

Legal Protection of Employees With A Specific Time Working Agreement Within The Framework of The Rule of Law State in Indonesia

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Abstract

Employment relationships are often carried out using a Certain Time Work Agreement (PKWT) or often called contract employees. This often happens in the practice of industrial relations in Indonesia which is sometimes made by employers by changing contracts every year with workers/labourers, even though the work carried out is work that is carried out permanently and continuously and should be done using an Indefinite Time Work Agreement (PKWTT) or often called permanent employees. In practice, entrepreneurs often violate the provisions of PKWT which have been stipulated in the provisions of the law. Although workers/labourers have complained to the Manpower Office about the actions of employers who violate PKWT, in fact, employers are reluctant to carry out decisions or recommendations from Supervisors or Mediators to improve the status of workers/labourers from PKWT to PKWTT. Then the change of PKWT status to PKWTT in the practice of the Industrial Relations Court can be carried out by Workers / Workers if the employer violates Article 59 paragraph (1) of the Job Creation Law. This has legal consequences on the fulfillment of workers' rights in accordance with the rules applicable to PKWTT. In order to guarantee legal protection for workers, the government must make implement regulations that regulate the types and names of jobs that must be done with the PKWT category and what work must be done with the PKWTT category. As well as imposing sanctions for entrepreneurs who violate the provisions of PKWT.

1. Introduction

The preamble to the 1945 Constitution (UUD 1945) has outlined that one of the objectives of statehood is to protect the entire nation and to promote the general welfare. The protection of the entire nation must certainly be carried out by the state towards Indonesian citizens. Similarly, the state must ensure the welfare of the Indonesian people without exception. Indonesia is a state of law, and one of its absolute characteristics is the guarantee of human rights protection which must be stated in the constitution or constitution.¹

One of the guarantees of human rights protection is related to employment relations (employment), wherein the provisions of Article 27 paragraph (2) of the 1945 Constitution it is stated "every citizen has the right to work and a decent living for humanity" then Article 28 D paragraph (2) of the 1945 Constitution states "everyone has the right to work and to get fair and decent remuneration and treatment in employment relations". The protection of this right is the right to work with fair labour rights and decent treatment for humanity.² arising in the employment relationship between employers and workers/labourers.

According to Soepomo as safely quoted by Abdul Khakim is a relationship between a worker and an employer, where the employment relationship occurs after an employment agreement between the two parties. They are bound by an agreement, on the one hand, workers/labourers are willing to work by receiving wages and employers hire workers/labourers by giving wages³. Article 1 paragraph (14) of Law Number 13 of 2003 concerning Manpower (Manpower Law) states that an employment agreement is an agreement between workers/labourers and employers or employers containing work conditions, rights, and obligations of the parties. In general, work agreements consist of Certain Time Work Agreements (PKWT) and Indefinite Time Work Agreements (PKWTT).

PKWTT is an employment agreement that regulates permanent employment relations between employees and employers.⁴ While PKWT in the community is better known as a contract work agreement or irregular work agreement. The status of labour is contract labour/irregular labour.⁵ PKWT regulated in Article 59 paragraph (1) of the Manpower Law states that PKWT can only be made for certain work which according to the type and nature or activity of the work will be completed within a certain time, namely work that is once completed or temporary, work that is estimated to be completed in a not too long time and a maximum of 3 (three) years, Seasonal

¹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 1st ed. (Depok: Rajawali Pers, 2017).

² Jimly Asshiddiqie, *Komentar Atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, ed. Tarmizi (Jakarta: Sinar Grafika, 2009)

³ Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan* (Bandung: PT Citra Aitya Bakti, 2020).

⁴ Sri Fitri Handayani et al., "Jurnal Indonesia Sosial Sains," *Jurnal Indonesia Sosial Sains* 1, no. September (2020): 911, <https://doi.org/10.36418/jiss.v3i5.626>

⁵ Muhammad Wildan, "Perlindungan Hukum Tenaga Kerja Kontrak Dalam Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Hukum* 12, no. 4 (2017): 837.

work, or work related to new products, new activities, or additional products that are still being tried or explored. Furthermore, paragraph (2) states that PKWT cannot be held for permanent work.

Then with the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law) which also amends the Manpower Law, the provisions of PKWT in Article 59 were also changed, originally PKWT regulated in the Manpower Law was held for a maximum period of 2 (two) years and could only be extended 1 (one) time for a period of 1 (one) year, however, in the Job Creation Law, these provisions were removed and instead given further regulatory delegation in Government Regulations. Then on this basis, Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP No. 35 of 2021) was issued, where in Article 8 paragraph (1) it is stated that the period of PKWT can be made for a maximum of 5 (five) years.

The five-year period stipulated in PP No. 35 of 2021 is longer in duration than that stipulated in the Manpower Law, according to the Minister of Manpower Ida Fauziyah regarding the reason for the difference in the maximum duration of the contract, explaining that the changes were made to accommodate the needs of short-term work which is generally completed within 5 years. It further stated that this 5-year limit will provide legal certainty that PKWT cannot be applied to work that is continuous and can only be done for work that is temporary.⁶

However, in industrial relations practice, there are employers who prefer to use contract employees rather than permanent employees even though the work carried out is a type of permanent and continuous work, which should be upgraded to permanent employees. According to Constitutional Judge Arief Hidayat and Constitutional Judge Anwar Usman in Decision Number 103/PUU-XVIII/2020, dated November 25, 2021, gave an opinion that permanent or routine work should not be tricked by using PKWT construction which in practice is often carried out to avoid PKWTT with contract renewals every year. This is certainly detrimental to workers because their status is always as a contract employee (PKWT) and never a permanent employee (PKWTT).

