

Legal Protection Toward A certain Time Worker (Outsourcing) Agreement Status (PKWT), Reviewed From Law no. 13 of 2003 and Law no. 11 Year 2020

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ABSTRACT

The statute No. 13/2003 concerning an employment has regulated re divided the working agreement which has determined on article 56 and 57. Which has divided to the certainty time on working time (PKWT) and the uncertainty time on working time (PKWTT). Also on statute no 11/2020 concerning Working Created has changed the statu which regulated on Statute No. 13/2003. The focus of research : How the law position of the worker with title as the certainty time working agreement (PKWT), base on the statute no. 13/2003 re Employment and statute 11/2020 re Working Created (Study on P.T. Primas Jamintara, South Jakarta) and How the law protection of the worker with title as the certainty time working agreement (PKWT), base on the statute no. 13/2003 re Employment and statute 11/2020 re Working Created (Study on P.T. Primas Jamintara, South Jakarta). The research method using the qualitative model with socio-legal approach, and field research P.T. Primas Jamintara South Jakarta. The results of the reseach are : the law position and the law protection the worker as with title as the certainty time working agreement (PKWT), in the practice still not fully implemented yet based on the regulation.

Keywords: *Protection, Outsourcing, Certainty, Time.*

ABSTRAK

Undang-Undang Nomor : 13 Tahun 2003 tentang Ketenagakerjaan telah mengatur tentang pembagian perjanjian kerja sebagaimana yang diatur dalam Pasal 56 dan 57. Di mana telah membagi kepada : perjanjian kerja waktu tertentu (PKWT) dan perjanjian kerja waktu tidak tertentu (PKWTT). Begitupun dalam Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja telah mengubah ketentuan yang diatur dalam Undang-Undang Nomor : 13 Tahun 2003. Perumusan penelitian adalah : Bagaimanakah Kedudukan hukum pekerja dengan sttus perjanjian kerja waktu tertentu (PKWT) ditinjau dari Undang Undang nomor : 13 Tahun 2003 tentang ketenagakerjaan dan Undang-Undang Nomor : 11 Tahun 2020 tentang cipta kerja (Studi pada P.T. Primas Jamintara Jakarta Selatan) dan bagaimanakah bentuk perlindungan hukum pekerja dengan pekerja perjanjian kerja waktu tertentu (PKWT) ditinjau dari Undang Undang nomor : 13 Tahun 2003 tentang ketenagakerjaan dan Undang-Undang Nomor : 11 Tahun 2020 tentang cipta kerja (Studi pada P.T. Primas Jamintara Jakarta Selatan). Metode penelitian ini menggunakan model kualitatif dengan pendekatan sosio-legal yang bersifat normatif empiris dengan studi lapangan dengan P.T. Primas Jamintara Jakarta Selatan. Hasil penelitian ini adalah bahwa kedudukan hukum dan perlindungan hukum para pegawai yang diikat dengan perjanjian kerja waktu tertentu (PKWTT) dalam prakteknya belum sepenuhnya dapat dilaksanakan sesuai peraturan perundang-undangan.

Kata Kunci: *Perlindungan, Alih Daya, Waktu Tertentu.*

A. Background of Research

One way that is currently developing that is mostly done by employers is to focus on handling workers who are the core business. Meanwhile, the supporting workers for the company are handed over to other parties through the labor service provider. In its implementation, it is carried out through a working relationship between outsourced workers and the company, they must make a work agreement to find out the clarity of the status of their work, things like this are very useful for outsourced workers in order to know the rights and obligations of their work. The existence of the law as a guarantee of protection is very strategic and very basic, this happens because the content is not only tennis, but also full of social, economic, political, which is also related to human rights issues..

Indonesia is a developing country that always tries to improve development in the field of life, including one of them is economic development. In the development of the business world in Indonesia, which is growing a lot and has tight competitiveness, making company owners to try to improve the quality of their business effectively and efficiently by employing as many workers as possible in the hope that workers can contribute and make big profits for the company..

