

The Transition of Employment Status from Fixed-Term Employment Agreement (PKWT) to Permanent Employment Agreement (PKWTT) based on Court Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi

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ABSTRACT: In the practice of industrial relations in Indonesia, Fixed-Term Employment Agreements (PKWT) are often used by companies to meet short-term labor needs. However, it is not uncommon for companies to continuously extend PKWT contracts or rehire the same workers without changing their employment status, even though such workers have fulfilled the legal requirements to be appointed as permanent employees in accordance with prevailing laws and regulations. This research discusses the Transition of Employment Status from a Fixed-Term Employment Agreement (PKWT) to a Permanent Employment Agreement (PKWTT) Based on Court Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi. This study is a type of normative legal research. The approach used is the Case Approach and the Statute Approach. The research findings reveal that the Legal Consideration of the Panel of Judges in determining the transition of employment status from PKWT to PKWTT in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi was based on the fact that the Plaintiff had been employed for more than five (5) years. Therefore, in accordance with Article 5 paragraph (1) letter a and Article 6 of Government Regulation No. 35 of 2021, the employment termination conducted by the Defendant on the grounds that the Plaintiff violated the employment agreement resulted in the Plaintiff still being entitled to normative rights. These rights, pursuant to Article 52 paragraph (1) of Government Regulation No. 35 of 2021, include severance pay, long service award, and compensation for entitlements, amounting in total to IDR 16,405,640.00 (sixteen million four hundred five thousand six hundred forty rupiahs).

KEYWORDS: Employment Relationship, Fixed-Term Employment Agreement (PKWT), Permanent Employment Agreement (PKWTT).

I. INTRODUCTION

Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "Every citizen has the right to work and to receive a decent livelihood for humanity." In obtaining employment, workers are bound by an employment agreement which contains the terms of employment, rights, and obligations of the parties involved. This employment agreement gives rise to an employment relationship that includes elements of work, wages, and orders, as stipulated in Article 1 point 15 of the Indonesian Law Number 13 of 2003 concerning Manpower. Provisions within the employment agreement related to the employment relationship or manpower are not merely supplementary law. This indicates that such provisions are binding and must be obeyed and implemented by the parties involved in the employment relationship.

An employment relationship encompasses the rights and obligations of both workers and employers, making the existence of an employment agreement a very important element in establishing such a relationship. This employment relationship must be properly maintained, even though in practice, differences of interest between workers and employers are common. These differences of interest make the employment relationship vulnerable to conflicts, which can lead to disagreements or differing viewpoints. Ultimately, these differences may escalate into disputes within industrial relations.

An employment relationship is a legal bond between a worker and an employer based on the existence of work, orders, and wages. Within this relationship, the worker is obligated to carry out tasks in accordance with the instructions given by the employer, while the employer is obliged to pay wages and fulfill the worker's rights in accordance with the prevailing laws and regulations. This relationship is not only functional but also contains legal aspects that bind both parties to exercise their rights and obligations in a balanced manner.

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The employment agreement serves as the legal basis for the formation of this employment relationship. This agreement can be made either in writing or orally and includes essential elements such as the type of work, wage amount, working hours, as well as the rights and obligations of each party. In labor regulations, the employment agreement must also meet certain legal requirements to be valid, such as the mutual consent of the parties, legal capacity, the existence of the agreed work, and conformity with laws and public order. Therefore, the employment agreement is not only a formal reference but also serves as a foundation that ensures legal certainty in the employment relationship.

Article 56 paragraph (1) of the Indonesian Law Number 13 of 2003 states that employment agreements consist of two types: Fixed-Term Employment Agreement (PKWT) and Permanent Employment Agreement (PKWTT). Article 1 point 10 of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment defines a "Work Agreement between a Worker/Laborer and an Employer to establish an Employment Relationship for a certain period or for a specific job." Meanwhile, Article 1 point 11 explains that a "Work Agreement between a Worker/Laborer and an Employer to establish a permanent Employment Relationship."

One common issue that arises with PKWT is the implementation of the fixed-term duration of PKWT workers by companies. The Job Creation Law regulates the extension of Fixed-Term Employment Agreements up to five years, including two renewals. However, in practice, the policies regarding Fixed-Term Employment Agreements are often not fully implemented by companies, especially concerning the term of the Fixed-Term Employment Agreement. Many companies employ workers under Fixed-Term Employment Agreements in ways that do not comply with the current applicable regulations.

