



Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law

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Abstract

Workers perceive that several new provisions regarding Fixed-Term Employment Agreements are detrimental to their rights. According to research findings, an agreement is considered valid if it meets the provisions stipulated in Article 1320 of the Civil Code. The requirements for a valid agreement are regulated in Article 1320 of the Civil Code. Article 1 Paragraph (14) of Law Number 13 of 2003 concerning employment, an employment agreement is: "An agreement between workers/laborers and employers or employers containing work conditions, rights and obligations of the parties." Employment agreements are divided into Fixed-Term Employment agreements and permanent employment agreements. The provisions regarding employment agreements made in writing have been regulated in Article 54, paragraph 1 of Law Number 13 of 2003 on Manpower. The provisions, nature, and type of work for a fixed-term employment agreement can be seen in Article 59. Changes in the duration of Fixed-Term Employment Agreements are regulated in Article 59, Paragraph (4) of the Manpower Law, which states that a Fixed-Term Employment Agreement can be made for a maximum period of two years and may be extended only once for a maximum period of one year. This means that if an employer applies a renewal system, the maximum duration for a Fixed-Term Employment Agreement is four years. However, in Article 81, Number 12 of the Job Creation Law, which amends Article 56 of the Manpower Law, Paragraph (3) stipulates that the employment contract determines the duration of a Fixed-Term Employment Agreement. Article 59 of the Job Creation Law eliminates the specific duration requirement for Fixed-Term Employment Agreements.

Keywords: legal protection, workers, Fixed-term employment agreement

I. Introduction

Labour law regulates the employment relationship between workers and employers, or in other words, regulates the interests between individuals or between individuals and legal entities. The employment relationship contains the rights and obligations of workers and employers, where these rights and obligations are reciprocal. These rights and obligations are not only regulated in laws and regulations. Still, they are also made based on an agreement between

workers and employers, which is then stated in the form of an employment agreement so that the employment relationship cannot be separated from the employment agreement made by workers and employers.¹

The objectives of labour law include achieving social justice in employment and protecting workers from the unlimited power of employers.² Labour law governs the employment relationship, which means it regulates personal interests. Consequently, labour law is considered private law. However, in certain matters, government intervention remains necessary. Labour law is characterized by two principles: imperative and facultative.³

Germany introduced the concept of works councils, which later spread across Europe in the 20th century. Germany had already developed insurance and social security schemes by the late 19th century, which expanded throughout Europe in the early 20th century. Additionally, international agreements were created to prevent unfair competition among countries, which could have adverse effects.⁴

In 1974, the term “labourer” was recommended to be replaced with “worker” during the Pancasila Labour Relations Seminar. The term “labourer” was considered inappropriate, as it was often associated with lower-class workers. From a Marxist perspective, labourers were seen as a class that could challenge employers in a struggle for rights. Thus, the term “labourer” was perceived negatively, as it did not encourage cooperation, mutual assistance, or a familial atmosphere. Consequently, a replacement term was deemed necessary. Since the 1945 Constitution, in Article 2 of its explanatory section, refers to worker organizations such as cooperatives and trade unions, the term “worker” was agreed upon as a suitable alternative.⁵

The establishment of trade unions must adhere to Pancasila as the national ideology and the 1945 Constitution as the fundamental law regulating trade unions. The purpose of trade unions, federations, and confederations is to provide protection, advocate for rights and interests, and improve the welfare of workers and their families.⁶

An employment agreement that begins an employment relationship can be classified based on time. An agreement that is made temporarily can be called an employment agreement for a certain period of time. At the same time, an agreement made permanently is called an employment agreement for an indefinite period or is made permanently. A Fixed-Term Employment Agreement is an agreement made by a worker with an employer when the parties have agreed to do certain work in an employment relationship with a short period of work. Meanwhile, a Permanent Employment Agreement) is made by a worker with an employer when the parties have agreed to work in an employment relationship for a period of work that continues continuously and remains.⁷

At the beginning of a worker working in a company, there will usually be an introduction phase for prospective workers/laborers to adapt to the system that has been in effect in the company. Usually, in addition to those that apply to general rules, each company has its policies that have been socialized from the start with each prospective worker/laborer. This is based on the applicable law, which states that several divisions of work system categories can employ each prospective worker/laborer. Adjusted to the needs and types of work available in the company, the recruitment method for prospective workers can also vary; for example, recruitment of workers can be as a Casual Daily Laborer, Outsourcing, Fixed-Term Employment Agreement, or after a trial directly becomes a Permanent Employment Agreement. Currently, in its development in the welfare of the Indonesian economy, it is entering a demographic bonus period of

¹ Suhartoyo, “Perlindungan Hukum Bagi Buruh Dalam Sistem Hukum Ketenagakerjaan Nasional,” *Administrative Law & Governance Journal* 2, no. 2 (2019): 326.

