>Outsourcing</b>		
Outsourcing	Limited to workers outside the main business.	Outsourcing is permitted for PKWTT and provides protection for outsourced workers.
<b>Foreign workers</b>		
Licensing	Must have written permission from the Minister.	Must obtain approval for the plan to use foreign workers.

Sources : [www.ilo.org/jakarta/country/indonesia/lang-en/index.htm](http://www.ilo.org/jakarta/country/indonesia/lang-en/index.htm)

Job creation is one of the urgencies that has actually been stated in Law of the Republic of Indonesia Number 17 of 2007 concerning the National Long Term Development Plan for 2005 - 2025 ("UU 17/2007") (Ramadhan et al., 2021). This urgency cannot be separated from the demographic bonus phenomenon which will contribute an average of 0.2 (zero point two) percent per year to economic growth until 2029 before this contribution finally ends after the end of the demographic bonus era (Airey et al., 2020; Perdana, 2022).

The reform of manufacturing technology in Indonesia means that low-skilled labor can be replaced with various machines that can make the production process more effective and efficient (Dughera et al., 2022). However, with the supply of workers in Indonesia with junior high school education and below who are classified as low-skilled labor, 76.12% of the workforce is very vulnerable to the threat of disruption due to the adoption of technology in various fields (Harryarsa & Hamid, Supardi, 2023; Mezei, 2019).

In line with this, if workers in Indonesia do not have the proper ability to use technology, it is feared that labor absorption will be very low compared to demand, thereby increasing unemployment, poverty and crime rates (Devereux & Wadsworth, 2021; Mahy, 2022). So regulations must be present to bring together the interests of various parties, in this case workers and employers, which provides space for employers





to develop their businesses by facilitating regulations related to investment and companies but still paying attention to labor protection (Allcock et al., 2023 ).

One of the instruments offered to accommodate the interests of workers in developing businesses and employers in protecting their workers' rights is known as the PKWT system (Sjaiful, 2021). PKWT is a manifestation of labor market policy in order to reduce unemployment and improve the investment climate in Indonesia. Due to this function, the Government then included the PKWT provisions in the Employment Law (Gerver, 2022). Considering that the PKWT rules have a limited nature, various issues arise in the PKWT as follows. First, in its application, many companies prefer the PKWT system over PKWTT in recruiting employees (Rohrs, 2023).

#### 4.2 PROTECTION OF FIXED-TERM WORK AGREEMENT (PKWT)

One of the fundamental changes to the Job Creation Law is the rules for recording PKWT which should have the aim of providing preventive legal protection because before the parties are bound to a work agreement, the work agreement has to be supervised by the Manpower Department first so that the PKWT is in line with applicable regulations. (Adhyaksa, 2022; Gelpert et al., 2019). Once the PKWT is in accordance with the applicable regulations, the new PKWT is ratified and given a recording proof number. On the other hand, if the PKWT has not complied with the legislation, the Manpower Service will return the PKWT to be repaired by the employer (Collins et al., 2019a).

In line with this, the recording rules are not completely new, these rules have been stated in the explanation of Article 59 Paragraph (1) of the Manpower Law and Article 13 of the Decree of the Minister of Manpower and Transmigration Number 100/MEN/VI/2004, namely that PKWT must be recorded by the business owner to the authorized institution in the surrounding district/city employment sector no later than 7 (seven) working days from the signing of the employment agreement (Maul, 2020; Roychowdhury, 2019). However, in practice, companies often fail to record PKWT (Barnard et al., 2022).

The implications of the amendment to the PKWT regulations have various impacts on workers, employers and Indonesia's economic growth (Hulshof et al., 2021). On the other hand, the PKWT amendment aims to provide better protection to workers, as evidenced by the confirmation of the obligation to register for PKWT, provide



compensation to PKWT workers, and clarify the scope of work that is permitted to use PKWT. However, this regulation is not completely perfect which has many pros and cons among various stakeholders such as workers and employers (Maul, 2020; Satria, 2019).

Table 2. Implications of Amendments to the PKWT Rules

Amended article	Results of Amendments	Implications of amendments
Article 56	There are additional paragraphs (3) and paragraphs (4): 1. The dynamic development of the world of business and technology requires workers/laborers with Fixedcompetencies to be able to meet labor needs in completing a job for a Fixed-term. 2. It is hoped that the flexibility in setting the PKWT period based on the agreement will expand job opportunities for job seekers and workers/laborers.	1. Amendments to the PKWT regulations are expected to expand job opportunities. 2. It is hoped that the opening of opportunities to implement PKWT flexibly can increase the level of labor force participation (TPAK), especially women, so that it can help the family economy. 3. With a more flexible PKWT, it is hoped that it will be easier for employers to employ workers/laborers with appropriate competencies. 4. Freedom for entrepreneurs and workers/laborers to agree on determining the PKWT period. 5. There is access to obtain certification for workers/laborers independently or facilitated by companies or the government.
Article 57	When there is a PKWT made in Indonesian and a foreign language, if there are differences in interpretation between the two, then the PKWT in Indonesian is valid.	Increase protection for PKWT workers/laborers.
Article 58	Changes are contained in paragraph (2), namely the prohibition of probationary work periods on PKWT.	This is aimed at providing protection for PKWT workers/laborers and certainty of PKWT work periods which aims to strengthen job protection for PKWT workers/laborers.
Article 59	Article 59 was deleted as a consequence of changes to the provisions of Article 56 where the type and nature of PKWT work which was previously limited was changed to be open to all types and nature of work.	This aims to make the implementation of PKWT more flexible.
	PKWT is obliged to regulate the termination of PKWT so that the fulfillment of rights and obligations comes clearer.	Clarify protection for entrepreneurs and workers/laborers.
	Employers are obliged to provide compensation to workers/laborers at the end of the PKWT. Compensation calculations are regulated in PP 35/2021.	1. Cause protection for workers/laborers when the PKWT ends to increase. 2. The company must prepare a compensation fund for the termination of the PKWT employment relationship. These funds can be prepared at a financial institution.



