



Comparison Between Law Number 13 of 2003 and Government Regulation Number 35 of 2021 in Termination of Employment for Workers, Certain Time Employment Agreements in the Contract Period Associated with the Employment Creation Law

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Abstract. The purpose of this research is to analyze the legal protection for PWKT workers who get terminated during the contract period. The research was conducted using juridical-normative legal research. The results showed, firstly, legal protection for PKWT workers who were terminated based on the Labor Law did not provide maximum legal protection for workers/laborer. Article Number 62 of the Manpower Law only provides compensation in the number of wages PKWT workers/laborers until the deadline for the expiration of the work agreement period. Second, the ratification of the Job Creation Law and Government Regulation Number 35 of 2021 raises legal problems in the form of conflicting norms (antyNomy Normen) and does Not yet reflect legal protection in the theory of fair, certain and beneficial legal objectives. In the event of layoffs for PKWT workers during the contract period, Government Regulation Number 35 of 2021 as a derivative regulation of the Job Creation Law requires Employers to provide compensation money, the amount of which is calculated based on the PKWT period that has been carried out by Workers/Labourers, then the Norm Article 16 of Government Regulation No 35 of 2021 contradicts a higher Norm, namely Article 62 of the Labor Law.

Keywords: Workers, Work Relations, Legal Protection.

1 Introduction

Companies in Indonesia are currently applying more Specific Time Work Agreements (PKWT) because they are considered more efficient and effective in obtaining greater profits by reducing costs incurred and the no of workers needed. If the position of the company has many workers, the company must provide various benefits for the welfare of the workers, such as health care benefits, work reward benefits, termination benefits, and others. However, PKWT workers believe that the policy of using the PKWT system is considered unfavorable because they do not have certainty in terms of length of work,

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appointment as permanent employees which affects their career path, status or position as workers, and severance pay at the end of the contract period.

PKWT workers, per statutory provisions, are not entitled to receive compensation for Termination of Employment (PHK) in the form of severance pay, gratuity pay, medical and housing replacement pay, or severance pay. Thus, the Company has no obligation to provide the benefits mentioned above when the contract period has expired, and the employment relationship will end automatically. Based on the provisions of Article 27 of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), namely that every citizen has the same position in law and government. This provision is detailed in Article 5 and Article 6 of Law Number 13 of 2003 Concerning Manpower (Law Number 13 of 2003). Article 5 Law Number 13 of 2003, namely every worker has the same opportunity without discrimination to get a job. Article 6 of Law Number 13 of 2003, namely that every worker/laborer has the right to receive equal treatment without discrimination from employers. If we look again, the purpose of Law Number 13 of 2003, namely providing protection to workers in realizing prosperity, and improve the welfare of workers and their families.

There are significant differences in legal protection contained in the Manpower Law and its derivatives and Law Number 11 of 2020 Concerning Job Creation (Law Number 11/2020) and its derivatives which guarantee workers with a certain working time agreement who experience termination of employment during the contract period. As Article 62 of Law Number 13/2003 states that if one of the parties terminates the employment relationship before the expiration of the period specified in the work agreement for a certain time, or the termination of the employment relationship is not due to the provisions referred to in Article 61 paragraph (1) of Law not 13/2003, the party terminating the employment relationship is required to pay compensation to the other party in the amount of the wages of the worker/laborer until the expiry date of the work agreement. However, the issuance of Law Number 11/2020 and Government Regulation 35 of 2021 Concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (Government Regulation Number 35/2021) as derivative regulations which are expected to provide more optimal legal protection for workers PKWT carried out by Termination of Employment, based on Article 17 Government Regulation Number 35/2021 states that if one of the parties terminates the Employment Relations before the expiration of the period specified in the PKWT, the Employer is obliged to provide money compensation as referred to in Article 15 paragraph (1) the amount of which is calculated based on the PKWT period that has been carried out by the Worker/Labourer. Furthermore, in Article 16 paragraph (1) Government Regulation Number 35/2021 provides a more complete explanation of the amount of compensation that must be given by employers to PKWT workers whose employment has been terminated. Regarding Termination of Employment, as stated in Article 1 Number 25 is termination of employment due to a certain matter which results in the end of the rights and obligations between the worker/laborer and the entrepreneur.