² Sendjun Manulang, *Pokok-Pokok Hukum Ketenagakerjaan* (Jakarta: Rineka Cipta, 1995).

³ Abdul Rachmad Budiono, *Hukum Perburuhan Di Indonesia* (Jakarta: Rajawali Pers, 1995).

⁴ Joni Bambang, *Hukum Ketenagakerjaan* (Bandung: Pustaka Setia, 2013).

⁵ Hartono Widodo, *Segi Hukum Penyelesaian Perselisihan Perburuhan* (Jakarta: Rajawali Pers, 1992).

⁶ Zaeni Asyhadie, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja* (Jakarta: Raja Grafindo Persada, 2007).

⁷ Ony Rosifany, “Perlindungan Hukum Terhadap Pekerja Perempuan Menurut Ketentuan Undang-Undang Ketenagakerjaan,” *LEGALITAS: Jurnal Ilmiah Ilmu Hukum* 4, no. 2 (2020): 36.

productive working age in the next few years. This situation requires strengthening the applicable regulations with the current employment system so that the synergy between company production can be in line with the welfare of workers due to the professionalism of workers and the rules that govern it. Based on Article 52 of the Manpower Law, the Fixed-Term Employment Agreement and Permanent Employment Agreement must contain elements of an agreement based on the provisions of Article 1320 of the Civil Code. The employment agreement must regulate the parties involved, who must be competent in terms of age and not in a state of forgiveness, and the parties must both agree to bind themselves to the agreement without coercion, threats, or mistakes.

Then, an agreement must contain a lawful object that does not conflict with the law or public order. When the employment agreement refers to these provisions, a legal employment relationship will be created between workers and employers that can be accounted for by both parties. In the practice of employment relations, it is also important to apply the principles of employment development, namely the principles of democracy, justice, and equity, which are basically in line with the goals aspired to by the principles of national development. With the change in regulations regarding the Fixed-Term Employment Agreement, which can be found in Chapter IV concerning employment in the Job Creation Law, there has been a lot of rejection from the community, especially from workers. Workers consider that several new provisions regarding Fixed-Term Employment Agreement are detrimental to workers' rights, such as the absence of Fixed-Term Employment Agreement policies that must be made in writing and the absence of sanctions against perpetrators who violate them. These provisions will certainly impact employers' arbitrariness towards workers' rights because there is no physical evidence that regulates all the provisions agreed upon in the work agreement, and there are no legal consequences that make perpetrators reluctant or deterred from repeating it again. This will impact legal uncertainty in employment relationships and during a project or work period. Workers also do not have the opportunity and have a long time to find new jobs after the Fixed-Term Employment Agreement period ends. Of course, the losses experienced by workers can occur because there are no regulations that regulate them, and employers are required to notify the extension and renewal period when the Fixed-Term Employment Agreement contract is about to end.

II. Research Problems

Based on the background description above, the problem formulations to be discussed in this article are: how are the arrangements in the Articles of the Job Creation Law that have the potential to provide legal loopholes for employers to unilaterally and indefinitely extend the contracts of Specified Time Work Agreements. How the potential to harm workers who are bound by a Fixed-Term Employment Agreement and widen the gap between employers and workers in terms of legal protection and workers' welfare.

III. Research Methods

Normative legal research also refers to legal rules. Research data is from legal materials used through legal material searches or literature studies of primary, secondary, and tertiary legal materials. Legal materials are analyzed using qualitative methods to explain legal events, materials, or products in detail to facilitate legal interpretation. In qualitative research, the process of obtaining data in accordance with the research objectives or problems is studied in depth and with a holistic approach.