One of the issues regarding Fixed-Term Employment Agreements (PKWT) was found in Court Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi. In this decision, one of the panel of judges' rulings stated: "Declaring that the employment relationship between the Plaintiff and the Defendant, which was originally based on a Fixed-Term Employment Agreement (PKWT), by law has become a Permanent Employment Agreement (PKWTT)." This means that there has been a transition of employment status from a Fixed-Term Employment Agreement (PKWT) to a Permanent Employment Agreement (PKWTT).

Based on the background above, the research questions in this study are: 1) What are the legal considerations of the panel of judges in determining the transition of employment status from PKWT to PKWTT in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi? And 2) What normative rights of workers were recognized by the panel of judges in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi based on the labor laws and regulations in Indonesia?

II. RESEARCH METHODS

This research is a type of normative legal research, namely legal research that places law as a building system of norms consisting of principles, norms, rules and regulations, court decisions, agreements, and doctrine. The approach used in this research is the case Approach and statute Approach. The data collection technique used is literature study. Data analysis is conducted descriptively. Descriptive analysis means that the author provides an explanation of the subject and object of the research based on the results obtained from the study.

III. RESULTS AND DISCUSSION

The Legal Considerations of the Panel of Judges in Determining the Transition of Employment Status from Fixed-Term Employment Agreement (PKWT) to Permanent Employment Agreement (PKWTT) in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi

Companies or employers are a vital part of the nation's economic system. Within these companies, industrial relations are formed between employers and workers. These industrial relations must be well-maintained to prevent disputes between the parties involved. If a dispute arises, a bipartite settlement effort will be pursued, and if unresolved, the matter may proceed to the Industrial Relations Court.

The Industrial Relations Court (PHI) serves as an institution responsible for resolving various disputes in industrial relations, including issues related to termination of employment (PHK). PHI plays an essential role in protecting workers' rights by providing a legal mechanism for seeking justice.

The Industrial Relations Court plays a crucial role in handling labor conflicts in Indonesia. This institution functions independently and neutrally in resolving disputes between workers and employers. Its primary goal is to provide legal certainty for all parties involved in the dispute. During court proceedings, judges consider arguments from both sides and render a fair decision in accordance with the applicable laws and regulations.

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One example of an industrial relations case is the one handled by the Industrial Relations Court at the Kendari District Court, specifically in Case Number 21/Pdt.Sus-PHI/2024/PN Kdi. The case involves a dispute between the Plaintiff (M.K.N.) and the Defendant (PT. D.T.U). The Plaintiff (M.K.N.) was a permanent employee of PT. D.T.U, a labor service provider, working as a driver with a monthly wage of IDR 910,000 (nine hundred ten thousand rupiah).

Based on the lawsuit filed by the Plaintiff, it was revealed that the Plaintiff was initially recruited by PT. Mahakam and subsequently transferred to PT. D.T.U in January 2011 without any written employment contract or appointment letter, which continued until January 2014. From February 2014 to December 2016, an Employment Agreement was finally drafted and signed by the Plaintiff and returned to the Defendant company. However, the Plaintiff was never given a copy of the Employment Agreement.

The Employment Agreement between the Plaintiff and the Defendant was extended again in December 2017 until 31 October 2020, with the Plaintiff's new position being that of a Marketing staff. By law, the Plaintiff's employment status was automatically considered as a Permanent Employment Agreement (PKWTT), based on Constitutional Court Decision No. 168/PUU-XXI/2023, which stipulates that the maximum duration for a Fixed-Term Employment Agreement (PKWT), including any extensions, is five (5) years.

The Employment Agreement was once again extended from November 2020 until 30 May 2023, with the Plaintiff retaining the position of Marketing. However, the Plaintiff was never provided a copy of the Employment Agreement. The Plaintiff's employment was eventually terminated after approximately 14 (fourteen) years of service, during which he received a final monthly salary of IDR 2,900,000 (two million nine hundred thousand rupiah). The Plaintiff had carried out his duties responsibly and had continuously received wages from the Defendant, with the last recorded base salary being IDR 2,900,000.

