

Legal Protection for Fixed-Term Workers in the Drafting of an Employment Agreement

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Abstract

Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu*/PKWT) are widely used by companies to flexibly meet labor needs. However, in practice, PKWTs are often drafted with clauses that disadvantage workers, resulting in contractual injustice. This study aims to analyze the forms of government protection for workers under PKWT arrangements and the drafting of fair PKWT clauses. This research employs normative legal research with statutory and conceptual approaches, supported by legal protection theory, contract theory, and justice theory. The findings indicate that government protection is implemented through labor regulations, supervision, and industrial dispute resolution mechanisms. Nevertheless, such protection remains largely passive, as labor offices merely record PKWTs without reviewing the substance of their clauses. Meanwhile, fair PKWT drafting should reflect the principles of balance and good faith, which are often absent in practice. This study concludes that although legal instruments governing PKWT are comprehensive, there remains a significant gap between regulation and implementation. Strengthening supervision and law enforcement is therefore necessary to ensure contractual justice for workers.

Keywords: *Fixed-Term Employment Agreement, Legal Protection, Contractual Justice.*



A. INTRODUCTION

The Preamble to the 1945 Constitution of the Republic of Indonesia mandates that the purpose of establishing the Republic of Indonesia is to realize a prosperous, just, affluent, and equitable society, both materially and spiritually. In line with that objective, Article 27 paragraph (2) of the 1945 Constitution stipulates that “Every citizen has the right to work and to a livelihood decent for humanity.” Therefore, the state needs to undertake various efforts or actions to fulfill citizens’ rights to obtain employment and a decent livelihood. The fulfillment of the right to work and to a decent livelihood is, in principle, one of the important aspects of national development carried out as part of building the Indonesian people as a whole (Anggraeni & Wahjoono, 2025; García-Pérez et al., 2019).

Development in the field of manpower is regulated in such a way that the basic rights and protections for the workforce and workers are fulfilled, while at the same time creating conditions conducive to the development of the business sector (Law Number 13 of 2003 on Manpower, State Gazette of the Republic of Indonesia Number 4279). In order to realize this, legal certainty is required in implementing the production process of goods and services between employers and workers, including the regulation of working conditions, as well as the rights and obligations of the parties in an employment relationship, which are regulated and agreed upon in an employment agreement. An employment agreement is an agreement between a

worker and an employer or a provider of work that contains working conditions, as well as the rights and obligations of the parties (Arifuddin et al., 2025; Nugraha et al., 2024).

According to the Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia), an agreement is a consent between two or more parties that binds the parties to comply with the contents of that agreement. In the context of an employment agreement, the signing of the agreement gives rise to legal consequences in the form of obligations for both the employer and the worker to carry out the contents of the agreement, as affirmed in Article 1338 of the Indonesian Civil Code (KUHPerdata), which adopts the principle of *pacta sunt servanda*. The Manpower Law also emphasizes that an employment agreement cannot be amended or withdrawn except by mutual consent of the parties. In addition, an employment agreement must meet the legal requirements of a valid agreement, namely: the existence of consent, the legal capacity of the parties, a certain object of work, and a lawful cause that does not conflict with public order, morality, and statutory regulations, as regulated in Article 1320 of the Civil Code.

Although the law regulates the validity requirements of an employment agreement—which may result in the agreement being null and void or voidable—in practice, it often occurs that certain terms of an employment agreement, especially the objective requirements, are not fulfilled or contradict statutory regulations (Geldenhuis, 2017; Gericke, 2016). This is caused by the position of workers in making employment agreements being unequal to that of employers/entrepreneurs.

Workers are in a weak position as job seekers who need employment to sustain their lives, so the contents of the employment agreement do not become an important concern for them. What workers need at that moment is to obtain a job, and only later do they realize that their interests have been harmed by the contents of the agreement. In fact, in an employment relationship between workers and employers, workers can be said to be the backbone of the company because they play an important role. Without workers, it would be impossible for a company to operate and participate in development (Ardhie & Suwadi, 2024; Deviona et al., 2024).

The weak position of workers in employment agreements is also expressed by Subekti, who argues that an employment agreement, as an agreement between a laborer and an employer, is characterized by: the presence of a certain wage or salary agreed upon, and the existence of a superior–subordinate relationship (*dienstverhouding*), namely a relationship under which one party (the employer) has the right to give orders that must be obeyed by the other party (Shalihah et al., 2022). The meaning of being under orders is that the laborer, as one of the parties entering into the employment agreement, must submit to the employer. A worker being under the orders or leadership of another person means that between the two parties there is an unequal position called subordination. There is a higher position that commands, and the commanded party occupies a lower position (De la Porte & Emmenegger, 2017; Wijayanti, 2018).

An employment agreement may take the form of a fixed-term employment agreement (Bahasa: *Perjanjian Kerja Waktu Tertentu/PKWT*) or an indefinite-term employment agreement (Bahasa: *Perjanjian Kerja Waktu Tidak Tertentu/PKWTT*). Before being specifically regulated in the Manpower Law, agreements between workers/laborers and employers/masters were regulated in the Civil Code, especially Articles 1601–1617. Although the principle of freedom of contract also applies to employment agreements, the weak position of workers means they do not have strong bargaining power when agreeing to an employment agreement.