IV. Result And Discussion

The right to work in Indonesia is based on Article 28D (2) of the 1945 Constitution, which states that every individual has the right to work and receive fair and decent treatment in employment. The right to work is further elaborated in Articles 7 to 15 of Law No. 11 of 2005 concerning ratifying the International Covenant on Economic, Social, and Cultural Rights (LN

2005 No. 119 TLN No. 4557). These rights include fair and favorable working conditions, the right to form and join trade unions, social security and insurance, protection, and assistance for families, the right to an adequate standard of living, the right to the highest attainable physical and mental health standards, and the right to education and cultural participation.⁸

Every legal system, especially in Indonesia, has different legal subjects and objects. Legal subjects are often associated with the parties contained in the legal system. Here are some of the parties in employment law:⁹

- a. Worker/laborer: Individuals working in exchange for wages or other compensation.
- b. Employers: Individuals, partnerships, or legal entities operating a business independently or on behalf of another, including those representing companies based outside Indonesia.
- c. Trade unions: Organisations formed by and for workers, both within and outside companies, as regulated by Law No. 21 of 2000.
- d. Employer organizations: Associations established to unify and represent Indonesian employers.
- e. The government: The central government, represented by the President, Vice President, and relevant ministers as stipulated in the 1945 Constitution.

An employment agreement is essentially an agreement in the field of work. Therefore, if we are going to discuss an employment agreement, it is necessary to know the meaning of an agreement. An agreement is an act by which one or more people bind themselves to one or more other people. From the definition of the agreement, it is clear that the positions of the parties who agree are equal and balanced. Meanwhile, an employment agreement is an agreement between workers/laborers and employers verbally and/or in writing, either for a certain period or indefinite period, which contains the terms of employment, rights, and obligations of the parties.¹⁰

An employment agreement is a form of agreement to carry out work as referred to in Article 1601 of the Civil Code. Apart from an employment agreement, other forms of agreements that are also agreements to carry out work (*de overeenkomsten tot het verrichten van arbeid*), namely an agreement for the provision of certain services/work (*de overeenkomst tot het verrichten vandiendiensten*), and a work contract for contracting work (*de overeenkomst tot het aanemen van werk*). The employment agreement that will be determined by the worker/laborer with the employer/entrepreneur must not conflict with the Labor Agreement that has been made by the employer/entrepreneur with the Labor Union in the company. Likewise, the employment agreement must not conflict with the Company Regulations made by the entrepreneur.¹¹

According to Subekti, a work agreement is An agreement between a "worker" and an "employer", which agreement is characterized by the characteristics of a certain wage or salary that is agreed upon and a relationship between parties, which in Dutch is called *dienstverhouding*, namely one based on which one party (the employer) has the right to give orders that the other party must obey. A work contract agreement is an agreement between a person (the party contracting out the work) and another person (the party contracting out the work), where the first party wants a work result that is agreed upon by the other party for the payment of a certain amount as the contract price.¹²

The practice occurs, even though the type of work is permanent, the existing Fixed-Term Employment Agreement has never been upgraded to a Permanent Employment Agreement as regulated in Article 15 paragraph (2) of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 100/MEN/VI/2004 concerning

⁸ Rachmad Abduh, "Perspektif Kesejahteraan Tenaga Kerja Dengan Model Penetapan Upah Minimum Kabupaten Kota," *IURIS STUDIA: Jurnal Kajian Hukum* 3, no. 1 (2022): 38.

⁹ Toman Sony Tambunan, *Hukum Bisnis* (Jakarta: Prenada Media, 2020).

¹⁰ Koesparmono Irsan and Armansyah, *Hukum Tenaga Kerja "Suatu Pengantar"* (Jakarta: Erlangga, 2016).

¹¹ Lalu Husni and Zainal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: Rajawali Pers, 2004).

¹² R. Subekti, *Aneka Perjanjian* (Bandung: PT. Citra Aditya Bakti, 1995).

Provisions for the Implementation of a Fixed Term Employment Agreement which states that "If the Fixed-Term Employment Agreement is made not fulfilling the provisions as referred to in Article 4 paragraph (2), or Article 5 paragraph (2), then the Fixed-Term Employment Agreement changes to Permanent Employment Agreement since the employment relationship exists". Companies tend to use workers with outsourcing status to avoid changes in status from Fixed-Term Employment Agreement to Permanent Employment Agreement. Legal protection for Fixed-Term Employment Agreement workers is very important to protect workers' rights.¹³

Legally, in providing protection, every worker has the right to have the same opportunity to obtain decent work and livelihood without distinguishing between gender, race, ethnicity, or religion and including equal treatment for people with disabilities. As for special protection for workers/laborers, especially with the status of a Fixed-Term Employment Agreement in terms of labor protection, Law No. 13 of 2003 concerning Manpower is expected to provide labor protection seen from 3 aspects, namely: social protection aspects, economic protection aspects, and technical protection aspects. Legal protection aims to provide certainty of workers' rights and recognition of workers' rights in the form of workers' positions in the case of contract workers whose work period is not in accordance with the provisions of the law. In this case, contract workers also have the right to obtain certainty of their position for the welfare of their continued life as permanent workers. As for special protection for workers/laborers, especially with the status of a Fixed-Term Employment Agreement in terms of labor protection, Law No. 13 of 2003 concerning Manpower is expected to provide labor protection seen from 3 aspects, namely: social protection aspects, economic protection aspects, and technical protection aspects.¹⁴