The current application of the Specific Time Work Agreement (PKWT) system is more widely used by companies because the value is very effective and efficient for employers, namely getting bigger profits where the costs incurred by employers for workers are much smaller because employers do not have to have a large number of workers. many and unproductive and if workers are known to have many workers it will be an expense for the company. However, this policy applies to workers themselves regarding the policy of using the PKWT system which is considered less profitable because they do not have certainty in terms of the working period of being appointed as permanent employees, affecting career paths, status or position as workers and severance pay at the end of the contract.

With the Law no. 13 of 2003 concerning Manpower as regulated in Chapter 7A Book III and regulated by a ministerial regulation as its implementing regulation, then when linked to Law no. 11 of 2020 concerning Job Creation as regulated in Part Two concerning

Manpower, there have been improvements or changes so that some of the provisions of these provisions are no longer valid.

One of the reasons for the strategy for outsourcing the outsourcing system is to use existing personnel whose activities are more effective and efficient in bringing producers or companies closer to the market or consumers. Through delegation or outsourcing, the company only thinks about how to do business, while for the procurement of outsourcing services it is handed over to other parties (companies in the field of outsourcing service providers).

The outsourcing service provider has a very broad legal responsibility, not only at the contract implementation stage but also in the pre-contract phase, namely the obligation to conduct in-depth research on workers who will be employed outside. That what is meant by in-depth research is because there has been an absolute obligation for outsourcing providers to verify all accuracy related to the procurement of outsourcing services that are handed over to the company (service recipient). This must be done by the outsourcing service provider to be able to guarantee and ensure that the company as the recipient of the service gets the right outsourcing employee, who will do the work according to his field and will be subject to the outsourcing contract.

The labor law qualifies work agreements into two types, each of which is a work agreement for a certain time (PKWT) and a work agreement for an indefinite time (PKWTT). PKWT is a work agreement between a worker or laborer and an entrepreneur to establish a working relationship for a certain time or a certain job, while PKWTT is an agreement between a worker or laborer and an entrepreneur to establish a permanent working relationship. The employment relationship is still based on the PKWTT and requires three probationary periods, the acceptance of workers by a company is carried out with an employment agreement. The acceptance of workers by a company is carried out in a work agreement, the work agreement that will be examined in this study is regarding the legal protection of outsourcing workers with PKWT status, in terms of the work copyright law Number: 11 of 2020

If We look at the provisions of Law no. 13 of 2003 which was enhanced by Law no. 11 of 2020 which was later declared conditionally unconstitutional by the Constitutional Court of the Republic of Indonesia, with Decision No. 109/PUU/XVIII/2020, then all the

rules relating to a Specific Time Work Agreement (PKWT) as regulated in Law no. 13 of 2003 is still valid as long as the government and the DPR have not been able to complete the constitutional requirements in harmonizing the legislation as mandated in the decision of the Constitutional Court, including the implementing laws and regulations. This is intended to avoid the occurrence of a legal vacuum in addressing any problems that occur in society.

B. Focus of Problems

From the background of the problem, the problems are identified as follows:

1. The legal position of workers with the status of a certain time work agreement (PKWT) in terms of Law number: 13 of 2003 concerning Manpower and Law Number: 11 of 2020 concerning Job Creation (Study on P.T. Priskas Jamintara South Jakarta)
2. The form of legal protection of workers with workers with a certain time work agreement (PKWT) in terms of Law number: 13 of 2003 concerning Manpower and Law Number: 11 of 2020 concerning Job Creation (Study at P.T. Priskas Jamintara South Jakarta)

C. Research Methodology

Penelitian hukum dilakukan dengan menggunakan metode-metode sebagai berikut:

1. Type of Research.

The type of research used is descriptive. "Descriptive research is research which is a problem-solving procedure investigated by describing or describing the current state of the subject and object of research based on visible facts."¹

2. Research Approach

The approach method applied in this research is Juridical Empirical. The problems that have been formulated above will be answered or solved using the Juridical Empirical approach. The juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem this research uses legal materials (both written law and unwritten law or both primary legal materials and secondary legal materials). The empirical approach (law as a social, cultural or *das sein* reality), because in this

¹Soerjono dan Abdulrahman. *Metode Penelitian Hukum*. (Jakarta: Rineka Cipta. 2003), hlm. 23

study used primary data obtained from the field, namely the implementation of employee outsourcing carried out by P.T. Primas Jamintara in South Jakarta.