There are many problems in employment agreements, especially PKWT, that harm workers in their drafting as well as in their implementation, this is usually evident from the clauses in the articles of the employment agreement (Amiruddin, 2024; Hanifah & Koto, 2025; Horuiko et al., 2020). From several practices of drafting and implementing employment agreements, the harm to workers can be seen in examples such as the following cases, among others:

- a. A clause in an employment agreement whereby workers may receive verbal warnings, written warnings, or even termination of employment if they violate the Company Regulations, while the Company Regulations can be changed at any time by the company; (For example, Employment Agreement Letter Number: 0667/SPKWT/EHS/HR/I/2024 between PT EHS and MSP)
- b. A termination clause (dismissal/termination of employment) caused by a PKWT worker's negligence toward the Company Regulations; (For example, Fixed-Term Employment Agreement Letter, PT BS, Number: 0101/HR-ER/III/2023 between PT BS and AH)
- c. A clause for ending a PKWT employment relationship due to "other matters that the employer considers as a valid reason," which contains uncertainty and subjectivity on the part of the employer; (Fixed-Term Employment Agreement Letter, Temporary Employment Agreement, 0667/SPKWT/EHS/HR/I/2024 between PT EHS and MSP)
- d. A clause waiving the worker's legal rights in the event of a dispute/industrial relations conflict, whereas clearly the mechanism for settling industrial relations disputes is regulated by law; (Fixed-Term Employment Agreement, PT BS, No. 0101/HR-ER/III/2023 between PT BS and AH)
- e. A clause regulating working hours that is not based on statutory provisions, but is arranged in such a way according to the company's needs; (Fixed-Term Employment Agreement of PT GIP, Number: 1.56/HRD-OPR/XII/2020)

These facts affirm the importance of protection for workers in drafting the contents of fixed-term employment agreements to ensure justice for workers as the weaker party. The considerations clause in the formation of Law Number 13 of 2003 on Manpower emphasizes: "that protection for workers is intended to guarantee the basic rights of workers/laborers and to ensure equal opportunity and treatment without discrimination on any basis, in order to realize the welfare of

workers/laborers and their families while still paying attention to the development and progress of the business sector”.

The role of the government in protecting workers, especially those under fixed-term employment agreements, is very important. Although the task of making an employment relationship balanced, fair, harmonious, and sustainable is not solely the government’s duty, the government as one of the actors in industrial relations has functions including oversight to ensure that working conditions, rights, obligations, and social protection are reflected in the contents of employment agreements.

The presence of the state or government in providing protection for the contents of employment agreements, especially PKWT, is affirmed in the legal considerations of Constitutional Court Decision Number 168/PUU-XXI/2023 on page 563: “...it is important for the Court to emphasize that even though there is the doctrine of *pacta sunt servanda* referring to Article 1338 of the Civil Code, which in essence states that all agreements made in accordance with law apply as law for those who make them. Such agreements cannot be withdrawn except by the agreement of both parties, or for reasons determined by law. Agreements must be executed in good faith. However, in this context it must be noted that employment agreements made between employers and workers/laborers involve parties whose positions are not balanced. This is because workers/laborers are in the weaker position, namely as those who need employment. Thus, the philosophy of the freedom of contract principle, which is one of the validity requirements of an agreement, cannot be fully satisfied....”.

A similar legal consideration regarding protection for workers/laborers is also found in Constitutional Court Decision Number 100/PUU-X/2012: “Whereas an employment relationship is not merely a civil/private relationship because it concerns broader interests (thousands of workers), meaning public interest, even state interest, so that there is a thin difference between private interests and public interests which requires fair regulation and protection by the state”.

The presence of state protection based on statutory regulations is carried out by the agency administering governmental affairs in the manpower sector at the regency/city level, in the form of regulating the registration of PKWT. Article 14 paragraph (1) of Government Regulation Number 35 of 2021 stipulates: “PKWT must be registered by the Employer with the ministry administering governmental affairs in the manpower sector online no later than 3 (three) working days after the signing of the PKWT.” The command that “PKWT must be registered” arguably does not provide sufficient protection because registration implies a formal process limited to being recorded/noted/registered without subsequent examination of the agreement’s contents, whether there is exploitation due to non-compliance with manpower laws, so that there is a right to correct or annul an employment agreement that harms one of the parties.

There are legal symptoms of a gap in practice in the drafting of PKWT between employers and workers between what should be (*das sollen*) and the reality in practice

(*das sein*), as well as the importance of protection for workers. As described in the above background, the researcher is interested in conducting this study.

B. METHOD

In legal research, the research method serves as a scientific guideline for answering the problem formulation in a systematic and measurable manner. Choosing the appropriate method is key to ensuring that the research has academic validity and is able to make a tangible contribution to the development of legal science, particularly in the field of labor law.

