

Specific Time Work Agreement (PKWT) After the Constitutional Court Ruling No. 168/PUU.XXI/2023, Is It Still Relevant?

Abraham Pierre Wenang P^{1*}, Al Arif Nur Siregar², Cindy Patricia Galag³,
Grace⁴, Hasoloan Sinaga⁵

Universitas Bung Karno, Jakarta, Indonesia

Email: pierre.wenang@gmail.com¹, alarifnursiregar12@gmail.com², cindy.p.galag@gmail.com³,
gracemonique@yahoo.com⁴, hasoloan189@gmail.com⁵

Correspondence: pierre.wenang@gmail.com*

KEYWORDS	ABSTRACT
PKWT; MK Decision on PKWT; Maximum PKWT of 5 years	The Constitutional Court (MK) decision number 168/PUU-XXI/2023 has a major impact on the world of employment and the business world where the Indonesian economy is facing pressure and slowdown due to global economic challenges. Even during the last few months in mid-2024, there has been a deflationary trend that shows a decline in people's purchasing power, which has a major impact on domestic consumption. This condition directly affects various business sectors, especially labor-intensive industries that have a great dependence on national economic stability. Moreover, there are still industries that have not recovered from the impact of Covid-19 in 2020-2021. The author tries to analyze the legal consequences and their social and commercial impact on the Constitutional Court's Decision on the Fixed-Time Work Agreement (PKWT) which can only be a maximum of 5 (five) years, which includes the extension period of the employment agreement
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Introduction

The Constitutional Court (Mahkamah Konstitusi Republik Indonesia) decision number 168/PUU-XXI/2023 has a major impact on the world of labor in Indonesia where there are 21 (twenty-one) points of the Constitutional Court decision which states that 20 articles in Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation become conditional unconstitutional laws and 1 article, namely the word "may" in Article 79 paragraph (5) in Article 81 number 25 of the Attachment to Law No. 6 of (2023) is unconstitutional.

In an effort to strengthen labor regulations in Indonesia, the Constitutional Court Decision Number 168/PUU-XXI/2023 brings a number of important changes in Chapter IV of the 2023 Job Creation Law, especially related to the Fixed-Time Work Agreement (PKWT) (Safrida, 2024). This change aims to provide legal certainty and better protection for workers, as well as ensure harmony between workers' rights and employers' obligations.

Based on the Constitutional Court Decision Number 168/PUU-XXI/2023, the Fixed-Time Work Agreement (PKWT) is regulated with a maximum period of 5 years, which includes the extension period of the employment agreement; PKWT must be prepared in the form of a written agreement using Indonesian and Latin letters to ensure clarity and good understanding between the parties; and the Minister of Manpower of the Republic of Indonesia is given the authority to determine provisions regarding the partial implementation of outsourcing work in accordance with the type and field of work agreed in the written contract (Bagijo et al., 2023; Husni, 2014; Tawary et al., 2021).

The decision is a new interpretation of the norm of Article 56 paragraph (3) in Article 81 number 12 of the Attachment to Law Number 6 of 2023 concerning Job Creation. Article 56 paragraph (3) in Article 81 number 12 previously reads: "The period or completion of a certain work as referred to in paragraph (2) is determined based on the Employment Agreement."

In its legal considerations, the Constitutional Court underlined that a labor agreement is made between the employer and the worker or laborer in an unbalanced position of the parties. Workers or laborers, said the Constitutional Court, are parties in a weaker position. Therefore, the Constitutional Court stated that the PKWT period is important to be regulated in the law, not in derivative regulations or other agreements.

Whether the maximum period of time in the Constitutional Court Decision resolves labor problems with employers or better is PKWT is not allowed so that the employment scheme becomes simpler so that it does not become a long debate between workers, the government and employers.

Differences in Regulations regarding Fixed-Time Work Agreements (PKWT) regulated in the Manpower Law (Law No. 13 of 2003 or UUK) and the Job Creation Law 2023 (Pemerintah Pusat, 2023). The purpose of these two laws that concern employment regulations is different, the Law focuses on comprehensive employment development including also providing welfare to their families while still considering the business ecosystem.

