

## The Regulation of employment agreements after the enactment of law number 11 of 2020 concerning job Creation

A regulação dos contratos de trabalho após a vigência da lei número 11 de 2020 relativa à criação de emprego

La regulación de los contratos de trabajo posteriores a la promulgación de la ley número 11 de 2020 relativa a la creación de Empleo

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### Abstract

The passage of legislation of Law Number 11 of 2020 concerning Job Creation will affect changes to the regulation regarding employment, considering that it is in Law Number 11 of 2020 concerning Job Creation. So far, the issue of increasing investment in order to attract investors to invest in Indonesia by creating job opportunities is the opposite side of protecting workers' rights and improving workers' welfare. It is expected that the job copyright law can accommodate the interests of investors and workers. The government considers that the Job copyright law is an attempt by the government to create a middle way to unite the two interests between investors and workers to grow the national economy after it slumped due to the global crisis due to the COVID-19 pandemic. Hence, it is necessary to do research on the arrangement of Work Agreements according to the Job Creation Act. To describe these problems, a normative juridical legal research method was used with a descriptive type of research. The results of the analysis were basically the difference in the arrangement of the work agreement, more precisely in the work agreement for a certain time, in the job copyright law, there is a maximum period of accumulation of the term of the work agreement, which is 5 years and for a work agreement for a certain time, which is based on the completion of a job. It has a period until the completion of the work. It also allows for more than 5 different years from the previous arrangement.

**Keywords:** Work Agreement for a certain time; Job creation; Employment; Omnibus law.

### Resumo

A aprovação da legislação da Lei n.º 11 de 2020 relativa à Criação de Emprego afetará as alterações à regulamentação relativa ao emprego, tendo em conta que está na Lei n.º 11 de 2020 relativa à Criação de Emprego. Até agora, a questão de aumentar o investimento para atrair investidores para investir na Indonésia criando oportunidades de emprego é o lado oposto da proteção dos direitos dos trabalhadores e da melhoria do bem-estar dos trabalhadores. Espera-se que a Lei de Criação de Emprego possa acomodar os interesses de investidores e trabalhadores. O governo considera que a Lei de Criação de Emprego é uma tentativa do governo de criar um meio-termo para unir os dois interesses entre investidores e trabalhadores para fazer crescer a economia nacional depois de ter desmoronado devido à crise global devido à pandemia de COVID-19. Por isso, é necessário pesquisar sobre o arranjo dos Contratos de Trabalho de acordo com a Lei de Criação de Emprego. Para descrever esses problemas, utilizou-se um método normativo de pesquisa jurídica com um tipo de pesquisa descritiva. Os resultados da análise foram basicamente a diferença na disposição do contrato de trabalho, mais precisamente no contrato de trabalho por tempo determinado, na lei de criação de emprego, há um prazo máximo de acumulação do prazo do contrato de trabalho, que é de 5 anos e para um contrato de trabalho por tempo determinado, que é baseado na conclusão de um trabalho. Tem um prazo até a conclusão da obra. Também permite mais de 5 anos diferentes do acordo anterior.

**Palavras-chave:** Contrato de trabalho por tempo determinado; Geração de emprego; Emprego; Direito omnibus.

## Resumen

La aprobación de la legislación de la Ley Número 11 de 2020 sobre Creación de Empleo afectará cambios a la regulación en materia de empleo, considerando que se encuentra en la Ley Número 11 de 2020 sobre Creación de Empleo. Hasta ahora, la cuestión de aumentar la inversión para atraer inversores a invertir en Indonesia mediante la creación de oportunidades laborales es el lado opuesto de la protección de los derechos de los trabajadores y la mejora del bienestar de los trabajadores. Se espera que la Ley de Creación de Empleo pueda acomodar los intereses de inversionistas y trabajadores. El gobierno considera que la Ley de Creación de Empleo es un intento del gobierno de crear una vía intermedia para unir los dos intereses entre inversionistas y trabajadores para hacer crecer la economía nacional después de que se desplomó debido a la crisis mundial por la pandemia de COVID-19. Por lo tanto, es necesario investigar sobre la disposición de los Acuerdos de Trabajo de acuerdo con la Ley de Creación de Empleo. Para describir estos problemas se utilizó un método de investigación jurídico normativo con un tipo de investigación descriptivo. Los resultados del análisis fueron básicamente la diferencia en la disposición del contrato de trabajo, más precisamente en el contrato de trabajo por tiempo determinado, en la ley de creación de empleo, existe un período máximo de acumulación del término del contrato de trabajo, que es de 5 años y por un contrato de trabajo por un tiempo determinado, que se basa en la realización de un trabajo. Tiene un plazo hasta la finalización de la obra. También permite más de 5 años diferentes a la disposición anterior.

