

# Legal Protection for Workers in Fixed-Term Employment Agreements (PKWT) in Regional-Owned Enterprises Regarding the Absence of Maternity Leave: A Human Rights Perspective in Relation to Law Number 6 of 2023 on Job Creation

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KEYWORDS	ABSTRACT
Non-permanent contracts; legal protection; maternity leave; human rights; discrimination; Job Creation Law	The absence of maternity leave for female workers in Fixed-Term Employment Agreements (PKWT) in regionally-owned companies is an important issue related to legal protection and human rights. This study aims to examine legal protection and relevant regulations based on Law No. 6 of 2023 on Job Creation, with specific objectives to: 1) analyze the extent of compliance of regionally-owned companies with labor laws concerning maternity leave; and 2) identify and address the factors contributing to the non-implementation of these rights. Using a normative juridical approach, this study identifies discrimination against female workers, who by nature require more protection in terms of reproduction. The results show that the elimination of maternity leave rights violates Article 153 paragraph (1) of Law Number 6 of 2023, which prohibits termination of employment for reasons of pregnancy or childbirth. The Labor Law provides special rights such as maternity leave to female workers. In conclusion, the company's policy of eliminating this right is against the principle of non-discrimination in human rights. It is recommended that companies comply with labor regulations to ensure the welfare of female workers.

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## Introduction

The issue of women's labor protection has become a global concern, especially in the context of gender-based discrimination in the work environment (Triana et al., 2019). The United Nations (UN) through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) emphasizes the importance of respecting women's reproductive rights, including the right to give birth and obtain maternity leave. In Indonesia, although there are regulations that protect the rights of women workers, such as Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation, the implementation still faces many challenges. One of them is a company policy that prohibits female workers with a Fixed-Term Employment Agreement (PKWT) status from getting married or pregnant, under the pretext of unavailability of maternity leave for

them. This condition reflects the gap between regulations and practices in the field, which in turn creates issues of injustice and human rights violations.

Factors that influence this problem include companies' lack of understanding of applicable regulations, weak government supervision, and companies' prioritization of target achievement over workers' welfare. In addition, a strong patriarchal culture also contributes to the lack of respect for the rights of women workers. In the context of non-permanent contracts, workers are often placed in a vulnerable position due to the temporary and flexible nature of the work agreement, so companies feel no obligation to provide certain rights, such as maternity leave. Another factor is workers' lack of knowledge about their rights, which makes them reluctant or unable to fight for these rights before the company.

The impact of these factors is significant, both for workers and companies. For female workers, these discriminatory policies can cause stress, emotional instability, and economic losses due to job loss. In addition, violations of women's reproductive rights can affect their physical and mental health. On the company side, such practices can damage the company's image and increase the risk of lawsuits. Furthermore, at a macro level, such discriminatory policies can hamper the government's efforts to achieve gender equality, which is one of the targets in the Sustainable Development Goals (SDGs).

More specifically, this study highlights the Fixed-Term Employment Agreement (PKWT) as the main variable in the analysis. PKWT, in accordance with Article 56 paragraph (1) of the Manpower Law, is a work agreement between workers and employers that is temporary, with a duration determined by the nature of the work. In this context, female workers on non-permanent contracts often face major challenges in obtaining legal protection, including maternity leave. Law No. 6 of 2023 has provided legal protections for women workers, such as a prohibition on termination of employment due to pregnancy. However, the interpretation and implementation of this law at the company level is often not in line with the regulation's mandate.

This research offers *novelty* in the form of an in-depth analysis of the gap between regulation and practice in protecting the rights of women workers in regionally-owned companies in Indonesia. Most previous studies have mostly discussed the rights of women workers in general, without considering the status of employment agreements that distinguish the treatment of permanent and contract workers. This research also uses a normative juridical approach with a specific study on the implementation of Law Number 6 Year 2023. Thus, this research is expected to provide a new contribution in understanding the complexity of the implementation of labor regulations in Indonesia.