Based on the formulation of the article, Termination of Employment is the termination of the employment relationship. Thus, the content of Article 62 Law Number 13/2003 states that if one of the parties terminates the employment relationship before the expiration of the period stipulated in the work agreement for a certain time, then it

is required to pay compensation, whereas in Article 17 Government Regulation. 35/2021 states that if one of the parties terminates the Employment Relations before the expiration of the period specified in the PKWT, the Employer is obliged to provide compensation money, the amount of which is regulated in Article 16 paragraph (1) Government Regulation Number 35/2021. This of course raises legal problems in the form of norm conflicts (antynomy normen), because as is known that Article 62 of Law Number 13/2003 explicitly recognizes compensation in the no of the worker/laborer's wages until the deadline for the expiration of the work agreement period if there is a PKWT worker/laborer whose employment relationship is terminated during the contract period, whereas in Government Regulation Number 35/2021 as a derivative regulation of Law Number 11/2020 recognizes compensation money, the amount of which is calculated based on the PKWT period that has been implemented by Workers/Labourers when workers with PKWT experience layoffs.

Furthermore, Article 59 paragraph (2) of Law Number 11/2020 states that Fixed Time Work Agreements cannot be held for permanent jobs. But what is happening in the field, many employers use PKWT workers to do a permanent job. This is a problem in itself because what PKWT workers are doing is the realm of work that should be done by PKWTT workers, whereas when termination of employment is carried out for PKWT workers during the contract period, the rights given if calculated are very small and not commensurate compared to with what PKWT workers have done, and it will be more ironic if the termination of employment is carried out by the employer before the end of the contract period. So with the existence of these legal problems, the author is interested in writing a journal related to legal protection for PKWT workers who are terminated during the contract period by including several legal issues, namely, first, how is the legal protection for Work Agreement Workers for a Specific Period of Termination of Employment during the period contract According to Law Number 13/2003 and secondly, how is the legal protection for workers with specific time work agreements who are terminated during the contract period? According to Law Number 11/2020.

2 Problem Formulation

What is the legal protection between Law Number 13 of 2003 and Government Regulation Number 35 of 2021 regarding termination of employment for workers with work agreements for a certain time during the contract period?

3 Legal Protection for Workers with Specific Time Work Agreements Who Are Terminated During the Contract Period According to Law Number 13/2003

The work agreement creates an agreement between the worker and the company, then the qualifications are divided into 2 (two) parts, namely the Specific Time Work Agree-

ment (PKWT) and the Unspecified Time Work Agreement (PKWTT). Raising the contract issue is closely related to contract workers. Meanwhile, contract workers are workers who are based on a Specific Time Work Agreement (PKWT), namely a work agreement between an employer and a worker/laborer to enter a working relationship for a certain time or a certain job. PKWT requirements are regulated in Article 56 to Article 59 of Law Number 13/2003 and have undergone refreshment namely Law Number 11/2020, whose implementing regulations are contained in Government Regulation Number 35/2021. As the rules in the articles previously mentioned, it can be narrowed down that the making of a work agreement for a certain time must fulfill the following elements:

1. Based on a certain period or completion of a job.
2. Must be made in writing and describe in Indonesian.
3. There may be no probationary period.
4. Can only be made for certain jobs according to the type or nature or activities of the work will be completed within a certain time.
5. Cannot be held for jobs that are permanent.

As the laws and regulations contained in Article 62 of Law Number 13/2003 states that if one of the parties ends the employment relationship before the expiration of the period specified in the work agreement for a certain time, or the employment relationship ends not because of the provisions referred to in Article 61 paragraph (1), the party terminating the employment relationship is required to pay compensation to other parties in the amount of the wages of the worker/laborer until the expiry date of the work agreement. From this description, the author provides an illustration of the case as follows:

Hendra is a PKWT worker at PT X with a contract period of 2 years. Hendra salary is Rp. 5,000,000. - (four million five hundred thousand rupiah) per month. However, 2 months before the contract ended, PT X as Hendra's workplace terminated Hendra's employment relationship on the grounds that PT X because of the global crisis, so we must reduce the no of PKWT workers. Regarding the case example above, Hendra was terminated by PT X, then based on Article 62 of Law Number 13/2003 PT X is obliged to pay Hendra's rights in the amount of:

- Rest of the contract: 2 months
- Monthly wages: IDR 5.000.000, -
- Amount of compensation: $2 \times \text{Rp. } 5.000.000, - = \text{IDR } 10.000.000, -$

Based on the theory of legal protection, the case illustration above still does not show maximum legal protection efforts for PKWT workers, the compensation money provided by PT X to Hendra as a PKWT worker is not commensurate considering that PKWT workers/laborers are essentially the same as PKWTT workers/laborers who have a very important role and position as actors and national development goals, while the purpose of legal protection for workers themselves is intended to guarantee basic rights. workers/laborers and guarantee equal opportunity and treatment without discrimination on any basis whatsoever to realize the welfare of workers/laborers and their families by considering developments in the progress of the business world. The law

requires employers to have the responsibility to fulfill and comply with the normative rights of workers in every job assignment.

Termination of employment is part of industrial relations disputes, namely "disputes on termination of employment relations dispute that arises because there is no conformity of opinion regarding the termination of employment relations carried out by one of the parties". The provisions in Article 1 paragraph 1 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (Law Number 2/2004) state that industrial relations disputes are differences of opinion that result in conflicts between employers and workers due to disputes regarding rights, disputes over interests, disputes over the termination of employment, and disputes between unions within one company. The best solution is to bring together the two disputing parties and negotiate to obtain results that benefit both parties. According to the provisions of Law Number 2/2004 that there are legal action procedures that can be filed by PKWT workers who are laid off during the contract period, namely mediation, conciliation, arbitration, and the Industrial Relations Court.

4 Legal Protection for PKWT Workers Who Have Termination of Employment According to Government Regulation 35/2021

The basic difference between PKWT and PKWTT lies in the timeframe, PKWT is an agreement between workers and employers to enter a working relationship for a certain period, while PKWTT is an agreement between workers and employers to enter a permanent working relationship. Nevertheless, Government Regulation 35/2021 contains provisions that have undergone many changes, including the provisions concerning PKWT. The changes to changes in regulations related to PKWT are as follows:

- Article 17 Government Regulation Number 35/2021

If one of the parties terminates the Employment Relations before the expiration of the period specified in the PKWT, the Employer is required to provide compensation money as referred to in Article 15 paragraph (1) the amount of which is calculated based on the PKWT period that has been carried out by the Worker/Labourer. Article 16 verse (1) Government Regulation Number 35/2021. The amount of compensation money is given per the following provisions:

- a. PKWT for 12 (twelve) months continuously, given 1 (one) month wages.
- b. PKWT for 1 (one) month or more but less than 12 (twelve) months, calculated proportionally with the calculation: $(\text{work period}/\text{month } 12 \text{ wages}) \times 1 \text{ (one)}$
- c. PKWT for more than 12 (twelve) months, calculated proportionally by calculating: $(\text{work period}/\text{month of } 12 \text{ wages}) \times 1 \text{ (one)}$

When trying to compare with the illustrated case examples as follows:

- Hendra is a PKWT worker at PT X with a contract period of 2 years. Hendra salary is Rp. 5,000,000. - (four million five hundred thousand rupiah) per month. However, 2 months before the contract ended, PT X as Hendra's place of work terminated Hendra's employment on the grounds that PT X due to the global crisis, so we had to reduce the no of PKWT workers. Regarding the case example above, because

Hendra was terminated by PT X, then based on Article 16 and Article 17 Government Regulation 35/2021, PT X is obliged to pay Hendra's rights in the amount of: Compensation: $(22 \text{ months} / 12) \times \text{Rp. } 5,000,000 = \text{Rp. } 9.166.666, -$

Based on the comparison above, apart from causing disharmony between laws and regulations, the value of the amount of compensation regulated in Government Regulation Number 35/2021 has not provided legal protection for PKWT workers whose employment has been terminated during the contract period. Thus, after comparing the rights of PKWT workers who were laid off during the contract period based on Law Number 13/2003 and Law Number 11/2020 along with its derivative regulations, economically and in favor of PKWT workers to achieve equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families, the compensation regulated in Article 62 Law Number 13/2003 is more appropriate to be chosen for PKWT workers who were laid off during the contract period.