The legal status of Fixed-Term Employment Agreement workers whose implementation of Fixed-Term Employment Agreement is contrary to the regulations, namely Article 59 of Law No. 13 of 2003 on Manpower, by law changes to Permanent Employment Agreement. In addition to Article 59 of the Manpower Law, the Decree of the Minister of Manpower No. KEP.100/MEN/VI/2004 concerning the provisions for implementing a fixed-term work agreement as stated in Article 15, paragraph 2 and paragraph 4. Based on the explanation of Article 59 paragraph (7) of the Manpower Law and Decree of the Minister of Manpower No. KEP.100/MEN/VI/2004 Article 15 paragraph (2), the legal status of workers bound by Fixed-Term Employment Agreement is contrary to the law of Permanent Employment Agreement (permanent workers). If the worker is laid off, he is entitled to severance pay, replacement money, and work reward money according to the length of service. This has been regulated in Article 156 paragraph (1) of Law No. 13 of 2003 concerning Manpower, which states: "In the event of termination of employment, the employer is required to pay severance pay and/or service award money and compensation for rights that should be received" Based on the explanation regarding the analysis of the judge's considerations above regarding Fixed-Term Employment Agreement changing to Permanent Employment Agreement which is a change in the legal status of workers. The researcher analyzes based on the theory of legal protection and contract law. The judge provides legal protection for workers in the form of protection for the transition from Fixed-Term Employment Agreement status to Permanent Employment Agreement even though it has been regulated in the Law concerning the transition by law. Still, the transition status is a worker's right: the welfare of workers and their families.¹⁵

The specific time period for this Fixed-Term Employment Agreement is regulated in Article 59, paragraph 4 of Law Number 13 of 2003 concerning Manpower, namely for a maximum of 2 years. It may be extended 1 time for a maximum of 1 year. Regarding certain jobs here, employers may only employ contract employees based on four types and nature of work, namely, work that is completed once or is temporary, work that is estimated to be completed within a maximum of three years, seasonal work, and work related to new products, new

¹³ Ronald Dworkin, *Penelitian Hukum* (Jakarta: Fakultas Hukum Universitas Trisakti, 1973).

¹⁴ HR.Ridwan, *Hukum Administrasi Negara* (Bandung: Raja Grafindo Persada, 2006).

¹⁵ Ahmad Jaya Kusuma, "Kedudukan Hukum Pekerja Pkwt Yang Tidak Sesuai Dengan Ketentuan Undang-Undang Ketenagakerjaan," *Jurnal NOTARIUS* 13, no. 1 (2020): 76.

activities, or additional products that are still experimental or exploratory.¹⁶

So that when workers are laid off, they are entitled to rights after the end of the employment relationship. Regarding the employment agreement, seen from the theory of contract law, the agreement implemented by the defendant and the plaintiff meets the requirements of the principle of binding force (*pacta sunt servanda*) and the requirements for the agreement's validity. The principle of binding force is a binding rule after there is an agreement and the requirements for the validity of the employment agreement are met. However, in the implementation of Fixed-Term Employment Agreement it is contrary to statutory regulations. The deviation from the implementation of the employment agreement is in the form of the type and nature of work and the absence of an extension and renewal of work. Although there is an agreement in a written and binding agreement in Fixed-Term Employment Agreement, if the employment agreement in its implementation is violated or does not comply with statutory regulations, the agreement is null and void.

Based on the provisions of the Manpower Law, there is legal protection for employees who work in companies with the Fixed-Term Employment Agreement system. The protection provided to contract employees aims to protect the rights of employees and free them from all forms of discrimination in order to create the welfare of the employees and their families.

The process of implementing Fixed-Term Employment Agreement is one of the obstacles in implementing work agreements, this is due to the non-enforcement of all provisions stipulated in the Laws and Regulations. The purpose of establishing the Manpower Law is to empower and use the workforce optimally and humanely, realize equal employment opportunities and the provision of workers in accordance with national and regional development needs, provide protection to workers in realizing welfare, and improve the welfare of workers and their families.