The urgency of this research is very relevant considering that the protection of women workers' rights is part of the state's responsibility to ensure the welfare of its people. Violations of women workers' rights are not only detrimental to the individuals concerned, but also reflect weak law enforcement in the labor sector. Furthermore, this issue has the potential to affect the competitiveness of the Indonesian workforce as a whole, especially in an era of globalization that demands fair and equal treatment in the workplace. Therefore, it is important to take a closer look at existing regulations and how their implementation can be improved to create an inclusive and women-friendly work environment.

This research aims to provide a clear picture of legal protection for female workers on non-permanent contracts for maternity leave, with a focus on regionally-owned companies. In addition,

this study also aims to identify factors that hinder the implementation of related regulations, and provide recommendations that can be the basis for future policy improvements.

The benefits of this research are expected to be felt theoretically and practically. Theoretically, this research can contribute to the development of legal science, especially in the field of labor law. Practically, the results of this research are expected to be a reference for the government, companies, and workers in understanding and implementing fair and equal employment regulations. Thus, this research can be the first step towards the establishment of a more inclusive work environment, where the rights of women workers are respected and protected in accordance with the mandate of the constitution and law.

## **Research Methods**

This research uses an analytical descriptive method with a normative juridical approach, aiming to describe systematically and factually the legal protection of female workers in a Fixed-Term Employment Agreement (PKWT) related to the absence of maternity leave, reviewed from Law Number 6 of 2023 concerning Job Creation. The research data was obtained through a literature study which included primary legal materials such as the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights, secondary legal materials in the form of labor law literature, and tertiary legal materials such as legal dictionaries and encyclopedias. Data collection techniques are carried out through document analysis using the Content Analysis method, which aims to identify the characteristics of relevant legal regulations, as well as interviews to obtain direct information from sources who have related information. This research was conducted at the Regional Library of Purwakarta Regency, with the main focus on evaluating the implementation of labor regulations that provide protection for female workers in PKWT, in order to answer the problem of discrimination of maternity leave rights in regionally-owned companies.

## **Results and Discussion**

### **Legal protection of workers in a specific time work agreement (PKWT) for the absence of maternity leave in regionally-owned companies in terms of human rights theory**

The term law is often used in everyday life, which can be interpreted as a norm that applies or is enforced in Indonesia. Law in Indonesia is a law that must exist in every work agreement, system of norms or rules that apply in Indonesia. In addition, the law must not override the rights and obligations of every citizen. Likewise, in work agreements, the law must not override the law. That is why work agreements must not override the rights of workers.

Every person has the same rights and opportunities to obtain employment and a decent livelihood without distinguishing ethnicity, religion, race or gender as guaranteed by the Constitution. The provision of Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that "Every Indonesian citizen has the right to a decent job and livelihood." Based on the provisions of Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, it shows that there is no discrimination of opportunities in the right to obtain employment and the right to a decent livelihood for both men and women, but the physical and psychological conditions between men and women are different. Physically, women naturally have reproduction, including menstruation, pregnancy, childbirth and breastfeeding. (Widanti & Putra, 2021).

The word woman comes from 'empu', which means cherished. According to Mansour Fakhri, women are human beings who have reproductive organs such as the uterus and channels to give birth, produce eggs, have a vagina and have breastfeeding tools. These tools are biologically attached to the female sex which is a gift from God Almighty (Rismilda, 2023; Widanti & Putra, 2021). Based on this nature, the right to reproduction for women workers is protected by the Constitution of the Republic of Indonesia which states that health is part of human rights. Human rights have been contained in the Constitution of the Republic of Indonesia, then elaborated in the reproductive rights of women workers regulated in Law No. IX.

13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law), one of which regulates maternity leave. The Manpower Law and Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (hereinafter referred to as Law No. 6 of 2023) are legal provisions for the implementation of development in the labor sector, which regulates the relationship between workers and employers, workers and workers, as well as workers or employers and the government (Indira et al., 2023; Salem et al., 2021).