The practice of employment relations that performs permanent work with the status of contract employees who are not or postponed appointment is even tricked by renewing the contract every year. Such practices still often occur in industrial relations in Indonesia which certainly greatly harms the constitutional rights of employees to get fair and decent treatment in employment relations as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution.

⁶ Iim Fathimah Timorria, "Durasi Maksimal Pekerja Kontrak Jadi 5 Tahun, Ini Alasan Pemerintah Artikel Ini Telah Tayang Di Bisnis.Com Dengan Judul "Durasi Maksimal Pekerja Kontrak Jadi 5 Tahun, Ini Alasan Pemerintah ", Klik Selengkapnya Di Sini: <https://Ekonomi.Bisnis.Com/Read/2021,>" *Bisnis.Com*, 2021, <https://ekonomi.bisnis.com/read/20210224/12/1360366/durasi-maksimal-pekerja-kontrak-jadi-5-tahun-ini-alasan-pemerintah>.

2. Problems

Based on the background above, the formulation of the problem in this study is:

1. What is the PKWT Regulation after the enactment of Law Number 11 of 2020 concerning Job Creation?
2. How is the Status of PKWT to PKWTT Change in Industrial Relations Court Practice?
3. What is the role of the government to carry out legal protection for employment relations using PKWT and PKWTT?

3. Discussion

PKWT Regulation After the Enactment of the Job Creation Law

Permanent workers are workers who are formally bound through an employment agreement between workers and companies. Contract labour is labour employed by a company on the basis of an employment contract for a short/limited-term period.⁷ Fixed labour is known using the PKWTT form while contract labour is known using the PKWT form. The regulation of PKWTT and PKWT was originally regulated in the provisions of the Manpower Law and the Decree of the Minister of Manpower and Transmigration Number: Kep-100 / Men / VI / 2004 concerning the Provisions for the Implementation of PKWT as a derivative rule, then changes were made through the Job Creation Law, but the provisions of PKWT in this Law only regulate in general, then regulated in the provisions of PP No. 35 of 2021 as the implementing rule.

The Job Creation Law revises the provisions of PKWT in Manpower by changing, removing, and adding several articles.⁸ Regarding the understanding and understanding of PKWT, Article 56 paragraph (2) states that PKWT is a Work Agreement based on:

- a) a certain period of time; or
- b) completion of a particular work

Then in the provisions of Article 59 paragraph (1), it is stated that PKWT can only be made for certain work which according to the type and nature or activity of the work will be completed within a certain time, namely as follows:

- a. work that is once completed or temporary in nature;
- b. work that is expected to be completed in the not-too-distant future;
- c. work of a seasonal nature;
- d. work related to new products, new activities, or additional products that are still under trial or exploration; or
- e. work whose type and nature or activity are not fixed.

⁷ Badan Pusat Statistik, "Konsep Defenisi Variabel Tenaga Kerja," 2022, <https://sirusa.bps.go.id/sirusa/index.php/variabel/777#>.

⁸ Diah Puji Lestari, "Analisis Yuridis Normatif Pemberian Kompensasi Perjanjian Kerja Waktu Tertentu (PKWT) Berdasarkan Undang-Undang Cipta Kerja," *Jurnal Hukum Lex Generalis* 3, no. 5 (2022): 344, <https://doi.org/10.56370/jhlg.v3i5.160>

The provisions of Article 5 of PP No. 35 of 2021 provide categorization of PKWT based on the period of time made for certain jobs, namely:

- a. work that is expected to be completed in the not-too-distant future;
- b. work of a seasonal nature; or
- c. work related to new products, new activities, or additional products that are still under trial or exploration.

While the category of PKWT based on the completion of a certain job is made for a particular job, namely:

- a. work once completed; or
- b. work that is temporary in nature.

For work that is expected to be completed in the not-too-distant future, this provision has no explanation in the Job Creation Law. However, PP No. 35 of 2021 provides a maximum time limit of 5 (five) years. This provision was previously regulated in Article 59 paragraph (4) of the Manpower Law by providing a time limit of not more than 3 (three) years, but the Job Creation Law actually removes this provision and regulates it in Article 6 PP No. 35 of 2021, by extending its duration to 5 years. However, grammatically it can be understood that this form of work is work that is estimated/predicted to be completed in a long time⁹ but does not exceed a period of 5 years. For this reason, in PKWT, a limit must be set for a work to be declared complete and also a maximum work completion period of 5 years.

Seasonal work is work whose implementation depends on the season or weather, or certain conditions. Work whose implementation depends on the season or weather means that it can only be done in certain seasons or certain weather. Meanwhile, work whose implementation depends on certain conditions is additional work carried out to fulfill certain orders or targets (Article 7 PP No. 35 of 2021). However, if the work is continuous, uninterrupted, not limited in time, and is part of a production process, but depending on the weather or the work is needed due to certain conditions, the work is seasonal work that does not include permanent work so that it can become the object of PKWT (Explanation of Article 59 of the Job Creation Law).