In its implementation, some companies still apply a contract system (Fixed-Term Employment Agreement) to their new employees. When viewed from the perspective of the Manpower Law, in the provisions of Article 57 paragraphs (1) and (2) must be made in writing. This provision is intended to further guarantee or protect against unwanted things in connection with the end of the work contract. Normatively, the written form guarantees the certainty of the rights and obligations of the parties, so that if a dispute occurs it will be very helpful in the proof process.¹⁷

The law provisions of Article 62 of Law No. 13 of 2003 concerning Manpower which was last updated by Law No. 11 of 2020 concerning Job Creation ("Law No. 13/2003") in conjunction with Article 15 and Article 16 paragraph (1) of Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreement Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours and Termination of Employment ("PP No. 35 of 2021") clearly states that workers who are terminated from their employment must receive their rights as regulated in the legislation.

According to the author, legal protection for the rights of workers who are laid off is the provision of compensation. The compensation given should be in accordance with the length of service of the worker/laborer and the reasons for the layoff, compensation consists of severance pay, length of service award money and replacement money for rights. In Law Number 13 of 2003 concerning Manpower, the amount of severance pay and length of service award money is greater, while in Law Number 11 of 2020 concerning Job Creation and PP Number 35 of 2021, the amount of severance pay and length of service award money is reduced based on the reasons for the layoff. In addition, the obligation of employers to replace housing, medical, and treatment is set at 15% of severance pay, and/or length of service award money is also abolished in the Job Creation Law. Several articles in PP Number 35 of 2021 eliminate the provision of severance pay and service award money such as Article 49, Article 50, Article 51, Article 52

¹⁶ Rizqa Maulinda, "Perlindungan Hukum Bagi Pekerja Kontrak Waktu Tertentu Dalam Perjanjian Kerja Pada PT. Indo Truck Utama," *Kanun Jurnal Ilmu Hukum* 18, no. 3 (2016): 5.

¹⁷ Gunanto Suhardi, *Peranan Hukum Dalam Pembangunan Ekonomi* (Yogyakarta: Universitas Atmaja, 2002).

Paragraph (2), and Article 54 Paragraph (1) and Article 54 Paragraph (2) only get service award money. Changes to the provisions related to layoffs in Law Number 11 of 2020 concerning Job Creation show that the Law makes it much easier to lay off employees than Law Number 13 of 2003 concerning Manpower.

If returned to the context of the substance of Law Number 13 of 2003 concerning Manpower, matters concerning efficiency or economic conditions are not prohibitions or reasons for termination of employment. This type of prohibition on termination of employment is only a prohibition for reasons of health, obligations as citizens, religion, marriage, reproduction, freedom of association, race, gender and politics. When viewed from the utilization aspect, efficiency can only be used as a reason for dismissal, namely if the company's efficiency is carried out by closing the company.

The Employment Law provides regulations regarding extending and renewing fixed-term employment agreements. Extensions can be made a maximum of once for a maximum of one year, while renewals can be made a maximum of once for two years. However, agreements can only be renewed after a grace period of thirty days has passed since the end of the old fixed-term employment agreement. Meanwhile, in the Job Creation Law, which is then regulated in more detail in PP No. 35 of 2021, the provisions regarding extending fixed-term employment agreements differ depending on the type of fixed-term employment agreement used. For fixed-term employment agreements based on the time period, extensions can be made several times with an unlimited number. Still, the maximum time between the start of the fixed-term employment agreement and all extensions must not exceed 5 (five) years. For fixed-term employment agreements based on the completion of a certain job, extensions can be made until the job is completed, but the maximum time is not determined. Then, for fixed-term employment agreements for other certain jobs whose types and nature or activities are not permanent, there are no regulations regarding extensions because they use a daily work agreement model. A fixed-term employment agreement must be based on a certain period or completion of a certain job and cannot be made for permanent work. The Employment Law provides regulations on fixed-term employment agreements to provide employers with a choice, a form of employment agreement that can be applied to work that is limited in time, so that employers do not have to hire permanent workers for work that is limited in time for completion..