The relationship between the employer and the worker is an employment relationship because in carrying out their work the worker is obliged to enter into an agreement with the employer in the form of a work agreement. The work agreement contains provisions regarding work elements, wage elements and order elements. A work agreement is a legal basis for workers in carrying out their rights and obligations. The rights for female workers are certainly different compared to men, the Labor Law provides special rights to women, for example, regulating the right to obtain maternity leave, maternity leave and menstrual leave.

One case arises regarding the fulfillment of the rights of female workers who work in a regionally-owned company, one of which is the right to maternity leave. A regionally-owned company in Purwakarta Regency prohibits its female workers in the period of a specific time work agreement (PKWT) to get married and become pregnant. The company is reluctant to take risks in achieving targets so that workers are required to resign from the company. Resignation in labor relations is something that is avoided by workers in general, especially for female workers, of course, it is very detrimental to their rights, which naturally have reproductive organs. In addition, the difficulty of getting a job makes some female workers delay marriage and having a baby.

Workers have a weaker/lower position than employers who are in a stronger position socio-economically. If the relationship between the worker and the employer is left entirely to the parties, then creating social justice in the field of labor will be difficult to achieve, because the strong party will always want to control the weak party. For this reason, the government has gradually participated in handling labor issues through various laws and regulations. (Husni, 2003).

In [Indonesia](#), a Regional-Owned Enterprise (BUMD) (prior to 2014 called Perusahaan Daerah) is a [company](#) owned by the [local government](#) and a legal entity created by the government to conduct commercial activities on behalf of the [provincial/district/city](#) local government. BUMDs are "organizations that have independent corporate status, led by a [board of directors](#) appointed by local government officials with majority public ownership." (Guan et al., 2021; Voorn et al., 2017) Regardless of the company, every employment agreement must be based on valid law. Because an agreement is invalid if it is based on something that is not lawful.

If we connect it with the theory of human rights, Jimly Asshidiqqie expressed the opinion that human rights are rights that are universally recognized as rights inherent in humans because of the

nature and nature of human birth as humans, namely the rights to enjoy freedom from all forms of slavery, oppression, deprivation, persecution or any other treatment that causes humans to be unable to live properly as humans (Asshiddiqie, 2005; Setiawan, 2023).

The idea of human rights emerged along with the concept of natural rights theory armed with the thought of natural law of Thomas Aquinas, Hugo de Groot and continued during the Renaissance, John Locke through the thought of natural law until the revolution in England, the United States and France in the 17th and 18th centuries. (Smith, 2008).

The idea of natural law stems from conservative forces that want to protect property property which is a symbol of the existence of a system of life whose approach is based on theological and secular views that see that existing laws are a manifestation or a phenomenon of a higher legal order that should be obeyed.

This motive is recognized as a fundamental right of every individual in his life, but behind the conservative nature of the idea of natural law, it contains a revolutionary motive, this is evident when the idea of natural law on human equality is contained in legal documents compiled in America and France which aim to protect human rights. (Cahyadi & Manullang, 2008)..

### **Arrangements for Workers in a Fixed-Term Employment Agreement (PKWT) for Maternity Leave based on Law Number 6 of 2023 concerning Job Creation in regionally-owned companies**

Matlin in her book entitled *The Psychology of Women* states that Employed women are women who work for wages (Nilakusmawati & Susilawati, 2012). This definition is the same as the definition of workers according to the Manpower Law stipulated in Article 1 number 3, namely "Workers / laborers are everyone who works by receiving wages or compensation in other forms." The remuneration in other forms is in the form of goods or objects whose value is determined on the basis of an agreement between the employer and the worker/laborer (Nur & Hajir Susanto, 2021; Pujiastuti, 2008). Employers have the meaning of legal entities or individuals who run a business either owned by themselves or together with other parties, with the aim of providing employment and providing wages for this work. Employers and workers if they have an agreement regarding rights and obligations will be regulated in a work agreement. A work agreement has elements of work, wages and orders as stated in Article 1 number 15 of the Manpower Law, namely "Work relations are relations between employers and workers / laborers based on work agreements, which have elements of work, wages and orders." The employment relationship is based on a work agreement between the employer and the worker, either an oral work agreement or a written work agreement.