The type of research used in this journal is normative legal research (normative-juridical). Normative legal research focuses on the study of applicable positive legal norms, whether contained in statutory regulations, doctrine, or legal principles related to the issue being examined (Soerjono Soekanto and Sri Mamudji, 2001:13). Through this approach, the author will examine legal protection for workers in the drafting of the contents of a Fixed-Term Employment Agreement (Perjanjian Kerja Waktu Tertentu/PKWT) by referring to Law Number 13 of 2003 on Manpower as amended by Law Number 6 of 2023 on Job Creation (Cipta Kerja), as well as its implementing regulations. This normative research choice is appropriate because the problem examined emphasizes an analysis of positive law rather than empirical aspects.

This research uses three main approaches, namely:

a. Conceptual Approach

The conceptual approach is used to understand legal protection for workers in drafting the contents of a PKWT based on doctrines and the opinions of legal scholars. This approach examines important concepts such as contractual justice, the principle of balance, and the protective principle for the weaker party in labor law.

b. Statute Approach

The statutory approach is used to examine relevant positive legal norms, such as Law Number 13 of 2003 on Manpower, Law Number 6 of 2023 on Job Creation, and Government Regulation Number 35 of 2021 concerning PKWT. Through this approach, the research analyzes the extent to which legislation provides legal protection for PKWT workers (Marzuki, 2017).

c. Theoretical Approach

The theoretical approach is used to examine legal theories relevant to the research issue, including the theory of legal protection, contract theory, and theories of justice. By using this approach, the author can provide an academic foundation for assessing the conformity between positive legal norms and values of justice as well as the objectives of worker protection in employment relationships.

The sources of legal materials used in this research are:

a. Primary Legal Materials

Primary legal materials in this research include: the Fixed-Term Employment Agreement, Temporary Employment Agreement,

0667/SPKWT/EHS/HR/I/2024 between PT EHS and MSP; the Fixed-Term Employment Agreement of PT MSKD No: 001./PTMSKD/PKWT/VII/202) between PT MSKD and BBS; the Fixed-Term Employment Agreement of PT BS No. 0101/HR-ER/III/2023 between PT BS and AH; the Fixed-Term Employment Agreement of PT BS No. 0104/HR-ER/III/2023 between PT BS and MN; the Fixed-Term Employment Agreement of PT GIP Number: 1.56/HRD-OPR/XII/2020 between PT GIP and UL; the Industrial Relations Court (PHI) Decision at the District Court (PN) Class IA Jambi No. 20/Pdt.Sus-PHI/2023/PN Jmb; the PHI Decision at the District Court (PN) Bandung Class IA Special No. 239/Pdt.Sus-PHI/2019/PN. Bdg; Law Number 13 of 2003 on Manpower; Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law; Government Regulation Number 35 of 2021 on PKWT; and the Indonesian Civil Code (KUHPerdata), particularly provisions related to principles of contract law.

b. Secondary Legal Materials

Secondary legal materials include literature, books, articles, research results, legal journals, and expert opinions relating to labor law, legal protection, and contract theory. These materials are used to strengthen the conceptual and theoretical analysis.

c. Tertiary Legal Materials

Tertiary legal materials consist of legal dictionaries, encyclopedias, and relevant internet sources, which function to provide additional explanations or support understanding of the legal terms used.

The technique for collecting legal materials used in this research is through library research. Since this research is normative, all required data are obtained from written legal sources, whether in the form of statutory regulations, expert doctrines, or relevant legal literature. The collection process is carried out by inventorying various statutory regulations governing employment relationships and worker protection, particularly those related to PKWT. The author also examines literature, books, journals, scientific articles, and previous research discussing legal protection, contract theory, and labor law.

The analysis of legal materials in this research is carried out qualitatively using methods of legal interpretation. Qualitative analysis means that legal materials obtained from legislation, doctrine, and legal literature are not processed in numerical form, but are described in a descriptive, systematic, and argumentative manner. The author examines the legal substance regulating PKWT, then compares it with relevant legal theories, such as the theory of legal protection, contract theory, and theories of justice. Furthermore, interpretation of legal norms is carried out using grammatical, systematic, and teleological interpretation methods to understand the meaning and objectives of legal protection for workers.

C. RESULT AND DISCUSSION

1. Forms of Government Protection for Workers/Laborers with Fixed-Term Employment Agreements (PKWT)

In Indonesia's labor system, the protection of workers/laborers is a primary objective of industrial relations, in which the government plays a central role in ensuring that employment relationships—both indefinite-term employment agreements (*PKWTT*) and fixed-term employment agreements (*PKWT*)—are implemented in accordance with the principles of justice, legal certainty, and a balance of rights and obligations. Protection for PKWT workers has not yet been optimal, particularly in terms of regulatory implementation and oversight of employment contracts. Normatively, legal instruments such as the Manpower Law, the Job Creation Law, and Government Regulation Number 35 of 2021 are available, there remains a gap between what the law prescribes (*das sollen*) and the reality in the field (*das sein*).

This gap is evident from the drafting of employment contract clauses that are one-sided, open to multiple interpretations, and that weaken workers' bargaining position—thereby reducing clarity regarding rights and obligations and hindering the realization of fair employment relations. To illustrate this condition, there are several concrete examples of PKWT employment agreements that reflect weak legal protection for workers. One important finding can be seen in Fixed-Term Employment Agreement Letters Number: 0667/SPKWT/EHS/HR/I/2024, Number: 0101/HR-ER/III/2023, and Number: 1.56/HRD-OPR/XII/2020, which indicate the drafting of employment clauses that do not fully provide certainty and fairness for workers.