	Obligation for compensation if one party cannot fulfill the agreement clause before the end of the agreement.	Increase protection for entrepreneurs and workers/laborers.
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Sources: www.mkri.id

There are 2 (two) legal remedies that workers can take if they do not agree with the PKWT rules contained in the Job Creation Law, namely judicial review and political review (Kennedy, 2020; Lane, 2021). Judicial review is a legal effort that can be taken by workers to test legal products in court. The courts that have jurisdiction to carry out judicial reviews are the Supreme Court and the Constitutional Court (Maul, 2020). The difference is that the Supreme Court's authority in judicial review is given if the legal product being tested is a regulation that has a hierarchy below the law to be tested against the law (Fadli, 2021).

The authority of the Constitutional Court to conduct judicial reviews is given if the review is carried out on constitutional law (Perdana, 2022). In the PKWT case, if the legal product being tested is the Job Creation Law, then the Constitutional Court has the authority to carry out a judicial review, whereas if what is being tested is PP 35/2021 then the Supreme Court has the authority to carry out a judicial review (Mulvey, 1994; Sudin et al. al., 2022).

Judicial review is considered a legal effort that can protect workers because statutory regulations are the product of legislative democracy which is usually dominated by the interests of the majority or stronger parties (Gerver, 2022). Often the interests of the majority are detrimental or conflict with the interests of minorities or weaker parties even though the interests of these minorities have also been protected under a higher legal umbrella, in this case Article 27 (2) of the 1945 Constitution which states that every citizen has the right to work and a decent living for humanity (Cengiz, 2021; Widanarti, 2021).

In line with this, there must be an institution that can act to correct these regulations. This mechanism also acts as a check and balance in government so that legislators do not act arbitrarily in making regulations (Collins et al., 2019a; Hamid, 2021). However, the limitation of judicial review is that the court institution can only act as a negative legislator, which can only cancel rules that conflict with rules of a higher hierarchy but cannot add new norms to the legislation being reviewed (Mulvey, 1994).

There is an example of a judicial review decision related to PKWT, namely the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-



XVIII/2020 in which the Petitioners for a judicial review, the formation of the Paper Creation Law using the omnibus law method caused uncertainty about the type of law that was formed, whether it was a law, -new law or amendment law or repeal law (Maul, 2020; Nirmayani et al., 2022). Thus, this is contrary to the technical provisions for the formation of new laws, revocation and/or amendments to laws as regulated in Attachment II to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (Lane, 2021).

The reasons for the Petitioners' submission to the Constitutional Court are to declare Law 11/2020 contrary to the 1945 Constitution and does not have binding legal force, as well as stating that the provisions of norms in the Law have been changed, deleted and/or which have been declared to have no binding legal force in the Law. 11/2020 re-enacts (Mulvey, 1994; Rohrs, 2023). Constitutional judges are of the opinion that the need for clear and standard procedures in the formation of laws and regulations is in principle a constitutional mandate in regulating the design and construction of laws (Hamid, 2021).

Methods that cannot be used as long as they have not been adopted in the law regarding the formation of statutory regulations. Based on these considerations, the constitutional judge decided that the establishment of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted as "no improvements are made within 2 (two) years since this decision was pronounced." This proves that judicial review can actually be used to increase protection for workers (Airey et al., 2020; Castiñeira, 2019; Perdana, 2022).

Protection is a worker's right which is important because the majority of workers/laborers in Indonesia have low education (elementary school, middle school, high school) and whose economic and social position is lower than that of employers will definitely accept whatever contents of the work agreement made by the entrepreneur, especially if the work agreement is made only verbally ( Adhyaksa & Negara, 2022). If the entrepreneur makes the PKWT period of 10 (ten) years, the worker/laborer will receive it. That labor protection is something that must also be considered in the formation of regulations considering the employment relationship in this relationship.



## 5 CONCLUSION

Based on existing studies, the Fixed-term Work Agreement (PKWT) is a legal framework in the Job Creation Law, based on various types of work, duration and compensation. Fixed-term Work Agreements (PKWT) are categorized into short-term, seasonal or new product-related work, one-time or temporary work, and five years or more. Companies must report the PKWT to the Manpower Department within three days of signing, and workers must receive compensation. Legal protection is very important to balance the social and economic position between employers and workers.

Elaboration between stakeholders is able to socialize the Job Creation Law and Government Regulation Number 35 of 2021 concerning Fixed-term Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. The Job Creation Law can be part of national economic recovery efforts, especially in encouraging economic transformation to be able to create jobs and protect worker welfare. However, what is happening in the field is that workers feel they are not benefiting from the Job Creation Law, especially in the work contract cluster. The lack of certainty regarding career paths and employers' initiation of work contracts is considered detrimental to workers.



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