The Job Creation Law 2023 states "that with job creation, it is hoped that it will be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of economic globalization as well as the existence of global economic challenges and crises that can cause disruption to the national economy, that to support job creation, adjustments are needed to various aspects of regulations related to the facilitation, protection, and empowerment of cooperatives and micro, small and medium enterprises, improving the investment ecosystem, and accelerating national strategic projects, including improving worker protection and welfare."

One of the adjustment aspects in question is changing the provisions of PKWT to improve the investment ecosystem. The concept of investment is when the owner of capital provides capital to a person or entity that does not or does not have capital for certain interests and purposes and benefits both parties. In the concept of employment, the position of capital owners and workers is certainly not equal so that the profits owned by workers are also not necessarily equal or fair, the unequal position will certainly bring a sense of injustice to workers, because workers are vulnerable

to being pressured to sign contracts, receive wages that are not in accordance with the provisions, even in

Taking into account the current situation of labor and the business world where the Government will also increase the VAT (Value Added Tax) rate by 1% (one percent) from 11% to 12% in 2025, with the additional labor costs, this will be even more burdensome for the Indonesian people, especially in the middle class, which is the biggest determinant of Indonesia's economic growth.

Research Methods

This type of research is normative legal research, namely legal research conducted by researching literature or secondary data, also called doctrinal research, where law is often conceptualized as what is written in laws and regulations (*law in books*) or conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.

Integration of Data Sources: To enhance the robustness of the analysis, the study incorporates primary, secondary, and tertiary data sources:

- Primary data is collected directly from key stakeholders through interviews and field observations.
- Secondary data includes analysis of legal documents, academic journals, and related reports, providing a contextual foundation for the study.
- Tertiary data is derived from legal commentaries, case law summaries, and regulatory interpretations, offering a synthesized understanding of the legal framework.

The integration of these data types ensures a comprehensive approach, balancing the doctrinal research focus with empirical insights, thereby providing a holistic analysis of the Constitutional Court's ruling and its implications.

Results and Discussion

The purpose of law based on ethical theory is to achieve justice. Furthermore, this theory teaches that [the law aims](#) solely to achieve justice and that the laws made must be applied fairly to the entire community so that the community feels protected. One of the objectives of the Job Creation Law is to create a prosperous, fair, and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. By fulfilling the right of citizens to work and livelihood that is decent for humanity. The Job Creation Law is expected to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of economic globalization as well as the existence of global economic challenges and crises that can cause disruption to the national economy."

According to Soetikno (2023), labor/employment law is a whole set of legal regulations regarding employment relations that result in a person being personally placed under the orders/leaders of others and regarding livelihood conditions that are directly related to the employment relationship (Islam & Walkerden, 2022; Khakim, 2014, p. 4).

According to Article 1 paragraphs (1)-(3) of Law No. 13 of 2003 concerning Manpower, the definition of employment is:

- (1) Employment is all matters related to labor before, during, and after the working period.
- (2) Labor is every person who is able to do work to produce goods and/or services both to meet their own needs and for the community.
- (3) Worker/laborer is any person who works by receiving wages or other forms of remuneration.

In the national economy, it is undeniable that the role of the workforce is large enough to improve the country's economy, through their energy and ability they are able to work processing and managing goods and services so as to generate income for the country. However, in the era of globalization of financial activities, production, and trade investment make the world economy one, as if there are no borders between countries in trade and business activities.

As a result, competition is getting tighter, job growth is not in line with the growth of more and more workers, although on the other hand, business and business opportunities are getting wider. This situation is exacerbated by the Covid19 pandemic where many private sectors or companies have suffered losses so that it is difficult to provide the wages requested by workers and on the other hand it is also increasingly difficult for workers to get jobs in accordance with their field of expertise due to the lack of available job vacancies.

In its decision, the Constitutional Court stated in Article 56 paragraph (3) in Article 81 number 12 of Law 6/2023 which states that "The period or completion of a certain work as referred to in paragraph 2 is determined based on a work agreement" is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as "The period of completion of a certain work is made not exceeding a maximum of five years, including if there is an extension".