**Palabras clave:** Contrato de trabajo por tiempo determinado; Creación de empleo; Empleo; Ley ómnibus.

## 1. Introduction

The government has a huge desire in creating job opportunities as wide and evenly as possible throughout Indonesia in order to fulfil the right to a decent living through the convenience and protection of MSMEs, improving the investment ecosystem for ease of doing business, increase protection of workers' rights, facilitating investment, and accelerating national strategic projects. contained in Law Number 11 of 2020 concerning Job Creation. One of the focuses of Law Number 11 of 2020 concerning Job Creation is the expansion of access to employment opportunities and increasing protection of workers' welfare. Furthermore, the House of Representatives on November 2, 2020, stipulated Law Number 11 of 2020 concerning Job Creation or called the Omnibus Law, such as regulating employment. The Job Creation Act is an omnibus law. It means "One law that simultaneously revises several laws, even dozens of laws" including those that regulate workers and the protection of workers' rights.

The passage of legislation of Law Number 11 of 2020 concerning Job Creation will affect changes to regulations regarding employment considering that Law Number 11 of 2020 is about Job Creation. It aims to attract and facilitate investment, and grow employment. On the other hand, it is also expected to increase the protection of worker welfare. So far, the issue of increasing investment to attract investors to invest in Indonesia by creating job opportunities is the opposite side of protecting workers' rights and improving workers' welfare. It is expected that the Job copyright law can accommodate the interests of investors and workers. The government considers that the Job copyright law is an attempt by the government to create a middle way to unite the two interests between investors and workers in order to grow the national economy after it slumped due to the global crisis due to the COVID-19 pandemic.

Considering that one of the parts regulated by Law Number 11 of 2020 concerning Job Creation as an omnibus law or commonly referred to as the Job copyright law, including concerning employment. It will certainly change some of the provisions contained in Law Number 13 of 2003 concerning Employment or the so-called Labor Law. The Job copyright law carries the spirit of improving the protection of workers' rights. It has actually been rejected by several labour unions. One of the substances of the refusal is regarding the arrangement of a Specific Time Work Agreement which is considered to eliminate the opportunity to be appointed as a permanent employee<sup>1</sup>. The disappointment of the unions increased considering that the Ministry of Manpower was not involved in the drafting of the Employment Act on the Employment Cluster as stated by the Ministry of Manpower (Kemenaker) which explained that it did not compile an employment cluster in the Bill Employment Creation Act but only provided notes on crucial matters.

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<sup>1</sup> Santia, T. (2020). *Penolakan buruh soal uu cipta kerja yang sudah ditandatangani jokowi*.

This is very interesting to study because there are new provisions in the employment agreement arrangement in the job copyright law that are different from those in the labour law. Looking at the explanation of the background, the central issue to be studied and researched in this article is how to regulate work agreements and calculate compensation for termination of employment according to the job copyright law.

## 2. Methodology

In this research, the author used legal research with a normative juridical approach with a descriptive approach. Specifically, legal research is a rediscovery carried out carefully from legal materials or legal data that aims to solve legal problems. Peter Mahmud Mardzuki explained that legal research is a process carried out to find the rule of law, legal principles or legal doctrine which aims to answer legal issues encountered.<sup>2</sup> This research seeks to explain the regulation of employment relations through the approach of law no. 11 of 2020 concerning job creation (Omnibus law) and law number 13 of 2003 concerning Manpower.