Before the enactment of the Job Creation Law, the Manpower Law had regulated that fixed-term employment agreements must be made in writing and use Indonesian and Latin letters. The purpose of a fixed-term employment agreement must be made in writing to provide legal certainty for the parties, including certainty regarding the rights and obligations of workers and employers. This is also intended so that if a dispute occurs in the future, the written employment agreement can be used to assist in the evidence process. However, in its implementation, it is not uncommon to find fixed-term employment agreements that are made without a written agreement, employment agreements are made verbally only on the basis of trust. One of the factors that causes this is the inability of human resources or due to customary factors. This is certainly very risky, considering that based on Article 57 paragraph (2) of the Manpower Law, a fixed-term employment agreement that is not made in writing is legally declared a Permanent Employment Agreement. This means that the agreement is not limited to a time limit for completion, and at the time of termination of employment, the employer has an obligation to pay compensation in the form of severance pay, length of service awards, or other rights related to work based on an Permanent Employment Agreement

A fixed-term employment agreement based on the Employment Law has special requirements, especially regarding the term of the agreement and the type of work agreed upon. The term of a fixed-term employment agreement can only be made for a maximum of two years, can only be extended once for a maximum of one year, or can be renewed a maximum of once for a maximum of two years. As for the type of work itself, not all work can be used as the object of a fixed-term employment agreement, but only certain jobs, namely: work that is completed once or is temporary, work whose completion is estimated to be completed within a maximum of three years, seasonal work, and work related to new products, new activities, or additional

products that are still in the trial or exploration stage. However, in its implementation, it is not uncommon for fixed-term employment agreements to be made for permanent work and the implementation time of the work exceeds the specified time limit.

A fixed-term employment agreement can be extended or renewed when the employment agreement is completed. However, an extension of the employment agreement can only be done once with a maximum period of one year, in addition, if an extension is to be made, no later than seven days before the employment agreement ends, the employer is required to provide written notification to the worker concerned. Meanwhile, suppose the employer wants to renew the fixed-term employment agreement. In that case, the renewal can only be done after exceeding a grace period of thirty days after the end of the old fixed-term employment agreement, and the renewal can only be done once with a maximum period of two years. Suppose the worker and the employer agree upon the extension of the agreement. In that case, this is not a problem, but if the extension of the agreement is done secretly, such as the employment relationship is considered to be held again for a maximum period of one year with the same conditions, then this becomes a problem. The extension of the agreement requires written notification no later than seven days before the end of the old employment agreement, while for the renewal of the employment agreement there must be a grace period of thirty days after the end of the employment agreement. Failure to fulfill these requirements makes the employment agreement legally a Permanent Employment Agreement. In practice, it is also not uncommon to find that in cases where a fixed-term employment agreement is renewed, workers are never dismissed for thirty days after the employment agreement ends.¹⁸

The above problems were encountered in the implementation or level of practice related to fixed-term employment agreements before the Job Creation Law was enacted. After the Job Creation Law was enacted, the compensation problem at the end of the employment relationship was answered by adding Article 61A. This article stipulates that when a fixed-term employment agreement ends, the employer must compensate workers in an amount adjusted to the length of service of the worker concerned. Furthermore, PP No. 35 of 2021 stipulates that compensation is given to workers who have worked for at least 1 (one) month. With the provision that a fixed-term employment agreement for 12 (twelve) months is continuously given compensation of 1 (one) month's wages, where if the fixed-term employment agreement is implemented for less than or more than 12 (twelve) months, compensation is given proportionally. However, the Job Creation Law does not answer the problem related to the problem of employment agreements that are not made in writing, violations of the terms of the fixed-term employment agreement, and extensions and renewals of fixed-term employment agreements that are not carried out in accordance with the provisions of the Manpower Law. So after the enactment of the Job Creation Law, several new problems related to fixed-term employment agreements deserve attention.

Since it was first drafted, the Job Creation Law has received criticism from various academics because it is considered detrimental to workers. The regulation was designed to protect the rights of workers. This can be seen in Article 56 of the Job Creation Law which changes the contract period of the Fixed-Term Employment Agreement to 5 (five) years from the previous 3 (three) years, as well as Article 59 of the Job Creation Law which eliminates the Fixed-Term Employment Agreement term rules. These changes can potentially invite problems, including opportunities for non-permanent employees to become permanent employees and the risk of arbitrary actions by the company. Moreover, based on Article 28D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that everyone has the right to work and receive fair and proper compensation and treatment in employment relationships. This provision implies that every Indonesian citizen has the right to optimal working conditions.