The first example can be found in PKWT Letter Number: 0667/SPKWT/EHS/HR/I/2024, which contains several contract provisions that are legally weak. Two articles highlighted are Article 12.8 and Article 13.6 letter (h). Article 12.8 states: "For any violation committed by the worker against the company regulations in effect at the employer, the worker may be subjected to verbal warnings, written warnings, or termination of employment." At a glance, this clause appears reasonable because it provides a basis for the employer to enforce workplace discipline. However, upon closer examination, it contains serious legal ambiguity. There is no clarity as to which company regulations are being referred to—whether they are written regulations that have been formally enacted and socialized to workers, or merely internal policies without formal legitimacy. Furthermore, there is no attachment or reference to an official document containing those company regulations. Workers are placed in a position of legal uncertainty because they do not clearly know what behavioral norms must be followed and what types of violations may lead to sanctions, including termination of employment (*PHK*).

Article 13.6 letter (h) in the same agreement states: "Other matters which the employer considers as a valid reason to terminate the employment relationship in accordance with this agreement or company regulations, with due regard to the applicable law, particularly in the field of manpower." This clause raises an even more

serious issue because it uses the phrase “other matters,” which is extremely broad and undefined.

Such wording provides a substantial opportunity for the employer to interpret termination grounds subjectively and unilaterally. In fact, the grounds for termination have been regulated in a limited (exhaustive) manner under Law Number 13 of 2003 on Manpower in conjunction with Government Regulation Number 35 of 2021. Therefore, the use of an uncertain phrase like this clearly conflicts with the *lex certa* principle in law, the clause in this PKWT fails to meet the principle of contractual justice and ignores preventive legal protection as explained by Philipus M. Hadjon—namely, that legal protection should be provided before a dispute arises through the formulation of clear rights and obligations for both parties.

The next finding comes from Fixed-Term Employment Agreement Letter Number: 0101/HR-ER/III/2023, which also demonstrates weak legal protection for workers due to the use of general and disproportionate contractual language. Article 10 point (6) states: “The Second Party commits a legal violation or errors that are considered serious in accordance with applicable provisions, regulations, and laws.” At first glance, this clause appears valid, but legally, the phrase “applicable provisions, regulations, and laws” is too broad and does not provide a clear limitation regarding which legal norms serve as the reference. Within Indonesia’s national legal system, statutory regulations consist of various hierarchical levels, ranging from the 1945 Constitution, laws, government regulations, ministerial regulations, to regional regulations. With such a general formulation, workers have no certainty regarding what legal standard is used to assess a “serious misconduct.” Consequently, the employer may interpret the misconduct unilaterally without clear normative boundaries, thereby violating the principle of legal certainty and the principle of protecting the weaker party in an employment relationship.

Article 15 point (2) of the same agreement states: “The Second Party relinquishes his/her right to pursue legal claims as provided by law and other legal regulations in the event of any dispute whatsoever with the First Party as referred to in paragraph (1) of this Article.” This clause explicitly eliminates the worker’s constitutional right to seek justice through the Industrial Relations Court (*Pengadilan Hubungan Industrial/PHI*) as regulated under Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes.

From a juridical perspective, such a clause falls into the category of an exoneration clause, namely a clause that releases a certain party from legal responsibility and restricts the other party’s right to sue. In contract law doctrine, such clauses are null and void if they conflict with public order (*ordre public*) and the principle of balance between the parties as regulated in Article 1337 of the Civil Code (KUHPerdata). The presence of this clause constitutes a serious violation of the principle of fair equality of opportunity in employment relations.

In addition to the two examples above, a similar case is also found in PKWT Number: 1.56/HRD-OPR/XII/2020, particularly in Article 4 concerning working time. The clause reads: “Work arrangements will be regulated in such a manner by the

Operation Manager and will be adjusted to the needs of the company so as not to disrupt operations.” In practice, this clause grants absolute authority to management to regulate workers’ working hours without clear limits. This clearly contradicts Articles 77 and 78 of Law Number 13 of 2003 in conjunction with Government Regulation Number 35 of 2021, which regulate that the maximum working time is 7 hours per day and 40 hours per week for a 6-day work system, or 8 hours per day and 40 hours per week for a 5-day work system, and requires payment of overtime wages when work exceeds those limits. Therefore, this clause not only violates positive law, but also disregards the principles of legal certainty, justice, and protection of workers’ welfare.

Based on the explanation above, it can be seen that the three PKWT examples share similar characteristics of violations, namely the use of contractual language that is open to multiple interpretations, imbalanced, and contains provisions contrary to positive law. This condition indicates that workers are often faced with a “take it or leave it” situation, where they have no room to negotiate the contents of the agreement. Fixed-term employment agreements—which should function as an instrument of protection—are instead transformed into a means of exploitation that weakens workers’ legal position (Hoda & Rai, 2015; Liana & Yahman, 2024). This fact strengthens the argument that government protection for PKWT workers remains weak, both in administrative oversight and law enforcement, thereby requiring a thorough evaluation of the implementation of labor policies at the company level.