## 3. Results and Discussion

The form of working relationship carried out between the employer and the worker is through a work agreement. It will generate a legal relationship between the worker and the entrepreneur. Lalu Husni stated, “the employment relationship as a form can be proven or commonly referred to as an engagement”. The employment relationship is something abstract in nature, while the work agreement is something concrete or real. Thus, with the existence of a work agreement, there will be a concrete and tangible bond between the worker and the entrepreneur. In other words, the bond due to the existence of this work agreement is an employment relationship<sup>3</sup>.

Specifically, the definition of a work agreement is regulated in Article 1338

Civil Code below<sup>4</sup> :

- Employment agreements are legally made by the parties involved in the agreement which aim as law for those who are bound by the agreement. The agreement that has been made can't be withdrawn unless there is an agreement from both parties who bind the agreement for certain reasons.
- Employment agreements can also be made based on a certain period. The work agreement stipulates the terms, rights and obligations in general as well as special provisions for the two parties carrying out the agreement.
- A work agreement also contains that the first party (worker/labour) binds themselves to work with the second party (employer/company) for a period that has been mutually agreed upon and is entitled to receive wages/salaries.

Furthermore, there are several elements of the work agreement, as follows<sup>5</sup>:

### 1. There is an element of work

In an employment agreement, there must be work that is agreed upon (the object of the agreement). The work must be carried out by the worker, only with the permission of the employer can order someone else. This can be explained in the Civil Code Article 1603a which reads:

“Workers are obliged to do their own work; only with the employer's permission can he order a third person to take his place.”

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<sup>2</sup> Diantha, (2017) *Metodelogi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Jakarta: Kencana, hlm. 02

<sup>3</sup> Diantha, (2017) *Metodelogi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Jakarta: Kencana, hlm 02

<sup>4</sup> Dewa Gede Giri Santosa, (2021) *Perjanjian Kerja Waktu Tertentu Paska Undang-Undang Cipta Kerja: Implementasi dan Permasalahannya*, *Jurnal Ilmu Hukum Volume 17 Nomor 2*, Agustus

<sup>5</sup> Pitoyo. (2020) *Panduan Praktis Hukum Ketenagakerjaan*, Jakarta: Transmedia Pustaka. hlm. 29

2. There is an element of command

The manifestation of the work given to workers by the employer is that the worker concerned must comply with the employer's orders to do the work following the agreement.

3. There is a wage

Wages play an important role in the employment relationship (employment agreement), it can even be said that the main purpose of a worker working for an entrepreneur is to earn a wage. Thus, if there is no element of wages, then a relationship is not an employment relationship<sup>6</sup>.

Based on the description above, a work agreement is a legal relationship made between two or more parties based on an agreement which can eventually lead to legal consequences. The purpose of this statement is that both parties agree to follow the applicable regulations or rules to obtain binding rights and obligations that must be adhered to which including the elements of work, employer orders, wages, and time for completion of work. There is an agreement between the two parties to create a legal relationship. They have legal consequences, if the agreement is violated, it will result in sanctions for those who violate it<sup>7</sup>. A work agreement can also be said as a means of establishing industrial relations through collective bargaining or agreement (the parties to conduct the agreement). The work agreement, contains the requirements to become a worker, working conditions that form the basis of the company or organization, trade unions in carrying out work, rights and obligations as well as industrial relations. The basis of the employment agreement usually contains the objectives, functions, principles, and legal basis for the employment relationship<sup>8</sup>.

Reviewing the concept of employment in Indonesia in the employment relationship between entrepreneurs and workers in the Manpower Act, there are two types of work agreements, namely a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT). PKWT is a work agreement between a worker/labourer and an entrepreneur to establish a working relationship for a certain time or a certain job, while PKWTT is a work agreement between a worker/labourer and an entrepreneur to establish a permanent working relationship.