1. Types and Sources of Data

a. Type of Data

Qualitative data is the type of data used in this study. By using primary data and secondary data. Qualitative data is data that is presented in the form of verbal words not in the form of numbers.²

b. Data Sources

The primary data obtained from this study were sourced from interviews with several informants, observation activities, and document studies. To determine the informants in this research, the researcher applied the purposive sampling method, namely the determination of the sample based on the recommendations of the research target that had been determined so that this technique did not consider the principle of population representation. While secondary data is data sourced from legislation related to research, scientific references from experts and other supporting references such as journals, internet.

D. Finding & Discussion

1. Theoretical Referencies.

The concepts of the rule of law (*rechtstaat*) and the rule of law are the most ideal state of law concepts for now, even though these concepts are implemented with different perceptions. The concept in Indonesian is often interpreted as "Supreme of Law" or Government based on law while *rechtstaat* is translated as "State of Law"³

Elements of the Rule of Law according to A.V. Dicey; is as follows ::

- a. Equality before the law, meaning that every human being has the same legal position and gets the same treatment.
- b. Supremacy of law, meaning that the highest power lies in the law.

²Noeng Muhadjir, "Metodologi Penelitian Kualitatif" , (Yogyakarta : Rakesarasin, 1996), hlm. 2.

³ Munir Fuadi, *Teori Negara Hukum Modern*, (Bandung: Refika Aditama, 2009), hlm. 1

c. Human rights are not rooted in the constitution.⁴

Furthermore, regarding the theory of justice as the basis of industrial relations, it is very necessary as a reference for problem analysis. Justice has never stopped since ancient times until now, because the issue of justice is very essential in human life. Justice continues to be discussed and fought for by every individual and society to obtain it so that their lives can run well, safely and comfortably. Justice is the highest policy and always exists in all its various manifestations. Justice is also one of the goals of every religion which places justice in a very important place in the life of the nation and state and society.⁵

As an implementation theory in this study, law enforcement theory is used related to the industrial world where the relationship between workers/laborers and employers must be protected, where both of them must be treated as work partners. For this reason, the implementation of industrial relations should refer to the Indonesian law enforcement system. Where the law regulates the rights and obligations of employers and the rights and obligations of workers or laborers.

Law enforcement is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words law enforcement is various legal remedies that must be provided by law enforcement officials to provide legal protection. a sense of security, both physically and mentally from disturbances and threats from any party. Satjipto Raharjo argues that law enforcement is not a definite action, namely applying a definite action, namely applying the law to an event, which can be likened to drawing a straight line between two points..⁶

In the implementation of the agreement between the employer and the worker, in practice, binding is carried out in an agreement or agreement. An agreement is an act that occurs between one or more people binding themselves to another person or more (Article 1313 of the Civil Code). The definition of

⁴ Moh. Kusnardi, Bintan R. Saragih, *Ilmu Negara*, (Jakarta: Gaya Media Pratama, 2000), hlm. 93

⁵ Abdul Manan, *Peranan Hukum Dalam Pembangunan Ekonomi*, (Jakarta: Prenadamedia Group, 2018), hlm. 61

⁶ Satjipto Raharjo, *Sosiologi Hukum : Perkembangan Metode Dan Pilihan Masalah*, (Yogyakarta: Sinar Grafika, 2002), hlm.190

agreement contained in these provisions is incomplete, and too broad. It is not complete because what is formulated is only a one-sided agreement. The agreement provides the widest freedom to the community to enter into an agreement containing anything as long as it does not violate public order and decency. Contract law in Indonesia adheres to the principle of freedom in terms of making agreements (*beginsel der contracts vrijheid*), in today's practice, agreements are often carried out in the form of standard contracts, which limit the principle of freedom of contract..