On 30 May 2023, the Plaintiff was informed verbally by Ms. Hasriani, Supervisor of Marketing at BTPN Conventional Bank Kendari Branch, that his employment agreement would not be renewed due to failure to meet sales targets for the last three (3) months. As a result, the Plaintiff was effectively terminated by the Defendant. From the beginning of his employment, the Plaintiff had been assigned to BTPN Conventional Bank Kendari Branch by the Defendant and had performed his job well, without committing any violations or receiving any warning letters.

Based on the facts presented during the trial, it was established that the employment relationship between the Plaintiff and the Defendant occurred during the following periods: February 2014 to December 2016, December 2017 to 31 October 2020, and November 2020 to 30 May 2023. Pursuant to Article 18 paragraph (1) of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment, "The employment relationship between an outsourcing company and the worker/laborer it employs shall be based on either a Fixed-Term Employment Agreement (PKWT) or a Permanent Employment Agreement (PKWTT)."

According to the provisions of Article 5 paragraph (1) letter a and Article 6 of Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment, the essence of the regulation reads as follows:

1. Article 5 paragraph (1): A Fixed-Term Employment Agreement (PKWT) based on a specific period as referred to in Article 4 paragraph (1) letter a shall be made for certain types of work, namely work that is estimated to be completed within a relatively short period of time.

2. The type of work estimated to be completed within a relatively short period of time as referred to in Article 5 paragraph (1) letter a shall be carried out for a maximum of five (5) years.

As stated in the Plaintiff's claim, the Plaintiff alleged that the employment relationship began on 13 October 2010 and continued until January 2014. However, this allegation was explicitly denied by the Defendant. Since the Plaintiff failed to provide sufficient evidence to prove that an employment relationship with the Defendant existed from 13 October 2010 to January 2014, the Panel of Judges held that this claim was unproven and must be disregarded.

The Panel of Judges opined that the employment relationship between an outsourced worker and an outsourcing company may be based on either a Fixed-Term Employment Agreement (PKWT) or a Permanent Employment Agreement (PKWTT), with a maximum allowable contract duration of five (5) years. Given that the employment relationship between the Plaintiff and the Defendant continued uninterrupted from December 2017 to 30 May 2023, the Plaintiff's total period of service amounted to five years and five months.

As the Plaintiff's employment period exceeded five (5) years, the Panel of Judges, based on Article 5 paragraph (1) letter a and Article 6 of Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment, declared that the employment relationship between the Plaintiff and the

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Defendant, which was originally based on a Fixed-Term Employment Agreement (PKWT), by operation of law, became a Permanent Employment Agreement (PKWTT).

The Normative Rights of Workers Recognized by the Panel of Judges in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi Based on Indonesian Labor Laws and Regulations

Every individual requires financial means to meet their basic needs. To obtain such means, one must work. Work can be performed independently or by being employed by another party. If employed by the state, the individual is referred to as a civil servant; whereas if employed by the private sector, the individual is known as a laborer or worker. Workers and employers are the main actors in the industrial world. Therefore, both parties must build a harmonious relationship and maintain good cooperation, in line with the fundamental purpose of establishing industrial relations.

One type of worker is the contract worker. Legally, a contract worker is defined as a non-permanent employee, or in other words, a worker employed only for a specific period based on an agreement between the worker and the employing company. In legal terms, a contract worker is often referred to as a "PKWT worker," meaning a worker employed under a Fixed-Term Employment Agreement, in which the term of employment ends in accordance with the agreement signed by both parties — the worker and the employer, who is usually represented by the company's HR or personnel manager.

The employment relationship between a worker and an employer must be well-maintained to prevent industrial disputes. There are four types of industrial relations disputes: (1) rights disputes, (2) interest disputes, (3) disputes regarding termination of employment, and (4) disputes between trade unions/labor unions within a single company.

A dispute over termination of employment, as stipulated in Article 1 point 4 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, is defined as: "a dispute arising from the absence of consensus regarding the termination of employment carried out by one of the parties."

The above-mentioned dispute must first be resolved through deliberation, commonly referred to as bipartite negotiation. If an agreement is reached, both parties will sign a memorandum of understanding, which is then registered with the court. One example of an industrial relations dispute is found in case number 21/Pdt.Sus-PHI/2024/PN Kdi.