Within the framework of Indonesian labor law, employment relationships based on PKWT should be drafted and implemented in accordance with applicable statutory regulations in order to ensure a balance of rights and obligations between workers and employers. Regulation of PKWT has been explicitly set forth in Law Number 13 of 2003 on Manpower, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, and is technically regulated in Government Regulation Number 35 of 2021 concerning PKWT, Outsourcing, Working Time, Rest Time, and Termination of Employment.

Article 1 point (1) of Government Regulation Number 35 of 2021 defines PKWT as an employment agreement between a worker/laborer and an employer to establish an employment relationship for a certain period of time or for certain work. This definition implies that an employment relationship based on PKWT is temporary, limited, and specific, both in terms of duration and the type of work. The drafting of PKWT contents must adhere to the principles of clarity, certainty, and justice, and is prohibited from including clauses that create multiple interpretations or legal imbalance between the parties.

2. Provisions on Clarity and Transparency of Contract Contents

Pursuant to Article 57 as referred to in Article 81 point 13 paragraph (1) of Law Number 6 of 2023, a PKWT must be made in writing and use Latin letters and the Indonesian language, the implementing regulation, Article 13 of Government

Regulation Number 35 of 2021, states that a fixed-term employment agreement must at least contain: the company's name, address, and type of business; the worker/laborer's name, sex, age, and address; position or type of work; workplace; amount of wages and method of payment; the rights and obligations of the employer and worker; the start date and duration of the agreement; the place and date the agreement is made; and the signatures of the parties.

These provisions are imperative, meaning they cannot be deviated from by the parties' agreement. Their purpose is to ensure that all aspects of the employment relationship are explained clearly and do not open opportunities for double interpretation. Accordingly, any agreement that does not contain those elements, or that includes ambiguous clauses such as "other matters deemed valid by the company" or "in accordance with applicable company regulations" without concrete explanation, can be categorized as having both formal and material defects.

Article 14 paragraph (1) of Government Regulation Number 35 of 2021 emphasizes that a PKWT must be registered by the employer with the government agency administering manpower affairs no later than 3 (three) working days after the signing of the agreement. This obligation has a dual function: (a) as an administrative mechanism providing certainty regarding the legal validity of the contract; and (b) as a government control tool over the implementation of temporary employment relationships so they are not misused.

As found in PKWT documents No: 0667/SPKWT/EHS/HR/I/2024, 0101/HR-ER/III/2023, and 1.56/HRD-OPR/XII/2020, PKWT registration is often merely a formality—sufficient with a receipt stamp from the local Manpower Office (*Disnaker*)—without verification of the agreement's contents. In fact, the substance of Article 14 paragraph (1) of Government Regulation 35/2021 implies an active government role in assessing the appropriateness of PKWT, including examining whether contract contents comply with the principle of justice, do not contain unilateral clauses, and do not violate mandatory manpower norms (*ius cogens*).

Disnaker should carry out a substantive verification function, not merely an administrative one. This means that before recording or approving a PKWT, the relevant agency should evaluate whether the submitted contract has fulfilled all elements regulated in Article 13 of Government Regulation 35/2021 and does not contain clauses contrary to law. This is important as a form of preventive legal protection as proposed by Philipus M. Hadjon—that effective legal protection should be provided before a dispute occurs through an administrative and oversight system ensuring the implementation of citizens' rights in accordance with the law.

3. Provisions on the Type and Nature of Work in PKWT

Government Regulation Number 35 of 2021 stipulates that a PKWT may only be made for certain work which, by its type and nature, will be completed within a certain time and is not permanent work, including:

- a. Work that is once-completed or temporary in nature;
- b. Work that is estimated to be completed within a not-too-long period;

- c. Seasonal work;
- d. Work related to a new product, new activity, or additional product that is still in a trial stage; or
- e. Temporary work due to the replacement of a permanent worker who is performing duties elsewhere.

PKWT must not be applied to work that is permanent and continuous, as this would deviate from Government Regulation 35/2021. In the PKWT example found, particularly Number 1.56/HRD-OPR/XII/2020, the work concerned falls within the company's daily operational activities, which legally does not meet the criteria of temporary work. Normatively, such a contract cannot use the PKWT scheme, and the worker is entitled to permanent employee status along with all attached rights, including severance pay and social security if termination occurs.

4. Provisions on Termination of Employment (PHK)

The aspect most frequently misused in PKWT is the clause concerning termination of employment (*PHK*). Under Article 61 paragraph (1) of Law Number 13 of 2003 in conjunction with Government Regulation Number 35 of 2021, a PKWT may end if:

- a. The term of the agreement has expired;
- b. The agreed work has been completed;
- c. The occurrence of a certain condition or event stated in the employment agreement; or
- d. A court decision or a decision of an industrial relations dispute settlement institution that has obtained permanent legal force.