Note: The Constitutional Court added the phrase "made not more than five years including if there is an extension". This additional phrase distinguishes it from Law No. 6 of 2023 regarding Job Creation which does not provide a time limit. Furthermore, in Government Regulation No. 35 of 2021 concerning PKWT, Outsourcing, Working Time and Rest Time and Layoffs, the Employment Contract is regulated for 5 years and can be extended once for a maximum of 5 more years so that the total becomes 10 years. Therefore, the phrase "five years at most" is a success at least a return to Law No. 13 of 2003 concerning Manpower. With the provisions of this new employment law, it provides convenience for entrepreneurs who are just starting their business in terms of employment contracts with employees, but on the other hand does not provide certainty of status for the employees concerned. This sometimes makes it easy for employees to move from one employment contract to another, so that the employment system on the employer/employer's side becomes unsustainable, the employment process is difficult to develop in the organization because of the continuous change of human resources in a position/position.

The Head of the Employment Division of Apindo, Bob Azam, said that his party understands the importance of maintaining a balance between the protection of workers' rights and the interests of the business world. "However, we also encourage all parties to be able to see the

impact of this decision in a broader perspective, especially in the midst of the current economic dynamics," said Bob (Baihaqi, 2024).

Bob said that the Indonesian economy is facing pressure and slowdown due to global economic challenges. Over the past few months, the deflationary trend has shown a decline in people's purchasing power, which has had a major impact on domestic consumption. According to him, this condition directly affects various business sectors, especially labor-intensive industries that have a great dependence on the stability of the national economy.

A number of things that have changed based on the Constitutional Court's decision are a fixed-time work agreement (PKWT) for a maximum of 5 years from the previous absence of a PKWT term requirement. In addition, the Constitutional Court stated that workers are entitled to a decent income to meet the living needs of workers/laborers and their families in a reasonable manner. The Constitutional Court includes food and beverages, clothing, housing, education, health, recreation and old-age security as elements of wages.

That for the term category, Law 6/2023 has abolished the provisions of Article 59 paragraph (4) of Law 13/2003 which states that "A certain time work agreement based on a certain period of time 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 there is no longer a term limit in a certain time work agreement and has the potential to place workers into a time work agreement certain (or referred to as contract labor) with a long period of time or even a lifetime;

That the existence of *Article a quo* and accompanied by the abolition of the term limit in a certain time employment agreement in Law 6/2023 results in provisions related to the term in a certain time employment agreement determined based on the employment agreement so that it will face directly between the workforce and the company to agree on the term in the employment agreement. In fact, in practice, the workforce has a weaker position (*inferior*) than companies that have a stronger position (*superior*) so that it is possible that the determination of the term in the employment agreement tends to be dominated by the company and has the potential to weaken the position of the workforce;

That for the category of completion of a certain work, Article 81 number 12 which contains Article 59 paragraph (1) of Law 6/2023 has determined the categories of work that are completed within a certain time, namely:

- a. Work that is once completed or temporary in nature;
- b. Work that is expected to be completed in the not too long time;
- c. Seasonal jobs;
- d. Work related to new products, new activities, or additional products that are still under trial or exploration; or
- e. Work of an irregular nature or activity

Therefore, the provisions for the completion of a certain work that is the basis for a certain time in *Article a quo* already have a basis in Article 81 number 12 which contains the provisions of Article 59 paragraph (1) of Law 6/2023, so it does not need to be determined based on a work agreement that actually faces directly between the workforce and the employer, even though in

practice, The position of the workforce is in a weaker position (inferior) than the company is in a stronger position (superior) in determining the employment agreement.

On the other hand, we must also consider Indonesia's current TPT. The Open Unemployment Rate (TPT) is an indicator used to measure labor that is not absorbed by the job market and describes the underutilization of labor supply. The TPT of the February 2024 Sakernas is 4.82 percent. This means that out of 100 people in the labor force, there are about 5 unemployed people. In February 2024, TPT decreased by 0.63 percentage points compared to February 2023 (BPS, 2024).

The increase in unemployment is also evidenced by the nominal claim for the Job Loss Insurance (JKP) program paid by BPJS Employment throughout the January-August 2024 period, which increased by 13% (year on year/YoY) compared to the same period last year.