PKWT based on the completion of a certain work is based on the agreement of the parties as stated in the Work Agreement, which contains: a) the scope and limitations of work declared complete, and b) the length of time for completion of work is adjusted to the completion of work. In the event that certain work agreed in PKWT can be completed faster than the agreed length of time, PKWT is terminated by law upon completion of the work. In the event that certain work agreed in PKWT cannot be completed according to the agreed length of time, the PKWT period is extended to a certain time limit until the completion of the work. The working period of Workers/Labourers in the case of extending the period of PKWT is still calculated

⁹ Almaududi, *Hukum Ketenagakerjaan Hubungan Kerja Dalam Teori Dan Praktik* (Bandung: Kaifa Publishing, 2017).

from the occurrence of Employment Relations based on PKWT (Article 9 PP No. 35 of 2021).

PKWT can be carried out on certain other jobs whose type and nature or activities are irregular in the form of certain jobs that change in terms of time and volume of work and payment of wages for workers/labourers based on attendance. PKWT can be done with a daily Work Agreement. The daily Work Agreement is carried out provided that the Worker/Labourers work less than 21 (twenty-one) days in 1 (one) month. In the event that Workers/Labourers work 21 (twenty-one) days or more for 3 (three) consecutive months or more, the daily Work Agreement becomes invalid, and the Employment Relationship between Employers and Workers/Labourers by law changes based on PKWTT (Article 10 PP No. 35 of 2021). While work related to new products is products that have never existed before or the development of existing products. Meanwhile, what is meant by new activities is a business that has just been carried out by the Company (Explanation of Article 5 letter c PP No. 35 of 2021). And this type of work PKWT is made with a period of not more than 5 years (Article 8 PP No. 35 of 2021).

Then PKWT which is regulated in the Job Creation Law provides requirements for employers in making work agreements, namely:

1. PKWT cannot require a probationary period of employment. In the event that the required period of probationary employment, the required period of probationary work is null and void and the period of service shall still be counted (Article 58).
2. PKWT is registered with the agency responsible for manpower. (Explanation of Article 59 paragraph 1).
3. PKWT cannot be held for permanent work (Article 59 paragraph 2).

PKWT that does not meet the provisions of a certain period of time or the completion of a certain work then by law becomes an indefinite time work agreement (PKWTT) or permanent work (Article 59 paragraph 3). What is meant by permanent work (PKWTT) in this paragraph is work that is continuous, uninterrupted, not limited by time, and is part of a production process in one company or work that is not seasonal (Explanation of Article 59 paragraph 1). PKWT becomes PKWTT due to violating the provisions of Article 59, so as a legal consequence of the change, if the employer terminates the employment relationship, then the rights of workers/labourers and settlement procedures are carried out in accordance with the provisions of the law for PKWTT.¹⁰ However, in practice, entrepreneurs more often use PKWT than PKWTT to avoid the legal obligations of PKWTT. In addition, Constitutional Judge Arief Hidayat and Constitutional Judge Anwar Usman in Decision Number 103/PUU-XVIII/2020 gave an opinion that the use of PKWT construction in practice is often carried out to avoid PKWTT with contract renewals every year. Such practices certainly harm the constitutional rights of workers. In

¹⁰ Sayid Mohammad Rifqi Noval, *Hukum Ketenagakerjaan Di Indonesia: Hakikat Cita Keadilan Dalam Sistem Ketatanegaraan* (Bandung: Refika Aditama, 2017).

addition, neither the Manpower Law nor the Job Creation Law expressly regulates criminal provisions or administrative sanctions provisions against employers who violate the provisions of PKWT. Weak sanctions against entrepreneurs who use PKWT construction which should be the type of work done with PKWTT which continues to be practiced in industrial relations in Indonesia.

Furthermore, Constitutional Judge Arief Hidayat and Constitutional Judge Anwar Usman argued that the time period for PKWT must be regulated in law and not in government regulations because it is closely related to the regulation of workers' constitutional rights, so it cannot only be determined by the Government through legal instruments Government Regulations (PP), but also determined by the House of Representatives and the Government through legal instruments. The PKWT Period was originally regulated in Article 59 paragraph (4) of the Manpower Law by providing a time limit of not more than 3 (three) years, but the Job Creation Law actually removed this provision and regulated it in Article 6 PP No. 35 of 2021, by extending its duration to 5 years.

Change of PKWT Status to PKWTT in Industrial Relations Court Practice

Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI Law) where its existence came into force on January 14, 2006.¹¹ From the perspective of its authority, the Industrial Relations Court (PHI) is a special court established within the state court that has the authority, to examine, adjudicate, and gives decisions on industrial relations disputes (Article 1 paragraph 17 of the PPHI Law). Industrial Relations Disputes are differences of opinion that result in conflicts between employers or combinations of employers and workers/labourers or trade unions/trade unions due to disputes regarding rights, disputes of interest, disputes over the termination of employment, and disputes between trade unions/trade unions in one company, (Article 1 paragraph 1) of the PPHI Law) this provision is the object of dispute in PHI.