The grounds for termination in a PKWT are closed (exhaustive) and cannot be expanded with phrases such as "other matters" as found in Article 13.6 letter (h) of PKWT Number 0667/SPKWT/EHS/HR/I/2024. Such a clause provides broad interpretive space for the employer to terminate unilaterally without a clear legal basis. This contradicts the *lex certa* principle (legal certainty) and the *pacta sunt servanda* principle, which requires that every agreement be carried out in good faith in accordance with the agreed intent.

In addition, Article 62 of the Manpower Law emphasizes that if one party terminates a PKWT before its expiry, the terminating party must pay compensation equal to the worker's wages until the PKWT term ends. This provision is a form of compensatory protection so that workers are not harmed by unilateral termination. Many companies do not implement this provision, citing ambiguous contract clauses or claiming that the worker committed disciplinary violations without proper proof (Lewandowski & Magda, 2017; Lingga & Siregar, 2025).

Normatively, termination clauses in PKWT should:

- a. State the grounds for ending the employment relationship in a limited manner and in accordance with the law;
- b. Not use general terms such as "violation of company regulations" without explaining or attaching the relevant regulatory document;

- c. Ensure there is a proof mechanism and staged warnings (written warning 1, 2, 3) before termination;
- d. Guarantee the worker's right to compensation if termination occurs before the contract ends.

5. Provisions on Workers' Rights

Under Articles 15, 16, and 17 of Government Regulation 35/2021, every PKWT worker is entitled to monetary compensation when the employment relationship ends. The amount is calculated based on the length of service, using the formula of 1 month's wage for every 12 months of service, proportionally. In addition, PKWT workers are also entitled to employment social security (*BPJS Ketenagakerjaan*), overtime pay, leave, and rest periods as regulated in Articles 77 to 85 of Law 13/2003.

A clause granting absolute authority to the company to determine working hours without limits—as found in Article 4 of PKWT Number 1.56/HRD-OPR/XII/2020—clearly contradicts Article 77 paragraph (2) of the Manpower Law and Article 21 of Government Regulation 35/2021, which limit maximum working hours to 40 hours per week. Excess working hours must be calculated as overtime and paid in accordance with Article 78 paragraph (2).

Thus, a valid and fair PKWT must guarantee the following basic worker rights:

- a. Certainty of wages and working time;
- b. The right to annual leave and weekly rest;
- c. Protection through employment and health social security;
- d. Protection from unilateral termination;
- e. The opportunity to file objections or claims with the Industrial Relations Court (*PHI*).

A clause that eliminates the worker's right to file a claim, such as Article 15 point (2) of PKWT Number 0101/HR-ER/III/2023, is a serious violation of the worker's constitutional rights. This article contains an exoneration clause—namely a clause that releases the employer from legal responsibility and eliminates the worker's right to sue. Under Article 1337 of the Civil Code, any agreement whose contents conflict with public order and morality is null and void.

6. Legal Principles That Must Be Applied in PKWT

To ensure that employment agreements are fair and socially just, the drafting of PKWT must be based on several fundamental labor-law principles:

- a. Principle of Justice

This principle demands a balance between the interests of employers and workers. In the context of John Rawls' "justice as fairness," justice does not merely mean equal treatment, but ensuring that the weaker party (workers) receives greater protection to create an equal condition. Therefore, any contract clause that grants unilateral power to the employer conflicts with this principle.

b. Principle of Legal Certainty

PKWT must be formulated in clear language that is not open to multiple interpretations. Using phrases such as “other matters deemed valid” creates uncertainty and violates the *lex certa* principle.

c. Principle of Good Faith

Based on Article 1338 paragraph (3) of the Civil Code, every agreement must be performed in good faith. This means the employer may not exploit a worker’s lack of knowledge to impose harmful clauses.

d. Principle of Protecting the Weaker Party

As part of social law, labor law has a protective function. Therefore, any employment agreement that contains provisions eliminating workers’ rights or disproportionately increasing their obligations must be declared null and void.

e. The Government’s Role in Enforcement and Supervision

For legal protection of PKWT workers to be effective, the government’s role through *Disnaker* and labor inspectors must be strengthened. *Disnaker* should not function merely as an administrative recorder, but as a substantive examiner of the feasibility of PKWT contents before registration. Labor inspectors, in turn, must actively conduct inspections and audits of companies employing PKWT workers, ensuring compliance with working time, wages, and compensation provisions.

Weaknesses in labor law enforcement to date are not only due to insufficient regulation, but also due to weak supervision and implementation. Therefore, protection for PKWT workers should be ensured through integration between normative policy (written rules), administrative mechanisms (registration and verification), and repressive measures (sanctions for violations).

Philipus M. Hadjon emphasizes that the essence of legal protection is the safeguarding of basic human rights so that they are not reduced by arbitrary actions, whether by the state or by private parties with economic power. In this context, workers as citizens are entitled to legal protection from the government so that they do not become objects of exploitation in employment relations. The government is not sufficient merely to enact regulations; it is also obliged to supervise their implementation so that employment agreement contents do not conflict with the principles of justice and legal certainty (Huysamen, 2019; Madia et al., 2022; Sädevirta, 2015).