Based on Article 56 of the Job copyright law, there are 2 types of it, namely an employment relationship based on a work agreement that can be made for a certain time (PKWT) and an employment relationship based on a work agreement for an indefinite period (PKWTT)<sup>9</sup>. Regarding the Employment Agreement for a certain period, the Job copyright law revised the provisions of the PKWT in Law No. 13 of 2003 through amendments, deletions, and additions to articles. However, the rules regarding contract employees are only explained in outline in Job copyright law No. 11 of 2020. The detailed provisions are in Government Regulation (PP) No. 35 of 2021 as the implementation rules of the Job copyright law<sup>10</sup>.

It is further explained in Article 56 paragraphs (2) and (3) of the Employment Creation Law that PKWT is a work agreement based on a period and completion of a job, all of which have been stated in the Employment Agreement. The period and completion of a job will be included in the employment agreement. Specific time work agreements are only for types of work that are once completed or temporary, work whose completion is not too long, seasonal work, work related to new products, new activities or additional products that are still under trial or exploration as well as other types of work not

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<sup>6</sup>Husni, (2010) *Pengantar Hukum Ketenagakerjaan Indonesia Edisi Revisi*, Jakarta: PT. Raja Grafindo Persada. hlm. 67.

<sup>7</sup>Setyawan, (2013) *Perlindungan Hukum Atas Perjanjian Jual Beli Melalui Internet*. E-Journal Grogia Yuris, Volume 01 Nomor 03.

<sup>8</sup>Santoso. (2012) *Hukum Ketenagakerjaan Perjanjian Kerja Bersama: Teori Cara Pembuatan dan Kasus*. Malang: UB Press, hlm 5.

<sup>9</sup>Isdian Anggraeny, (2021) *Keabsahan Perjanjian Kerja Waktu Tertentu Dengan Konsep Remote Working Dalam Perspektif Undang-Undang Cipta Kerja*, Jurnal Hukum dan Kenotariatan, Volume 5 Nomor 1, Februari.

<sup>10</sup>Erlangga Bagus Setiyawan dkk, (2021) *Perbandingan Undang-Undang Cipta Kerja Klaster Ketenagakerjaan Dengan Undang-Undang No. 13 tahun 2003 Tentang Ketenagakerjaan Mengenai Status Perjanjian Kerja Waktu Tertentu*, Jurnal Veritas Volume 7 Nomor 2 Tahun

permanent. PKWT are generally known as contract employees while PKWTT is known as permanent employees. The basic difference between PKWT and PKWTT is related to the time of completion of work and the type of work.

Based on Article 59 of Law Number 11 of 2020 concerning Job Creation (employment clusters), PKTW must meet the requirements, as follow:

- PKTW must be made in writing using Indonesian
- PKTW is made in Indonesian and foreign languages. If there is a different interpretation, the Indonesian language will be used.
- Probation is not allowed, and if it is submitted in the terms of the work agreement, then the work agreement is void.

Furthermore, Article 61A of Law Number 11 of 2020 concerning Job Creation (employment clusters) states that if the PKWT ends based on a predetermined period and work agreement, then the company or entrepreneur is obliged to provide money or compensation to the worker/labour.

In a Specific Time Work Agreement, the end of the employment relationship occurs at a certain agreed period or the completion of the agreed work. According to the Job Creation Act, its derivative regulations are regulated in Government Regulation no. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. In the government regulation, the arrangement regarding the period in a work agreement for a certain time is distinguished based on :

a. Specific Time Employment Agreement based on Term

A specific time work agreement based on a period consisting of work is estimated to be completed in a not too long time, seasonal work, or work related to new products, new activities, or additional products that are still under trial or exploration, can be carried out for maximum 5 (five) years.

b. Specific Time Work Agreement based on the completion of a certain job

For a work agreement for a specific time based on the completion of a certain job, which consists of work that is once completed and temporary work, it can be carried out for a period of time-based on the agreement of the parties.

c. Specific Time Work Agreements for certain other jobs whose types and nature or activities are not permanent.