In principle, the change of PKWT to PKWTT is not an object of industrial relations disputes in PHI, but in practice, the change of PKWT to PKWTT occurs if workers/labourers first file a lawsuit to PHI on the basis of industrial relations disputes in the form of termination disputes. In Layoff lawsuits that are examined and tried at PHI, often the panel of judges considers the PKWT status of workers/labourers declared or changed to PKWTT status. The change of PKWT to PKWTT will definitely have its own juridical consequences for entrepreneurs. Because if the employer terminates the employment relationship with the worker, then the workers' rights and settlement procedures are carried out in accordance with the provisions of the laws and regulations for permanent workers / permanent employees.¹²

¹¹ Mohammad Saleh & Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, Dan Permasalahannya)* (Bandung: Citra Aitya Bakti, 2012)

¹² Almaududi, *Hukum Ketenagakerjaan Hubungan Kerja Dalam Teori Dan Praktik*.

Workers/labourers with PKWT who feel aggrieved by employers can pursue legal remedies in the Industrial Relations Court as part of legal protection by judicial legal protection. This legal protection by judicial power is the legal protection provided by the judiciary. The judiciary will resolve disputes over decisions that have the effect of *res judicata* and therefore can resolve the dispute definitively. Legal protection by the judiciary can only occur after a concrete case exists and the aggrieved party submits its case to the court.¹³ In practice at PHI, there is quite a lot of PKWT status for the sake of law to become PKWTT which is decided by a panel of judges when examining, and adjudicating cases submitted by workers/labourers. Some cases regarding PKWT becoming PKWTT as in court decisions are as follows:

1. *Decision of the Industrial Relations Court at the Bandung District Court Number 197/Pdt.Sus-PHI/2020/PN. BDG, December 21, 2020.*

This lawsuit was filed by Rahmat Darmawan, et al., (as many as 16 people) as the Plaintiffs, opponents of PT Daya Mitra Serasi as the Defendants based in Karawang, West Java, the Plaintiffs worked as drivers who had worked for an average of more than 7 years in the Defendant's company using a Certain Time Work Agreement (PKWT) that had been signed 3 times during employment. The dispute between the Plaintiffs and the Defendants began in September 2009 when the Defendants laid off the Plaintiffs on the grounds that their contract terms had expired.

The Plaintiffs postulate that their work is a permanent work carried out continuously so the Defendants' actions have violated the provisions of Article 59 paragraph (2) of the Manpower Law which states that for a certain time, work cannot be held for permanent work. On the PKWT status of the Plaintiffs, an examination had previously been carried out by the UPTD Manpower and Transmigration Office, Karawang Regency Labour Supervisor Region II, and a Memorandum of Examination I and Memorandum of Special Examination Number: 560/7816/UPTD had previously been issued. WIL II/XI/2019 dated November 28, 2019, which states that the employment relationship status of the Plaintiffs has legally changed from PKWT to PKWTT and must be rehired by the Defendants. However, the Defendant did not implement the decision.

Then the Plaintiffs made bipartite efforts but did not get an agreement with the Defendants, then made mediation efforts at the Karawang Regency Manpower Office and a Letter of Recommendation was also issued with Number: 565/2842/HIPK dated May 14, 2020, where against the recommendation letter, the Plaintiffs stated that they refused and then the mediator of the Karawang Regency Manpower and Transmigration Office issued a Minutes of Settlement of Industrial Relations Disputes Number: 565/3391/HIPK dated June 24, 2020. Becoming the next legal remedy for the

¹³ Freddy Poernomo A'an Efendi, *Hukum Administrasi* (Jakarta: Sinar Grafika, 2017)

Plaintiffs to file a lawsuit in the Bandung Industrial Relations Court was registered on September 24, 2020.

The Plaintiffs' claim basically states that the Defendants have violated Article 59 of the Manpower Law where the Plaintiffs should have been upgraded from PKWT to PKWTT because the Plaintiffs' work as a driver is a permanent job and is carried out continuously. To the Plaintiffs' claim, the Defendants responded by responding with the exception that the Plaintiffs' claim was Vague and Unclear (*Exceptio Obscur Libel*) and stated that the Plaintiffs' Claim lacked parties. For this exception, the Panel of Judges declared it unproven so it was declared rejected. Meanwhile, in the Subject Matter, the Defendants stated that they rejected the arguments of the Plaintiffs, and requested that the Plaintiffs' application be declared rejected.

Then the panel of judges who examined and tried the case gave legal consideration by finding legal facts in the trial, that the Defendant's company is a company engaged in labour distribution and management services where one of its business fields is in the transportation sector. That because the Defendant's company is a company engaged in labour distribution and management services, one of which is the provision of transportation facilities, the Panel of Judges is of the opinion that the driver is a type of work that is included in the qualification of the type of work that is permanent and continuous in the Defendant's company, this is reinforced by the fact that the service period of the Plaintiffs while working at the Defendant's company is at least 7 (seven) years more and the longest is 12 (twelve) years more, while still doing the same job, namely as a driver, where the length of service has exceeded the time allowed by law to carry out a certain time work agreement (PKWT) which violates the provisions of Article 59 of the Manpower Law which has state unequivocally and clearly that an employment agreement for a certain time cannot be held for permanent work. So that the panel of judges held that the fixed-time work agreement (PKWT) made between the Plaintiffs and the Defendants for legal reasons became an indefinite time work agreement (PKWTT) since the employment relationship occurred. And supported by legal facts examined by the UPTD Manpower and Transmigration Office, Labour Supervisor Region II Karawang Regency which states that the type of work of the Plaintiffs is a type of permanent work and for the sake of law changed from PKWT to PKWTT.