If this theory is applied to PKWT drafting practices found in the field, several aspects can be criticized. For example, clauses that do not clearly state the basis of the company regulations used as reference, or clauses that grant absolute authority to the employer to determine grounds for termination of employment. Such clauses eliminate preventive legal protection for workers because they create legal uncertainty. In Hadjon’s theory, legal uncertainty is a form of state failure to provide proper legal protection, because workers do not have a clear normative basis

regarding the limits of authority or the sanctions they may face (Fedryca, 2024; Kobroń-Gąsiorowska, 2022; Waas, 2010).

Legal protection for PKWT workers must also be understood within the function of a state governed by law (*rechtsstaat*), where law not only regulates but also protects people's rights from arbitrary actions. In this framework, an employment agreement drafted unilaterally by the employer without negotiation space for the worker essentially conflicts with the rule of law and fairness principles that underpin legal protection. Hadjon in (Chamdani; Nasution Slamet; Hufon, 2022) emphasizes that true legal protection is realized only when there is a balance between legal certainty and substantive justice. Legal certainty is meaningful only if the contract contents reflect a sense of justice for the weaker party, not merely formal certainty that benefits the stronger party.

Legal protection theory demands mechanisms that guarantee workers' access to justice. In practice, many clauses in PKWT contracts in fact restrict or even eliminate workers' right to pursue legal remedies if disputes occur, such as clauses waiving the right to sue. Such clauses directly conflict with the principle of legal protection because they eliminate workers' basic right to obtain justice (Joubert, 2021; Kamal, 2020; Siregar, 2025). In Hadjon's view, any restriction on the right to seek justice constitutes a violation of the rule-of-law principle that upholds the supremacy of law over economic power.

When linked to legal protection theory, the government should play an active and responsive role in ensuring that every PKWT is not only legally valid, but also substantively fair. Preventive legal protection can be realized through several steps, including: (1) drafting more detailed technical regulations regarding PKWT validity requirements; (2) establishing a verification or registration mechanism for PKWT by manpower authorities before it is applied; and (3) imposing administrative sanctions on companies that draft employment agreements contrary to law. Repressive legal protection, meanwhile, is realized through a mechanism for resolving industrial relations disputes that is fast, affordable, and impartial (Sädevirta, 2015).

To achieve effective legal protection as required by Philipus M. Hadjon's theory, the PKWT registration mechanism must be upgraded from a mere administrative procedure into a substantive control system. The government, through the Ministry of Manpower, needs to re-regulate the registration procedure in more detail through implementing regulations that require evaluation of PKWT contents before a registration mark is issued. In this way, the role of the local Manpower Office is not merely as a recipient of reports, but as a preventive supervisor ensuring that employment contracts do not contain clauses detrimental to workers.

Based on the analysis of various PKWT agreements found in practice, the weakness of legal protection for workers is not only caused by normative gaps, but rather by weak oversight functions and the implementation of regulations by the government, the solution must be comprehensive, covering regulatory, administrative, institutional, and substantive aspects of the employment agreement itself.

A comprehensive solution to weak legal protection in PKWT must be grounded in the legal protection theory approach, strengthened by the implementation of positive legal norms, and supported by proactive administrative and institutional policies. This effort is not merely about improving employment agreement documents, but about building a labor system that guarantees balance, justice, and legal certainty for all parties in industrial relations.

D. CONCLUSION

Government protection for PKWT workers remains normative and has not yet reached the substantive stage. Although legally supported by the Manpower Law, the Job Creation Law, and Government Regulation Number 35 of 2021, in practice, there remains a gap between legal norms and reality, as reflected in the numerous PKWT clauses that are open to multiple interpretations, one-sided, and do not reflect the principles of justice and protection for workers as the weaker party. The government, particularly through the Manpower Office. The regulation on registration obligations contained in Article 14 paragraph (1) of Government Regulation Number 35 of 2021 is only administrative in nature, and the Manpower Office lacks the authority to register employment agreements. As a result, agreements that are detrimental to workers remain in effect without correction. Therefore, if an employment agreement contains clauses that are unlawful or detrimental to workers as the structurally weaker party in the employment relationship, the Manpower Office does not have the authority to restore the registration to provide preventive legal protection to workers.

REFERENCES

1. Amiruddin, M. C. (2024). Oversight on the Execution of Fixed-Term Employment Contracts at the Makassar City Labor Department. *Journal of Indonesian Scholars for Social Research*, 4(1), 61–72.
2. Anggraeni, D. M., & Wahjoeono, D. (2025). Implementation Of Specific Time Work Agreement (PKWT) Based on Law No. 6 Annual 2023 About Creating Work: To Workers of PT. Eigerindo Mpi Regional Surabaya. *Court Review: Jurnal Penelitian Hukum*, 5(06), 119–129.
3. Ardhie, E. F., & Suwadi, P. (2024). Pacta Sunt Servanda as Legal Certainty in a Fixed-Term Employment Agreement. *International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, 112–121.
4. Arifuddin, A. M. Y. A., Afnina, A., & Shada, S. S. (2025). Legal Protection for Contract Workers in the Perspective of Labor Law. *Innovative: Journal of Social Science Research*, 5(4), 9017–9031.
5. Chamdani; Nasution Slamet; Hufron, K. S. (2022). Legal protection for outsourced workers/laborers due to termination of employment during the contract period. *Technium Soc. Sci. J.*, 34, 283.
6. De la Porte, C., & Emmenegger, P. (2017). The Court of Justice of the European Union and fixed-term work: Putting a brake on labour market dualization? *Journal of European Social Policy*, 27(3), 295–310.