Specific time work agreements for certain other jobs whose types and nature or activities are not permanent. It can be made with daily work agreements with a maximum period of not exceeding 3 (three) consecutive months.

Based on the information above, it can be seen that the fundamental difference regarding the term of the work agreement in the Job Creation Act is 5 years. This is certainly different from the provisions in the Labour Law, Article 59 paragraph 1, which states that the work is estimated to be completed in a not too long time and a maximum of 3 (three) years. Furthermore, Article 59 paragraph 4 explains that PKWT is held for a maximum of two years and may only be extended once for a maximum of one year. PKWT can be renewed but is held after exceeding the grace period of 30 (thirty) days after the expiration of a certain old work agreement and renewal of a certain time work agreement may only be made 1 (one) time and a maximum of 2 (two) years. While in Government Regulation no. 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations, it can be seen that the regulation regarding the maximum period of PKWT is based on the period as referred to in Article 8 paragraphs 1 and 2 of PP Number 35 of 2021, the limit is maximum of 5 years and includes the extension. However, if the PKWT is made based on the completion of a certain job, then the PKWT period can be extended to a certain time limit until the completion of the work as stated in Article 9 paragraph 4 PP Number 35 of 2021. This confirms that the regulation of the period in the current PKWT that applies

is maximum accumulation terms of 5 years. In practice, the employer can employ workers with any contract duration as long as it does not exceed the accumulation of 5 years or if the PKWT is based on the completion of a job. Furthermore, the accumulated term of the work contract can exceed the 5 years stipulation if the work given has a completion period of more than 5 years. year. A Specific Time Work Agreement must be stated in a written agreement using Indonesian and Latin letters as stated in Article 81 number 13 of the Job copyright law which amends Article 57 paragraph (1) of the Manpower Act. Normatively, a written work agreement guarantees the certainty of the rights and obligations of the parties, so that if a dispute occurs, it will greatly assist the evidentiary process<sup>11</sup>.

Different arrangements regarding Work Agreements of Indefinite Time do not have to be made in writing or can be made only orally. In addition, the PKWTT may also require a maximum probationary period of 3 months and these requirements must be included in the work agreement or notified to the worker concerned and included in the letter of appointment if the work agreement is made orally. If it is not stated in the work agreement or the letter of appointment, then the provisions for the probationary period are considered non-existent and the work period is calculated from the beginning of the probationary period<sup>12</sup>. Although PKWTT is not allowed in writing. However, PKWTT is an agreement that has legal consequences if one of the parties violates it. Any violation of PKWT or PKWTT which is an engagement is an act of default. In this case, it means that something that must be carried out following the contents of the agreement is not carried out in full or is not carried out at all<sup>13</sup>.

However, what needs to be taken into account is that if the Specific Time Work Agreement conflicts with the elements of a certain time work agreement, then legally it can be appointed as Permanent Workers or PKWTT including if the PKWT is not made in writing or employs workers with PKWT but carries out work that is permanent and not following certain jobs which according to the type and nature of activities of the work will be completed within a certain time as in Article 81 point 15 of the Copyright Law and Article 81 number 12 of the Job copyright law in conjunction with Article 4 PP 35/2021.

#### 4. Conclusion

The form of work agreement is divided into 2, namely a Specific Time Work Agreement (PKWT) for work that is temporary or has a certain period or is based on the completion of a job. If the PKWT is based on a certain period. The work agreement can be made with a maximum accumulated working period of 5 years. While the PKWT is based on the completion of the work, the maximum period is the completion of the agreed project or work so that it is possibly more than 5 years. This indicates that the Specific Time Work Agreement in the Employment Creation Law provides employers with the flexibility to grant employment contracts to workers for a longer period than the previous Manpower Law. While the Indefinite Time Work Agreement does not have specific differences from the previous arrangement

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<sup>11</sup>Suratman. (2019). *Pengantar Hukum Ketenagakerjaan Indonesia*. Jakarta, Radja Grafindo Persada. hlm. 64.

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