Then the panel of judges stated that because in the trial it was proven that the termination of employment between the Defendant and the Plaintiffs had not received a determination from the Industrial Relations Dispute Resolution Agency (in case of Industrial Relations Court), then based on the provisions of Article 151 paragraph (3) Jo Article 155 paragraph (1) of the Manpower Law, the Panel of Judges held that the Termination of Employment made by the Defendant against the Plaintiffs in a quo case was null and void and the working relationship between the Plaintiffs and the Defendants has never been severed.

Based on these legal considerations, the panel of judges decided as follows:

1. Granting the Plaintiffs' claim in part;
2. Declaring the employment relationship between the Plaintiffs and the Defendants by law as an employment relationship based on an indefinite employment agreement (PKWTT), and the Plaintiffs are permanent workers in the Defendant's company since the employment relationship occurred;
3. Stating that the employment relationship between the Plaintiffs and the Defendants has never been severed;
4. Penalize the Defendants to issue a letter of appointment as a permanent worker on behalf of each Plaintiff;
5. Penalize the Defendants to recall and rehire the Plaintiffs to their original positions and positions;
6. Punish the Defendants to pay unpaid wages and holiday allowances (THR) in 2020 to each Plaintiff.

Based on the description of the case above, we can understand some legal rules in the case:

1. The type of driver work is a type of permanent work (PKWTT) that must not be done with the PKWT mechanism. So that employers who employ drivers continuously then for the sake of law become permanent jobs (PKWTT).
 2. Workers with PKWT who work continuously and whose status is not raised to PKWTT, workers can make efforts to the Manpower and Transmigration Office of UPTD labour Supervision to be examined for violations committed by employers.
 3. If the employer does not raise the worker's status from PKWT to PKWTT, the worker can request the Industrial Relations Court to upgrade his status to PKWTT. This has legal consequences on the fulfillment of workers' rights in accordance with the rules applicable to PKWTT.
 4. Workers with PKWT status who have been laid off by employers and still want to work, can ask PHI to order employers to rehire workers/labourers who have been laid off previously by employers accompanied by and/or without an increase in status from PKWT to PKWTT.
2. *Supreme Court Decision Number 150 K/Pdt-Sus/PHI/2021, dated March 17, 2021.*

The lawsuit in the *aqua* case was filed by Ngatno, et al., (total 31 people) as Plaintiffs against PT Straightway Primex as Defendants domiciled in Tangerang Regency, Banten. The Plaintiffs work in the production department, by first becoming Freelance Daily Workers (PHL) and then becoming PKWT with

changes every 3 months, for example, Ngatno has a working period of 16 years, namely:

- Freelance Daily Employee (HL) from June 13, 2003, to December 31, 2008;
- The 1st to 40th PKWT from January 1, 2009, to December 31, 2018 (work contract signed) every 3 (three) months;
- The 41st PKWT from January 1, 2019, to June 30, 2019;
- The 42nd PKWT from July 1, 2019, to September 30, 2019;

Then on October 1, 2019, Defendant summoned the Plaintiffs and declared Termination of Employment on the grounds that their employment contract period had expired. The layoffs made by the Defendants were then rejected by the Plaintiffs by considering that the layoffs were carried out unilaterally and the company was still carrying out its activities normally. Then the Plaintiffs made mediation legal efforts at the Tangerang Regency Manpower Office, and on February 22, 2022, the mediator of the Disnaker of Tangerang Regency issued a recommendation that the Plaintiffs be rehired but the Defendants rejected the mediator's recommendation. So that the Plaintiffs took legal action by filing a Lawsuit at the Serang Industrial Relations Court, registered on June 10, 2022, with Number 67/Pdt.SusPHI/2020/PN Srg.

The argument of the Plaintiffs' lawsuit basically states that the Defendants who first employed the Plaintiffs as Freelance Daily Employees for more than 3 (three) consecutive months violated Article 10 paragraph (3) of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.100 / Men / VI / 2004, which states that "In the case of casual daily workers who work 21 (twenty-one) days or more for 3 (three) consecutive months or more, then the freelance daily work agreement changed to PKWTT". Then the Plaintiffs postulated that the signed PKWT violated the provisions of Article 59 of the Manpower Law, where the work done by the Plaintiffs on the Defendants was part of a production process that was continuous and fixed, so it is not a job of a temporary nature and type. Because the Defendants extended the PKWT against the Plaintiffs more than once or several times without any pause. The Plaintiffs never received notice from the Defendants about the extension of the employment contract in writing before the seven-day PKWT expired. And the Defendants extended the employment contract against the Plaintiffs more than once and continuously without pause, so that according to the Plaintiffs, for the sake of law the employment relationship between the Plaintiffs and the Defendants automatically became an indefinite employment agreement (PKWTT).