7. Deviona, A. A., Sriono, S., & Siahaan, N. (2024). Social Security and Compensation: Analyzing the Protection of Fixed-Term Employment Contract Workers under the Omnibus Law on Job Creation. *SIGN Jurnal Hukum*, 6(2), 85–96.
8. Fedryca, M. (2024). Validity of the Collective Agreement in Terminating a Fixed Term Employment Agreement According to Labor Law. *Journal of Law, Politic and Humanities*, 5(1), 684–689.
9. García-Pérez, J. I., Marinescu, I., & Vall Castello, J. (2019). Can fixed-term contracts put low skilled youth on a better career path? Evidence from Spain. *The Economic Journal*, 129(620), 1693–1730.
10. Geldenhuys, J. (2017). The effect of changing public policy on the automatic termination of fixed-term employment contracts in South Africa. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 20(1).
11. Gericke, S. B. (2016). The regulation of successive fixed-term employment in South Africa: lessons to be gleaned from foreign and international law. *Journal of South African Law/Tydskrif Vir Die Suid-Afrikaanse Reg*, 2016(1), 94–109.
12. Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245–256.
13. Hoda, A., & Rai, D. K. (2015). Labour regulations and growth of manufacturing and employment in India: Balancing protection and flexibility. *Review of Development and Change*, 20(2), 105–136.
14. Horuiko, K., Muzyka, M., & Kokhan, M. (2020). *Fixed-Term Employment Contract in the Sphere of Education: The Issues of Legal Regulation*.
15. Huysamen, E. (2019). An overview of fixed-term contracts of employment as a form of A-typical employment in South Africa. *Potchefstroom Electronic Law Journal (PELJ)*, 22(1), 1–42.
16. Joubert, A. M. (2021). *A Review of the Protection of Fixed-Term Contract Employees Within South African Labour Law: A Comparative Discussion*.
17. Kamal, M. (2020). Workers Protection with a Fixed-Term Employment Contract System based on the Employment Statutory Regulations. *Substantive Justice International Journal of Law*, 3(2), 180–195.
18. Kobroń-Gąsiorowska, Ł. (2022). A fixed-term contract as a threat to the rights of temporary workers. In *Jurisprudencja 19. Zatrudnienie tymczasowe jako nietypowa forma świadczenia pracy* (pp. 71–79). Wydawnictwo Uniwersytetu Łódzkiego.
19. Lewandowski, P., & Magda, I. (2017). Temporary employment, unemployment and employment protection legislation in Poland. *Myths of Employment Deregulation: How It Neither Creates Jobs nor Reduces Labour Market Segmentation*, 143.
20. Liana, L., & Yahman, Y. (2024). Legal Protection of Workers with A Specific Time Work Agreement (PKWT) in The Transfer of Outsourcing Companies Following the Enactment of Law No. 6/2023. *YURIS: Journal of Court and Justice*, 110–122.
21. Lingga, E., & Siregar, H. (2025). Termination of employment without an official letter: A juridical review of employee protection under the manpower act and the job creation act. *Priviet Social Sciences Journal*, 5(11), 355–363.

22. Madia, P. B. M., Bagiastra, I. N., & Purwanto, I. W. N. (2022). Legitimacy Of A Fixed-Term Employment Contract Based On Remote Work Concept From The Perspective of the Job Creation Act. *Policy, Law, Notary and Regulatory Issues*, 1(4), 65–74.
23. Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
24. Nugraha, B. E. C., Arifin, S., & Darmawan, D. (2024). Legal Basis for the Protection of Workers' Rights and Employment Contracts in the Startup Ecosystem of the Flexible Work Era. *Journal of Social Science Studies*, 4(1), 43–50.
25. Sädevirta, M. (2015). Regulation of Fixed-Term Employment Contracts in the EU, France, Finland and the United Kingdom: A Comparative Analysis. *International Journal of Comparative Labour Law and Industrial Relations*, 31(2).
26. Shalihah, F., Megawati, M., Suryadi, S., Zuliyah, S., & Muhammadi, F. (2022). Fixed-time employment agreement based on legal awareness to realize harmonious employment relationship. *Substantive Justice International Journal of Law*, 5(2), 178–192.
27. Siregar, D. (2025). Legal Protection in Fixed-Term Employment Contracts: Striking a Balance Between Workers' Rights and Obligations. *Istinbath: Jurnal Hukum*, 22(01), 84–106.
28. Waas, B. (2010). Labour policy and fixed-term employment contracts in Germany. *Labour Policy on Fixed-Term Employment Contracts*. Tokyo: Japan Institute for Labour Policy and Training, 23–41.
29. Wijayanti, R. (2018). Effectiveness of Legal Protection on Employees/Labours in a Fixed-Term Employment Contract in Golden Tulip Bay View Hotel & Convention-Bali. *Jurnal Hukum Prasada*, 5(2), 90–99.