The increase is in line with the surge in Termination of Employment (PHK). Data from the Ministry of Manpower (Kemnaker) recorded that the number of workers affected by layoffs from January-August 2024 reached 190,639 workers, an increase of 27.75% (YoY) compared to the January-August 2023 period of 149,227 workers.

"During 2024 until August 31, BPJS Ketenagakerjaan has paid JKP benefits for more than 37,000 laid-off workers with a total nominal value of IDR 264.61 billion," said Deputy for Communication of BPJS Ketenagakerjaan Oni Marbun to Tabloid Bisnis, quoted on Sunday (22/9/2024). Meanwhile, until August 31, 2024, the total funds under management of the JKP BPJS Ketenagakerjaan program reached IDR 13.74 trillion (Ishaqi, 2024).

However, this does not mean that the unemployment rate in Indonesia is already in a safe position because there are still many new job seekers waiting for job vacancies to open.

Considering that Indonesia's current economic conditions are being difficult for entrepreneurs which may still last for a long time because there are other plans from the government to increase the VAT rate from the current 11% to 12% in early 2025, there is a discourse of increasing the UMP every year and others as well as to reduce the unemployment rate because recently there have been many layoffs which according to the Ministry of Manpower records until September 2024 have reached 53 thousand people (Idris, 2024), whether a "transition period" should be carried out for the implementation of this Constitutional Court Decision.

Business actors must sit together with labor unions and the government to be able to take a middle ground because Indonesia's economic problems are not only a problem for business actors but also a problem with workers. What is feared is that after the PKWT period ends within 5 years, business actors will not accept PKWT workers as permanent employees (it could be only a small part) but will look for new employees for the next 5 years, although later new training must be carried out, but this is solely done to be able to reduce the number of permanent employee wages. Meanwhile, the government will be very interested here to increase tax revenues which will decrease if the costs of business actors increase.

Indeed, the Labor Law emphasizes the importance of protecting workers and all parties involved in employment relationships from abuse and unfair treatment and pays special attention to protecting those in a more vulnerable position in employment relationships, as well as providing a special legal framework to prevent unfair and unnatural employment relationships. Requirements

include working hours, safety and health in the workplace, and salary and welfare, all aimed at ensuring healthy working conditions for employees and the company (Suwanto, 2003, p. 19).

However, does the above still apply in the current situation and what about the government's duty to be fair to business actors on the other hand.

Conclusion

Based on the discussion above, the author argues that it is currently too early to say that the PKWT period of 5 (five) years is good or not. We must respect the Constitutional Court's Decision and implement it where the government will issue a new Labor Law within 2 (two) years after this Constitutional Court Decision, namely in 2026. We all hope that at that time the economic situation of Indonesia and the world has recovered and returned to growth so that the items of this Constitutional Court Decision can be well accepted by business actors, workers and the government. However, if up to the period of 2 (two) years the economic situation is still sluggish and there are no signs of improvement, what the author can suggest is how the government can bridge the interests of the business world and the workforce until a certain time, including:

There is a transition period for the implementation of the PKWT period for a few more years, if possible, so it is hoped that business actors and workers can prepare for what strategies will be carried out by considering existing economic conditions. Things that can be done are: a) Employee Training and Development: it is better for workers to be appointed as permanent employees after the PKWT period ends so that there is a natural selection with the achievement of the success of the workforce at the time of training, and this has been well informed at the beginning of recruitment, so that there is no dispute between workers and employers. b) Effective HR management: in strategic management, it is learned that one of the company's strategies is HR management so that it can be in line with the company's vision, mission and goals, in addition to the selection of the award of employment contracts whether PKWT or PKWTT, the provision of *Key Performance Indicators, Employee Valuation, Reward and punishment* adequate. This is expected to create a conducive working atmosphere and advance the company without burdening the employer when it comes to providing PKWTT status to workers. c) Business Expansion (business differentiation): business actors can consider new businesses to absorb more workers. Business expansion strategies require more time and additional investment, product trials, sales goals and other activities, but can help address long-term labor needs.

The Labor Law emphasizes the importance of balancing the interests of workers and employers, and encourages companies to manage human resources effectively and sustainably. Through a well-regulated transition period, it is hoped that beneficial results can be achieved for all parties.

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