The Plaintiffs consider the layoffs carried out by the Defendants without any fault of the Plaintiffs, so the Plaintiffs demand that the Defendants be punished to pay the rights of the Plaintiffs, namely in the form of Severance Money in the amount of 2 (two) times the provisions of article 156 paragraph (2),

service award money in the amount of 1 (one) time the provisions of article 156 paragraph (3) and compensation money in accordance with article 156 paragraph (4). The arguments of the Plaintiffs were refuted by the Defendants in the Answer which basically stated that the Defendants had never unilaterally terminated their employment to the Plaintiffs, but the Plaintiffs had expired their employment contracts at PT. Straightway Primex. Based on the arguments of the Plaintiffs and Defendants mentioned above along with the evidence submitted by the parties, the panel of judges then gave a legal conclusion that basically stated that the Plaintiffs could not prove the arguments of the lawsuit which were the subject matter of dispute in this case and rejected the Plaintiffs' claims in their entirety and the Defendants could prove their rebuttal.

Because the Serang Industrial Relations Court rejected the lawsuit, the Plaintiffs then took cassation legal remedies, as per Supreme Court Decision Number 150 K / Pdt-Sus / PHI / 2021 dated March 21, 2021. Where the Supreme Court Judge ruled by granting the plaintiffs' claim, in this case, the Industrial Relations Court at the Serang District Court had misapplied the law with the following considerations:

- The Plaintiffs were initially employed as Freelance Daily Workers or based on a Certain Time Work Agreement (PKWT) continuously and the agreement was contrary to the provisions of Article 59 of Law Number 13 of 2003.
- The Fixed Time Work Agreement (PKWT) executed by the Defendant in addition to being contrary to the provisions was also not recorded at the Local Manpower Office;

Therefore, the Supreme Court concluded that the employment relationship of the Plaintiffs had changed from PKWT to PKWTT so that there was sufficient reason for the Supreme Court Judge to grant the cassation application of the Cassation Applicants: Ngatno and friends, and annulled the Industrial Relations Court Decision at the Serang District Court Number 67/Pdt.Sus-PHI/2020/PN Srg dated September 23, 2020, with the following verdict:

1. Granting the Plaintiffs' claim in part;
2. Stating that the Plaintiffs are workers based on the Indefinite Time Work Agreement (PKWTT) of the Defendants;
3. Declaring the termination of employment between the Plaintiffs and the Defendants since the judgment was read;
4. Penalize the Defendants to pay the rights of the Plaintiffs due to termination of employment.

Starting from the journey of the case above, we can understand some of the legal rules in the case, namely:

1. Work with the type of production work that is carried out continuously cannot be done with PKWT but must be with PKWTT or for the sake of law become PKWTT.
2. PKWT made between employers and workers / labourers who are not registered with the Manpower Office is a violation of the Manpower Law. The consequences of not being registered will result in the cancellation of PKWT and for legal reasons become PKWTT.
3. Even though the worker at the time of layoff was still a PKWT status, then a lawsuit was filed at PHI asking that his status become PKWTT and it turned out to be granted by the Panel of Judges, the legal consequences on workers' rights that must be equated with the procedures applicable to PKWTT.

The two court decisions described above in legal practice are referred to as jurisprudence (jurisprudential recht). Where according to Van Apeldoorn states that jurisprudence is the source of law. The judges' rulings followed by other judges are factors in the formation of law. Meanwhile, according to Soepomo, jurisprudence is an important source for subordinate judges in finding objective law. Although a judge is not bound by the decisions of other judges, it is customary (in Indonesia and the Netherlands) that subordinate judges pay close attention to the decisions of superior judges in relation to the possibility of appeals and cassation.¹⁴ Court decisions that have the force of law can still be used as a source of law in labour law by all parties. Workers with PKWT status who feel disadvantaged by employers due to their status not being upgraded to PKWTT and who have been doing permanent and continuous work can use these court decisions as a basis for making demands so that their guaranteed rights can be fulfilled by employers.

These court decisions are not only used as a basis by workers/labourers but can be used as a reference by the Government, as one of the sources for decision making, or as the basis for policy-making in the field of labour. Because in jurisprudence there are many lines of law that apply in society, but which are not legible in the law. Thus, understanding the law in legislation alone, without studying jurisprudence is incomplete.¹⁵

The judicial practice has given us an understanding that employers' actions that violate the law and harm workers/labourers, especially related to the status of PKWT, often occur and cannot be avoided in industrial relations in Indonesia. Workers who fight for their rights both through bipartite efforts to find dead ends (fail) even the presence of the workers/labourers Office that checks violations committed by employers also does not have a positive impact on the relationship between workers and employers. Where from the example of the court decision above, the Supervisor at the Manpower Office who is proven to have violated Article 59 of the Manpower

¹⁴ Soeroso, *Yurisprudensi Hukum Acara Perdata Bagian 2 Tentang Pihak-Pihak Dalam Perkara* (Jakarta: Sinar Grafika, 2010)

¹⁵ *Ibdi.*,

Law then orders the employer to rehire workers with PKWTT status but the employer refuses to implement the recommendation. In the end, workers/labourers make legal efforts at PHI as a last resort in fighting for their rights. Although workers/labourers won in PHI, the relationship with employers became no longer harmonious. Even this disharmony is used as a basis for judges to lay off workers/labourers in PHI as an Industrial Relations Settlement Institution.