In its response, the Defendant argued that the reason for terminating the employment relationship with the Plaintiff was the expiration of the employment contract and the Plaintiff's failure to meet performance targets. Based on the testimony of witness I.T., it was primarily explained that the termination was due to the Plaintiff's failure to meet the performance targets set by the Defendant. According to the employment contract between the Plaintiff and the Defendant, one of the stated reasons for termination is the failure of the worker to achieve the performance targets set by the company.

The Panel of Judges was of the opinion that the termination of the employment relationship by the Defendant should be qualified as a dismissal due to a breach of the employment agreement by the Plaintiff, or at the very least, as stipulated under Article 36 letter (k) of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment.

The Plaintiff's termination by the Defendant, on the grounds that the Plaintiff breached the employment contract, entitles the Plaintiff—under Article 52 paragraph (1) of Government Regulation Number 35 of 2021—to the following rights:

1. Severance pay amounting to 0.5 (half) of the amount stipulated in Article 40 paragraph (2);
2. Long service award amounting to 1 (one) time the provision stipulated in Article 40 paragraph (3);
3. Compensation for entitlements in accordance with Article 40 paragraph (4).

Article 40 paragraph (4) of Government Regulation Number 35 of 2021 states that: Compensation for entitlements that should be received as referred to in paragraph (1) includes:

1. Annual leave that has not been taken and has not expired;
2. Travel expenses or fare for the Worker/Laborer and their family to return to the place where the Worker/Laborer was initially employed; and
3. Other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.

Based on Article 66 paragraph (1) of Government Regulation Number 36 of 2021 concerning Wages, it essentially states that "The wage components used as the basis for calculating severance pay and service appreciation pay consist of: basic wages and fixed allowances given to the Worker/Laborer and their family."

According to the plaintiff's claim, the last wage received was IDR 2,900,000.00 (two million nine hundred thousand rupiah), however, this basic wage is below the minimum wage set for Kendari City in 2023. Therefore, the Panel of Judges ruled that the wage used as the basis for calculating severance pay, service appreciation pay, and compensation for entitlements shall be the applicable minimum wage in Kendari City based on the Southeast Sulawesi Governor's Decree Number 673 of 2022 regarding the

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Determination of the Minimum Wage of Kendari City, Southeast Sulawesi Province for 2023, amounting to IDR 2,993,730.00 (two million nine hundred ninety-three thousand seven hundred thirty rupiah).

The calculation and components of severance pay, service appreciation pay, and compensation for entitlements for the plaintiff based on Article 52 paragraph (1) of Government Regulation Number 35 of 2021 are as follows:

severance pay	6 x 0,5 x Rp2.993.730,00	Rp8.981.190,00
service appreciation pay	2 x 1 x Rp2.993.730,00	Rp5.987.460,00
compensation for rights	1/25 x 12 x Rp2.993.730,00	Rp1.436.990,00
Total		Rp16.405.640,00 (Sixteen million four hundred five thousand six hundred forty IDR)

IV. CONCLUSIONS

1. The Legal Consideration of the Panel of Judges in Determining the Change of Employment Status from Fixed-Term Employment Agreement (PKWT) to Permanent Employment Agreement (PKWTT) in Decision Number 21/Pdt.Sus-PHI/2024/PN Kdi, because the Plaintiff's period of employment exceeds 5 (five) years, based on Article 5 paragraph (1) letter a and Article 6 of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Time, and Termination of Employment, the Panel of Judges declared that the employment relationship between the Plaintiff and the Defendant, which was originally based on a Fixed-Term Employment Agreement (PKWT), is by law changed into a Permanent Employment Agreement (PKWTT).

2. The termination of the Plaintiff's employment by the Defendant on the grounds that the Plaintiff violated the employment agreement, as a consequence of such termination, according to Article 52 paragraph (1) of Government Regulation Number 35 of 2021, the Plaintiff is still entitled to normative rights, namely severance pay, service appreciation pay, and compensation pay, which altogether amount to Rp16,405,640.00 (sixteen million four hundred five thousand six hundred forty rupiahs). This has been decided in the final ruling of the Panel of Judges in case number 21/Pdt.Sus-PHI/2024/PN Kdi.

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