In answering this problem, we will refer to the legal provisions contained in Article 28D

¹⁸ Fithriatus Shalihah, "Implementasi Perjanjian Kerja Waktu Tertentu (PKWT) Dalam Hubungan Kerja Di Indonesia," *Jurnal Selat* 4, no. 1 (2016): 45.

paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), as well as Article 56 and Article 59 of Law Number 11 of 2020 concerning Job Creation (Job Creation Law) which should guarantee equal employment opportunities and treatment without discrimination on any basis to realize the welfare of workers in Indonesia. In addition, we also refer to the provisions of Law Number 13 of 2003 concerning Manpower (Manpower Law), Article 61A of Law Number 6 of 2023 (Job Creation Law 2023), Article 8 of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Termination of Employment, and Article 1 paragraph (1) of the Decree of the Minister of Manpower and Transmigration Number KEP-100/MEN/VI/2004 of 2004 concerning Provisions for the Implementation of Fixed-Term Employment Agreements.

The Job Creation Law basically carries the spirit of flexibility for workers. Unfortunately, the promise of workforce flexibility is merely a pleasure for employers without adequate worker protection. This further worsens the position and condition of workers who continue to be juxtaposed with the rapid development of technology, which also automates business production activities and policies that allow workers to be hired and dismissed easily. As the state guarantees the rights of citizens in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the right to work is seen as a fundamental need, but having a "job" alone is not enough. In the government's opinion, a person is categorized as a worker when he is bound by an employment relationship, regardless of whether it is permanent or not. This is what then gave rise to a market construction with Fixed-Term Employment Agreement and Permanent Employment Agreement which became an ongoing industrial relations issue in Indonesia..

The provisions regarding employment agreements themselves have been specifically regulated in the Employment Law, but along with the enactment of the Job Creation Law, several provisions in the Employment Law have changed. However, the rules regarding the requirements for the validity of an employment agreement have not changed, as stipulated in Article 52 of the Employment Law, which stipulates that an employment agreement must meet at least four bases, including agreement by both parties; the ability or capacity to carry out legal acts; the existence of the agreed work; and the agreed work does not conflict with public order, morality, and applicable laws and regulations. Failure to fulfill the requirements in points a and b can cause the employment agreement to be canceled, and failure to fulfill the requirements in points c and d can cause the employment agreement to be null and void by law.¹⁹

Referring to these provisions, the general requirements for a valid agreement as stipulated in Article 1320 of the Civil Code are similar to the requirements for a valid employment agreement as stipulated in Article 52 of the Employment Law, except that in the Employment Law, the object of the agreement has been determined more specifically, namely the existence of work. Employment agreements can be divided into fixed-term and permanent employment agreements in the Employment Law. The fundamental difference between a fixed-term employment agreement and an Permanent Employment Agreement lies in the time period, a fixed-term employment agreement is an agreement between a worker and an employer to establish an employment relationship for a certain period of time, while an Permanent Employment Agreement is an agreement between a worker and an employer to establish an employment relationship that is permanent.²⁰ In the Job Creation Law, the provisions that have undergone many changes are the provisions governing fixed-term employment agreements. Changes in regulations related to fixed-term employment agreements after the issuance of the Job Creation Law.²¹

Fixed-Term Employment Agreement and Permanent Employment Agreement require

¹⁹ Ivena A. K. Tapan, "Berakhimnya Perjanjian Kerja Antara Pekerja/Buruh Dengan Pengusaha Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Lex Privatum* 7, no. 2 (2019): 34.

²⁰ Ony Rosifany, "Perlindungan Hukum Terhadap Pekerja Perempuan Menurut Ketentuan Undang-Undang Ketenagakerjaan," *LEGALITAS: Jurnal Ilmiah Ilmu Hukum* 4, no. 2 (2020): 36.

²¹ Dewa Gede Giri Santosa, "Perjanjian Kerja Waktu Tertentu Pasca Undang-Undang Cipta Kerja: Implementasi Dan Permasalahannya," *DiH: Jurnal Ilmu Hukum* 17, no. 2 (2021): 34.

different treatments, where the more flexible employment relationship in Fixed-Term Employment Agreement often worsens exploitation and reduces labor productivity because employees feel insecure about the uncertainty of the end of their employment period. On the other hand, the Permanent Employment Agreement which offers greater stability with permanent employee status, reflects better protection for workers. The existence of differences in working hours must be accompanied by efforts to strengthen protection for workers. This is important because without sufficient protection, freedom of contract will only be a tool for employers to exploit workers. The reality in society is often faced with economic problems that make the opportunity to obtain employment a weak bargaining position. Therefore, the government has an obligation to provide certainty and guarantee of protection to workers, especially with the existence of a subordinate framework in employment. Article 1 paragraph (1) of the Decree of the Minister of Manpower and Transmigration Number KEP-100/MEN/VI/2004 of 2004 concerning Provisions for the Implementation of Fixed-Term Employment Agreements defines as an employment agreement between a business owner and workers in carrying out an employment relationship for a specific period or for certain responsibilities.