Basically, jurisprudence in the field of industrial relations affirms the rights and obligations of each party and also guarantees legal certainty for parties involved and directly or indirectly affected by disputed cases in this case between workers/labourers and employers. The judicial power is basically tasked with, among others, testing whether legal actions taken by entrepreneurs in the form of PKWT are in accordance with applicable procedures and regulations or not. All of this aims to keep the labour relations sector within the framework and legal signs in accordance with the principles of the rule of law and employers exercise their authority in labour relations according to applicable laws and regulations.

The Role of the Government to Carry Out Legal Protection of Employment Relations Using PKWT and PKWTT

Legal protection for citizens from government actions in principle has the aim of ensuring the fulfillment of the rights of citizens. prevent the occurrence of actions that harm the rights of citizens, then provide access for citizens to stop acts of violation, obtain compensation or remedial actions for violations of their rights, and ensure the availability of compensation or remedial actions against the rights of citizens who have been harmed.¹⁶

Legal protection for the people is a universal concept, in the sense that it is embraced and applied by every country that puts forward itself as a state of law, but as mentioned by Paulus E. Lotulung is quoted by Ridwan HR, each country has its own ways and mechanisms on how to realize legal protection, and also to what extent legal protection is provided.¹⁷ There are at least 3 (three) kinds of government actions in providing legal protection to the people, namely government actions in the field of making laws (*regeling*), government actions in issuing decisions (*beschikking*), and government actions in the civil sector (*materiele daad*). In addition to these three government actions, the government is also placed with free authority or *freies ermessen*, which if stated in written form will take the form of policy regulations.¹⁸

In the context of labour, legal protection for workers in Indonesia still rests on protecting the dignity and dignity of workers, along with their human rights both individually and as workers.¹⁹ Moreover, workers' rights have been guaranteed in the 1945 Constitution, Article 27 paragraph (2) states "every citizen has the right to work

¹⁶ A'an Efendi, *Hukum Administrasi*.

¹⁷ Ridwan HR, *Hukum Administrasi Negara, Revisi* (Jakarta: Rajawali Pers, 2014)

¹⁸ *Ibid.*,

¹⁹ Anna Triningsih, *Hukum Ketenagakerjaan: Kebijakan Dan Perlindungan Tenaga Kerja Dalam Penanaman Modal Asing* (Depok: Rajawali Pers, 2020)

and a decent living for humanity" then Article 28 D paragraph (1) states "everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law", then paragraph (2) states "everyone has the right to work and to receive fair and decent remuneration and treatment in employment relations".

The rights of citizens in this case workers/labourers that have been guaranteed in the constitution must certainly be protected by the state, in this case, the Government. According to Ashabul Kahf, the aspect of protection for workers includes two basic things, namely protection from the power of the ruler and protection from government actions. Legal protection from the power of the employer is implemented if laws and regulations in the field of labour that require or force the employer to act as in the law are really implemented by all parties.²⁰

Workers/labourers must be protected by the state through government interference, the form of protection provided by the government as mentioned by Ridwan HR is in the form of regulation (*regeling*) decisions (*beschikking*), and policies (*freies ermessen*). So the government must certainly make regulations that bind workers/labourers and employers/employers in the context of industrial relations. Not only making and formulating and setting policies, but the government also ensures that the implementation of policies in the field of labour runs as it should.

In the context of the current PKWT employment relationship in Indonesia, reeling has been regulated in Law No. 13 of 2003 concerning Manpower (Manpower Law) which has now been amended by Law No. 11 concerning Job Creation (Job Creation Law), along with Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, And Termination of Employment (PP No. 35 of 2021) as the implementing rule, as previously explained.

The regulation of PKWT in the provisions of the law in practice still has an employment relationship that should be the scope of permanent work (not contract) and is still carried out with the PKWT mechanism. This is certainly a form of violation of laws and regulations. However, the problem is that entrepreneurs prefer to use the PKWT mechanism rather than the PKWTT mechanism. These violations committed by employers are revealed when workers take legal action for violations of their rights by employers. The steps of workers/labourers who complain to the Manpower Office, by the Mediator or Supervisor issue a decision or recommendation that workers employed with PKWTT for the sake of law become PKWTT, but employers are reluctant to carry out the order. Finally, workers ask for legal protection in the judiciary by filing a lawsuit in the Industrial Relations Court.

The practices of labour relations between workers/labourers and employers who use the PKWT mechanism for permanent and continuous work by Constitutional Judge Arief Hidayat and Constitutional Judge Anwar Usman in Decision Number 103 / PUU-XVIII / 2020 provide an opinion that permanent or routine work should not

²⁰ *Ibid.*,

be tricked by using PKWT construction which in practice is often carried out to avoid PKWTT with contract renewal every year. This opinion of the Constitutional Judge often occurs in industrial relations as well as the Supreme Court Decision Number 150 K / Pdt-Sus / PHI / 2021, as previously explained, where the contract extension is carried out 42 times (contract renewal is carried out every 3 months) even though the work carried out is a permanent job and is carried out continuously.