The birth of Government Regulation Number 35/2021, which is a derivative regulation of Law Number 11/2020 has also not become a vessel for legal protection in the theory of just, certain, and beneficial legal objectives. This is of course based on the practice that occurs in the field for PKWT workers who are employed by employers for permanent jobs, so, is it rational for PKWT workers who are laid off during the contract period to be given compensation money that is not commensurate with their work? Meanwhile, in principle, the purpose of the law is to achieve justice, benefit, and legal certainty. Reviewing the regulations contained in Article 59 paragraph (3) of Law Number 11/2020 states that a PKWT that does not fulfill the conditions referred to in paragraph (1) and paragraph (2), by law becomes a PKWT. So that if PKWT workers are employed by employers for permanent jobs, with the consequence that in the event of layoffs of PKWT workers who are still in the contract period, the employer is obliged to give PKWT workers the same rights as PKWTT workers. This is solely to guarantee legal protection for PKWT workers who are laid off during the contract period to create legal objectives that are just, certain, and beneficial.

The regulations contained in Article 17 Government Regulation Number 35/2021 need to be re-analyzed using the principle of preference, namely *Lex Superiori Derogat Legi Inferiori* (high laws beat lower laws). The analysis using this principle provides a prescription that the rules contained in Article 17 Government Regulation Number 35/2021 should not apply because it conflicts with the norms of Article 62 of Law Number 13/2003 which is higher in the hierarchy of laws and regulations and is still valid as Indonesian positive law.

The ruling of the Constitutional Court on Number 91/PUU-XVIII/2020 creates ambiguity, namely ordering the legislators to make improvements within a maximum period of 2 (two) years since this decision was pronounced, and if within this time limit no corrections are made then Law Number 11/2020 becomes permanently unconstitutional. If the formal review and material review are examined, the Constitutional Court Decision on Number 91/PUU-XVIII/2020 provides an overview of the conditions for legal development for the formation of laws and regulations in Indonesia, especially in the field of manpower, which experienced a setback after the enactment of Law Number 11/2020 along with its derivative regulations. The Constitutional Court's decision is

inversely proportional as if it gives a discount to the Legislature to correct it within 2 years of the constitutional court's ruling. If you adhere to the view of legalistic formalists, the consequences should be - a law that is proven to be formally flawed, because the granting of a formal review of a law will have an impact on the cancellation of a law as a whole, while material review will not cancel a law as a whole. , only states apart, article, paragraph, or phrase that is contrary to the 1945 Constitution of the Republic of Indonesia, so as long as Number material content material is granted for judicial review, the decision of the Constitutional Court Number 91/PUU-XVIII/2020 is seen as materially valid until corrections are made to the formation following the grace period as specified in the decision, meaning that the articles, paragraphs or phrases contained in Law Number 11/2020 remain positive law. So that everyone is still subject to the provisions of Law Number 11/2020.

5 Conclusion

Maximum legal protection for workers/labourers, in line with what was stated by Philipus M. Hadjon that the presence of law also functions to provide justice and is a means to realize welfare for the community. For PKWT workers who get laid off during the contract period, Article 62 Number 13/2003 provides compensation money equal to the wages of PKWT workers/laborers until the deadline for the expiration of the work agreement period, so if there is a layoff of PKWT workers who are still in the contract period, employers are obliged to give PKWT workers the same rights as PKWTT workers in order to create goals law that is just, certain, and beneficial. Legal protection according to Law Number 11/2020 along with Government Regulation Number 35/2021 as a derivative regulation of Law Number 11/2020 requires Employers to provide compensation money, the amount of which is calculated based on the PKWT period that has been carried out by the Worker/Labourer. The results of the analysis show that the provisions of Law Number 11/2020 in providing protection for Workers has not provided a function so that Workers/Labourers get welfare as Number 13/2003, in fact, this arrangement is experiencing a setback, if referring to the theory of legal protection, it does not reflect the benefits of law and legal justice. In addition to the material content of legal protection Law Number 11/2020 does not comply with legal purposes, it turns out that Law no 11/2020 Work, in terms of the Constitutional Court Decision Number 91/PUU-XVIII/2020, has not fulfilled the principles for forming statutory regulations that have been determined by Law Number 12/2011, this condition makes Law Number 11/2020 does not have legal certainty, therefore Law Number 11/2020 is stated to be mandatory for repairs over a period of 2 years but it needs to be underlined by Law Number 11/2020 is still valid as positive law in Indonesia.

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