In the valid terms of the agreement stipulated in Article 1320 of the Civil Code (hereinafter referred to as the Civil Code) and the valid terms of the employment agreement according to Article 52 paragraph (1) of the Manpower Law. A work agreement is an agreement between an employee and an employer orally and or in writing, either for a certain time or for an indefinite time, which contains working conditions, rights and obligations of the parties. Work agreements for a certain period of time must be made in writing (Pujiastuti, 2008). According to Article 56 paragraph (1) of the Manpower Law, which has been amended by Law No. 6 of 2023, there are 2 types of work agreements, namely specific time work agreements (PKWT) and indefinite time work agreements (PKWTT). A specific time work agreement is a work agreement based on a period of time or the completion of a certain job. Article 59 paragraph (1) of Law No. 6 of 2023 states that a specific time

work agreement can only be made for certain jobs which, according to the type and nature or activities of the work, will be completed within a certain time, namely as follows:

- a) Work that is one-off or temporary in nature.
- b) Work that is expected to be completed in a short period of time;
- c) Seasonal work.
- d) Work related to new/experimental/pilot products.
- e) work that is irregular in type and nature or activity

The provision of Article 153 paragraph (1) of Law No. 6 Year 2023 states that employers are prohibited from terminating employment to workers for the following reasons:

- a) absent from work due to illness according to a doctor's certificate for a period not exceeding 12 (twelve) months continuously;
- b) is unable to carry out his/her work due to fulfilling obligations to the state in accordance with the provisions of laws and regulations;
- c) practicing the worship that their religion commands;
- d) get married;
- e) pregnant, giving birth, miscarrying, or breastfeeding her baby;
- f) have blood ties and/or marital ties with other Workers/Laborers in one Company;
- g) establishing, becoming a member and/or management of a Trade Union/Labor Union, Workers/Laborers conduct Trade Union/Labor Union activities outside of working hours, or within working hours upon the agreement of the Employer, or based on the provisions stipulated in the Work Agreement, Company Regulation, or Collective Bargaining Agreement;
- h) report the Employer to the authorities regarding the Employer's actions that commit criminal offenses;
- i) different ideology, religion, political sect, ethnicity, color, class, gender, physical condition, or marital status; and
- j) in a state of permanent disability, illness due to work accident, or illness due to employment relationship which according to a doctor's certificate whose recovery period cannot be ascertained.

If we observe the provisions of Article 153 paragraph (1) letter e of Law No. 6 Year, the company's decision not to allow its workers to marry and conceive is not in accordance with what is mandated by the law, because female workers have the right to reproduction, namely to give birth. Even this does not cause workers to lose their jobs.

## **Conclusion**

Based on the description of the discussion carried out above, it is concluded that legal protection for female workers who do not get maternity leave by companies in the Manpower Law and Law No. 6 of 2023 is not justified. The Manpower Law regulates the right to obtain maternity leave which is regulated in Article 82 of the Manpower Law. Therefore, workers under a specific time agreement are allowed to marry and conceive. Because in the provisions of Article 153 paragraph (1) of Law No. 6 of 2023 states that companies are prohibited from terminating employment to workers on the grounds of pregnancy, childbirth, pregnancy loss, or breastfeeding their babies. If the company unilaterally terminates employment due to female workers taking maternity leave, the termination

of employment carried out for the reasons mentioned above is null and void and the company is obliged to reinstate the worker concerned. Therefore, the prohibition of marriage and pregnancy does not have an impact on the dismissal of a worker.

It is key that companies or employers are required to comply with the regulations stated in the labor law regarding women's leave for pregnancy and childbirth. This means that female workers have the right to obtain leave as stipulated by law for purposes such as childbirth, childcare, or other health needs. Companies/employers must ensure that this right is fulfilled and not discriminate against women workers/laborers. It also means that there are no rules prohibiting workers from getting married or having a baby. Companies/employers do have to comply with labor regulations governing the leave rights of pregnant women workers in accordance with applicable laws. This is important to ensure the protection and welfare of female workers during pregnancy and childbirth.

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