The question that often occurs and should be raised in this paper is the extent of the effectiveness of regulations regarding PKWT in the practice of labour relations that are still carried out on permanent and continuous work. Whether the regulation is inadequate or the employer has another interpretation of the regulation, what is the government's role in the practice of PKWT that still occurs in industrial relations? These questions can be problematic and should be asked in this field of study. On this question, if referring to the previous explanations then obtained:

1. Laws and regulations on PKWT have limited which work must go through the PKWT mechanism and through the PKWTT mechanism, both those regulated in Article 59 of the Job Creation Law and PP No. 35 of 2021).
2. The PKWT rules are often ignored by employers in conducting employment relations with workers/labourers.
3. Workers/labourers complained about PKWT problems to the Manpower Office to be upgraded to PKWTT but employers refused to carry out the recommendations of Supervisors or Mediators.

Of these three things, the government's role in carrying out legal protection for workers/labourers can be said to have fulfilled the constitutional rights of workers/labourers. However, the problem is that employers do not implement the recommendations of the Manpower Office. This is of course the recommendation from the Manpower Office that does not provide legal consequences for employers who still practice labour relations using PKWT. In the end, workers did not get legal certainty from the local Manpower Office and then filed a lawsuit at PHI. The legal remedies carried out at the Manpower Office according to the author are a form of effort to fulfill formal requirements only before making a lawsuit at PHI.

Therefore, according to the author, the role of the government is very important in order to ensure the practice of providing workers with the PKWT mechanism for the sake of law to become PKWTT, get clear legal certainty in order to provide definite legal protection for workers/labourers, then at least fulfill the following:

1. Employers often engage in working relations with workers/labourers for permanent and continuous work through the PKWT mechanism even by outsmarting them by renewing contracts every year, this action is because the law related to labour does not regulate the content material regarding sanctions for employers' actions that violate the provisions of PKWT.
2. The provisions (*regeling*) regarding the types of PKWT work regulated in Article 59 paragraph (1) of the Job Creation Law are not very clear in the regulation, although it has been explained in PP No. 35 of 2021, according

to the author, it still does not provide a definite explanation. The government should make rules for its implementation related to examples of what types of work are included in the qualifications of Article 59 paragraph (1).²¹

3. In addition to making implementing regulations regarding examples of what work must be done with PKWT, the government must also make implement regulations regarding companies in any field that cannot recruit workers/labourers using PKWT where they must use PKWTT.
4. The government must make sanctions against employers who do not carry out orders or recommendations from the Manpower Office.

The absence of criminal or administrative sanctions provisions stipulated in the Job Creation Law against entrepreneurs who violate PKWT rules, makes entrepreneurs use PKWT more often than PKWTT for permanent work carried out continuously. For this reason, in order to provide legal protection for workers/labourers, sanctions provisions for PKWT violations should be included in laws and regulations.

In addition, the legal protection that must be carried out by the government must make implementing regulations that regulate which work must be done with PKWT and which work must be done with PKWTT, as a comparison material, for example, to foreign workers, an implementing regulation is made, namely the Minister of Manpower Regulation Number 228 of 2019 concerning Certain Positions That Can Be Occupied by Foreign Workers, where in this Regulation states that there are 18 categories of positions that must be occupied by foreign workers, from these 18 categories then derived again into the names of what positions must be occupied by foreign workers. If the government makes such arrangements, workers/labourers and employers and the community will know which types of work must be done with PKWT or PKWTT. Coupled with clear sanctions against entrepreneurs who violate the provisions of PKWTT. This is done in order to realize the goals of the nation and state, namely to protect the entire nation and to promote general welfare as mandated in the preamble of the 1945 Constitution, as well as provide legal protection for workers/labourers whose rights are protected in Indonesia's highest law, namely the Constitution (1945 Constitution).

4. Conclusion

The enactment of the Job Creation Law regime not only adds or decreases the provisions in the Manpower Law, but also removes the provisions of articles in the Manpower Law, as well as removing the provisions of articles regarding the content of the PKWTT Implementation Period, which was previously regulated in the Manpower Law and then deleted and regulated in PP No. 35 of 2021. The provisions regarding the period of PKWT should not be unilaterally regulated by the Government through a Government Regulation but rather regulated by a law formed

²¹ Almaududi, *Hukum Ketenagakerjaan Hubungan Kerja Dalam Teori Dan Praktik*.

with the House of Representatives of the Republic of Indonesia, because it concerns the regulation of workers' constitutional rights guaranteed by the 1945 Constitution.

Changes in PKWT status to PKWTT in Industrial Relations Court Practice can be carried out by Workers / Workers if employers violate Article 59 paragraph (1) of the Job Creation Law. The panel of judges will examine and adjudicate if the work done by workers/labourers is work that is carried out permanently and continuously, the judge can decide the status of workers from PKWT by law to PKWTT, thus having legal consequences on workers' rights that must be equated with the procedures applicable to PKWTT by employers, then the judge can also order employers to hire workers/labourers with PKWTT status.

The State through the Government has a role to provide legal protection for Workers / Workers who use PKWT and PKWTT, guarantees legal protection that must be carried out by the Government by containing sanctions provisions against employers who are proven to have violated the provisions of Article 59 paragraph (1) of the Job Creation Law. Then the Government must make implement regulations that regulate the types and names of jobs that must be done with the PKWT category and what work must be done with the PKWTT category so that employers are not haphazard in implementing laws and regulations. In addition, the Government must impose sanctions on employers who are reluctant to implement decisions or recommendations from supervisors or mediators at the Manpower Office.

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