Employment agreements in the form of Fixed-Term Employment Agreement have been regulated in Indonesia for more than 2 (two) decades through the Manpower Law which was enacted in 2003. The a quo law emphasizes that a Fixed-Term Employment Agreement is based on a time period or the completion of a certain job. Article 59 paragraph (4) of the Manpower Law states that Fixed-Term Employment Agreement can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year, so that overall the maximum period is 3 (three) years. However, the provisions for the Fixed-Term Employment Agreement period are no longer valid since the Job Creation Law was enacted. The Job Creation Law adds provisions to Article 56, namely paragraph (3) which states that the period or completion of a fixed-term employment agreement is determined based on the work agreement. In addition, Article 59 of the Job Creation Law removes the provisions for a certain period from Fixed-Term Employment Agreement. In this case, the a quo article has the potential to provide loopholes for employers to extend Fixed-Term Employment Agreement contracts with workers arbitrarily due to the absence of a time limit and provisions on how many times Fixed-Term Employment Agreement can be extended. In fact, this allows the employment contracts of elderly workers to continue to be extended until they become permanent employees.

This is certainly very prone to occur due to the more vulnerable position of workers compared to employers who are more powerful. Thus, the provisions of Article 56 paragraph (3) and Article 59 of the Job Creation Law are considered detrimental to workers bound by Fixed-Term Employment Agreement and increase the gap for exploitation of workers. However, Article 56 of the Job Creation Law must be read in its entirety, including the implementing regulations of the article in question. Paragraph (4) of the a quo article emphasizes the provisions related to the time period or completion of certain work in the Fixed-Term Employment Agreement, which is further regulated in Government Regulation (PP) Number 35 of 2021 concerning Fixed-Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Layoffs. Article 8 of the a quo Government Regulation has provided a rigid limitation that Fixed-Term Employment Agreement is made for a maximum of 5 (five) years and can be extended for no more than 5 (five) years. Thus, the provisions regarding the time period and other matters regarding Fixed-Term Employment Agreement referred to in Article 56 paragraph (3) of the Job Creation Law cannot override the limitations stipulated in Government Regulation Number 35 of 2021. In addition, there are rules regarding the provision of compensation money that must be given by employers or employers to workers when the employment relationship ends. The right to receive this compensation is accommodated in Article 61A of Law Number 6 of 2023 (2023 Job Creation Law). Thus, the Job Creation Law provisions still provide loopholes for employers to arbitrarily extend Fixed-Term Employment Agreement contracts because there is no longer a clear time limit in the law. This can trigger exploitation of workers, especially those in weaker and more vulnerable positions. Therefore, there needs to be an adjustment

between the Job Creation Law and its derivative regulations so as not to cause gaps in interpretation and losses for workers.

Implementing a Fixed-Term Employment Agreement should pay attention to the details of the rights and obligations contained in the employment agreement and ensure its compliance with applicable legal provisions to avoid future misunderstandings. In this case, the Fixed-Term Employment Agreement must state when the work starts, when the work takes place, rest time and when the work agreed upon will end. A lack of understanding of employment regulations often hinders the actualization of workers' protection. Employers should be responsible for ensuring the fulfillment of workers' rights as balanced compensation, especially for workers with fixed-Term Employment Agreement status who are vulnerable to termination of employment. In this case, the compensation given to workers when the employment relationship ends must be in accordance with the provisions stipulated in applicable laws and regulations. The government also needs to increase supervision of employment aspects throughout the employment relationship cycle, from before, during, to after the employment relationship ends.

V. Conclusion

The Job Creation Law adds provisions to Article 56, namely paragraph (3) which states that the term or completion of a fixed-term employment agreement is determined based on the employment agreement. In addition, Article 59 of the Job Creation Law removes the provision of a fixed-term period from the Fixed-Term Employment Agreements. In this case, the a quo article has the potential to provide loopholes for employers to extend Fixed-Term Employment Agreements contracts with workers arbitrarily due to the absence of a time limit and provisions on how many times the Fixed-Term Employment Agreements can be extended. In fact, this allows the employment contracts of elderly workers to continue to be extended until they become permanent employees. This is of course very prone to occur due to the position of workers who are more vulnerable compared to employers who are more powerful. Thus, the provisions of Article 56 paragraph (3) and Article 59 of the Job Creation Law are considered detrimental to workers bound by Fixed-Term Employment Agreements and increase the gap for exploitation of workers.

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