2. Juridical Referencies.

As a juridical and conceptual basis on manpower, it is formulated based on the provisions of the legislation. Employment is all matters relating to labor at the time before, during and after the work period. Thus, the employment is manpower related to aspects starting from the time he is looking for work, while doing work in all sectors, until he is dismissed from work, and returns as a job seeker..⁷

Meanwhile, the various theories and concepts of labor itself that are found in the literature in general are all people or people of working age who have the ability to do work, as stated by Darza, that labor is part of the working age population physically and mentally capable of doing work. doing work, both inside and outside the employment relationship in order to produce goods or services to meet the needs of the community (generally aged 15 years or older) ⁸

the labor is identical with residents in a country that can produce goods and services as stated by Subri, that labor is a population of working age (aged 15-64 years) or the number of residents in a country who can produce goods and services if any. demand for labor.⁹ Meanwhile, according to Simanjuntak, that labor is related to humans who are able to work to provide services or work efforts. Being able to work means being able to carry out activities that have economic value, namely that these activities produce goods or services to meet the needs of the community. Physically the ability to

⁷ Undang-Undang No. 13 Tahun 2003

⁸ Darza. Z.A, *Kamus Istilah Bidang Ketenagakerjaan*, (Jakarta: Delina Baru, 1995), hlm.114

⁹ Subri Mulyadi, *Ekonomi Sumber Daya Manusia*, (Jakarta: Raja Grasindo Pusaka, 1996), hlm.57

work is measured by age. In other words, people of that age are called workers, in short, workers are defined as residents of working age.¹⁰

Labor is any person who is able to do work to produce goods or services both to meet their own needs and the needs of the community. These workers need to be provided with services by public institutions, namely the government, especially in terms of placement, so that they can get jobs that are in accordance with their respective abilities. Therefore, public service to this workforce needs rules or policies so that it can be carried out by entrepreneurs or companies.¹¹

The definition of engagement in the Civil Code states that "Every engagement is born good because of approval, whether because of the law".¹² Furthermore, it is stated that: "Every engagement is to give something, to do something, or not to do something"¹³ The law of engagement is a legal relationship between two or more people located in the field of assets where one party is entitled to an achievement and the other party is obliged to fulfill an achievement. The Civil Code also regulates more specifically regarding the Agreement. "An agreement is an act by which one or more people bind themselves to one or more people".¹⁴

3. Implementation

a. The employment agreement (Law No. 13 of 2003)

The employment agreement is divided into two parts, such as ::

- a) The employment agreement is made for a certain time or for an indefinite period of time.
- b) The work agreement for a certain time as referred to in paragraph (1) is based on:
 - 1) time period; or
 - 2) completion of a certain job.¹⁵

Furthermore, the mechanism is explained as follows:

¹⁰ Simanjuntak Payaman, *Pengantar Ekonomi Sumber Daya Manusia*, (Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 1994), hlm.1

¹¹ Op.Cit. Undang-Undang No. 13 Tahun 2003

¹² Pasal 1233 Kitab Undang-Undang Hukum Perdata.

¹³ Pasal 1234 Kitab Undang-Undang Hukum Perdata.

¹⁴ Pasal 1313 Kitab Undang-Undang Hukum Perdata

¹⁵ Pasal 56 Undang-Undang Nomor : 13 Tahun 2003

1. A work agreement for a certain time is made in writing and must use the Indonesian language and Latin letters.
2. A work agreement for a certain time which is made unwritten contrary to the provisions as referred to in paragraph (1) shall be declared as a work agreement for an indefinite period of time.
3. In the event that the employment agreement is made in Indonesian and a foreign language, if there is a difference of interpretation between the two,, then the work agreement is made in the Indonesian language .¹⁶

In other provisions, it is explained that:

- 1) A work agreement for a certain period of time cannot require a probationary period.
- 2) In the event that a probationary period is required in the work agreement as referred to in paragraph (1), the probationary period required is null and void by law.¹⁷

b. Employment Agreement (Law No. 11 of 2020)

With regard to work agreements for a certain time in the Job Creation Law, it is explained as follows::

- 1) The employment agreement is made for a certain time or for an indefinite period of time.
- 2) The work agreement for a certain time as referred to in paragraph (1) is based on: a. time period; or b. completion of a particular job.
- 3) The period or completion of a certain work as referred to in paragraph (2) is determined based on a work agreement.
- 4) Further provisions regarding a work agreement for a certain period of time or the completion of a certain work shall be regulated by a Government Regulation.¹⁸

The provisions of Article 57 are amended, so that they read as follows:

¹⁶ Pasal 57 Undang-Undang Nomor : 13 Tahun 2003

¹⁷ Pasal 58 Undang-Undang Nomor : 13 Tahun 2003

¹⁸ Pasal 56 Undang-Undang Nomor : 11 Tahun 2020

- 1) A work agreement for a certain time is made in writing and must use Indonesian and Latin letters.
- 2) In the event that the employment agreement for a certain time is made in Indonesian and a foreign language, if there is a difference in interpretation between the two, then the work agreement for a certain time is made in the Indonesian language .¹⁹

Furthermore, the legislation states that:

- 1) A work agreement for a certain time cannot require a probationary period.
- 2) In the event that a probationary period as referred to in paragraph (1) is required, the required probationary period is null and void and the working period is still counted.²⁰

4. Empirical Opinion

Empirical data in the form of interviews to obtain information that can support the validity of the research was carried out to informants who were directly involved in the practice of using outsourcing personnel at P.T. Prismas Jamintara, South Jakarta. In Lucki Andri's view of the Jabodetabek Area Division regarding the legal position of workers who are bound by PKWT, in general, the two legal political laws are good, but the implementation in the field cannot be fully implemented as regulated in the statutory provisions (theory and practice there is no equality view).²¹ Meanwhile “ in Rudi's view of the Division of Relations Officer regarding the legitimacy of legal binding on workers who are bound by PKWTT, in the practice, it is not as intended by laws and regulations, where there are violations of the PKWT working period which is up to 3 years which should be according to the law The law is set as a permanent employee, but it is not done and PKWT workers are required to re-apply from the beginning.²²

In Muhammad Fikri's view of the Sales Generalist Consumptive Division, and regarding the implementation of working hours not in accordance with the existing

¹⁹ Pasal 57 Undang-Undang Nomor : 11 Tahun 2020

²⁰ Pasal 58 Undang-Undang Nomor : 11 Tahun 2020

²¹ Wawancara pada tanggal 2 Juli 2022.

²² Wawancara pada tanggal 2 Juli 2022

laws and regulations, for example, they should go home at 16.30 in practice it can go until sunset and sometimes the company does not count overtime²³ while in the view of Aga Dwi Permadi in the Sales Generalist Consumptive Division, especially with health insurance which should be paid every month but in fact within 1 year it has not been paid.²⁴ In Hermanum Hendra's view of the Productive Sales Generalist Division, regarding the expiration of the work contract, it has not been based on existing laws and regulations, for example, the work period has been more than 2 years but has not been appointed as a permanent employee..²⁵ In Zulkarnain's view of the Generalist Productive Sales Division, with regard to changes in the provisions on PKWT in Law no. 13 of 2003 with Law no. 11 Year 2020 is better for the company but less for the employees. For example, employee rights, such as reduced leave and holidays.²⁶

E. Conclusions

1. The position of workers who are bound by a certain time work agreement (PKWT) as regulated in Law no. 13 of 2003 and amended by Law no. 11 of 2020, according to what happened in the practice of P.T. Priskas Jamintara, South Jakarta, has not been fully implemented in accordance with applicable laws and regulations. Because in the field there is a conflict of interest between companies, labor providers and workers.
2. Protection of workers who are bound by a certain time work agreement (PKWT) regulated in Law no. 13 of 2003 and amended by Law no. 11 of 2020, has not provided a definite guarantee of legal protection, because in practice at P.T. Priskas Jamintara South Jakarta, the position of workers who are bound by a certain time work agreement (PKWT) still has a weak position in terms of agreement. It can be seen that there is no empowerment of workers to negotiate with employers and labor providers.

²³ Wawancara pada tanggal 2 Juli 2022

²⁴ Wawancara pada tanggal 2 Juli 2022

²⁵ Wawancara pada tanggal 2 Juli 2022

²⁶ Wawancara pada tanggal 2 Juli 2022

F. Recommendation

1. Confirmation of the enactment of Law no. 13 of 2003 and Law no. 11 of 2020 specifically for workers who are bound by a certain time work agreement (PKWT) must be really supervised by the government and related parties.
2. Legal protection of the rights of workers who are bound by a certain time work agreement (PKWT) must really be provided in accordance with the applicable laws and regulations.

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