



## LEGAL PROTECTION FOR OUTSOURCED WORKERS WHO ARE LAID OFF DURING THE PERIOD OF THE EMPLOYMENT AGREEMENT

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### *Abstract*

*The implementation of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (UUCK) has brought fundamental changes to the employment regime, particularly regarding Fixed-Term Employment Agreements (PKWT) and the outsourcing system. Outsourced workers bound by PKWT are a vulnerable group whose position is increasingly dilemmatic post-UUCK. Significant normative conflicts arise regarding compensation rights due to unilateral termination of employment (PHK) before the PKWT contract expires. Law Number 13 of 2003 (UUK) explicitly requires compensation payments equal to the remaining wages of the contract period. In contrast, Article 61A of the UUCK and Government Regulation Number 35 of 2021 (PP 35/2021) only regulate the provision of compensation based on the length of service. This radical difference in the calculation of rights creates severe legal uncertainty and has the potential to violate the principles of justice and benefit for workers. This normative legal research aims to: 1) Critically analyze the conflicting norms arising from Article 62 of the UUK and Article 61A of the UUCK/PP 35/2021 regarding compensation for termination of PKWT (non-permanent employment contract) contracts. 2) Formulate a concept for an ideal legal protection arrangement, guaranteeing the constitutional rights of PKWT outsourced workers to a decent living and legal certainty. This research uses a statutory, conceptual, and comparative legal approach. The study findings indicate that the partial implementation of UUCK/PP 35/2021 without considering the spirit of Article 62 of the UUK actually worsens protection conditions, triggering labor market flexibility that is too biased towards employers. The proposed ideal concept is a harmonization that requires employers to pay compensation for PKWT (exceeded employment period) plus compensation equal to the remaining wages of the unexpired contract period, if the termination is carried out unilaterally without valid reasons. This protection must be enforced by strengthening the role of the Industrial Relations Court (PHI) and pro-worker labor supervision.*

**Keywords:** *legal protection for outsourcing workers who are laid off during the contract period*

### **Abstrak**

Implementasi Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang (UUCK) telah membawa perubahan fundamental dalam rezim ketenagakerjaan, khususnya terkait Perjanjian Kerja Waktu Tertentu (PKWT) dan sistem Alih Daya (*outsourcing*). Pekerja alih daya yang terikat PKWT merupakan kelompok rentan yang posisinya semakin dilematis pasca-UUCK. Konflik norma yang signifikan terjadi



mengenai hak kompensasi akibat Pemutusan Hubungan Kerja (PHK) sepihak sebelum masa kontrak PKWT berakhir. Undang- Undang Nomor 13 Tahun 2003 (UUK) secara eksplisit mewajibkan pembayaran ganti rugi sebesar upah sisa masa kontrak. Sebaliknya, Pasal 61A UUCK dan Peraturan Pemerintah Nomor 35 Tahun 2021 (PP 35/2021) hanya mengatur pemberian uang kompensasi berdasarkan masa kerja yang telah dijalani. Perbedaan radikal dalam perhitungan hak ini menciptakan ketidakpastian hukum yang parah dan berpotensi melanggar asas keadilan dan kemanfaatan bagi pekerja. Penelitian hukum normatif ini bertujuan untuk: 1) Menganalisis secara kritis konflik norma yang timbul dari Pasal 62 UUK dan Pasal 61A UUCK/PP 35/2021 terkait kompensasi PHK PKWT. 2) Merumuskan konsep pengaturan perlindungan hukum yang ideal, menjamin hak konstitusional pekerja alih daya PKWT atas penghidupan yang layak dan kepastian hukum. Penelitian ini menggunakan pendekatan perundang-undangan (*statute approach*), konseptual (*conceptual approach*), dan perbandingan hukum (*comparative approach*). Temuan studi menunjukkan bahwa penerapan parsial UUCK/PP 35/2021 tanpa mempertimbangkan semangat Pasal 62 UUK justru memperburuk kondisi perlindungan, memicu fleksibilitas pasar kerja yang terlalu berpihak pada pengusaha. Konsep ideal yang diusulkan adalah harmonisasi yang mewajibkan pengusaha membayar kompensasi PKWT (masa kerja terlampaui) ditambah ganti rugi sebesar sisa upah masa kontrak yang belum berakhir, apabila PHK dilakukan sepihak tanpa alasan sah. Perlindungan ini harus ditegakkan melalui penguatan peran Pengadilan Hubungan Industrial (PHI) dan pengawasan ketenagakerjaan yang pro-pekerja.

Kata Kunci : perlindungan hukum alihdaya di phk dalam masa kontrak

## I. INTRODUCTION

The reform of labor regulations in Indonesia following the enactment of Law Number 6 of 2023 (UU 6/2023) through the Omnibus Law method is aimed at improving the investment climate. However, this change has generated significant controversy regarding worker protection, particularly for outsourced workers with Fixed-Term Employment Agreements (PKWT). The central issue that has emerged is the fundamental difference in compensation treatment for unilateral termination of employment (PHK) before the contract expires, which has the potential to diminish workers' normative rights. Welfare is the primary goal of the Indonesian nation, as stated by the founders of the Republic of Indonesia on August 17, 1945, that the establishment of the state aims to advance the welfare of its people. This statement is reflected in the Preamble to the 1945 Constitution.

To realize the mandate of the 1945 Constitution of the Republic of Indonesia, the government has established several laws and regulations in the field of labor, ranging from laws to their implementing regulations. The most well-known law in the world of employment today is Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law), along with ministerial regulations and decrees of the Minister of Manpower. To attract investors, Law Number 11 of 2020 concerning Job Creation is

expected to simultaneously meet two needs: job creation and the welfare of Indonesian workers. To guarantee and fulfill citizens' constitutional rights to decent work and a decent living, the government is obligated to fulfill these needs. This was updated with the enactment of Law Number 6 of 2023. This government obligation must be realized by providing decent employment for humanity.

According to Article 1, number 3 of Law Number 13 of 2003 concerning Manpower, a worker/laborer is "every person who works for wages or other forms of remuneration." This article clearly places a crucial position on workers/laborers, who serve as the backbone of a company. Without workers, a company will not be able to run well and will not be able to participate in national development.

Recognizing that workers are the weaker party in the employment relationship, there is a need for government intervention through comprehensive policies aimed at creating fair industrial relations, because the government is the primary bearer of responsibility for realizing social justice, general welfare, and the greatest possible prosperity of the people.

Article 62 of the UUK states that if one party terminates the employment relationship before the end of the period stipulated in the PKWT or the termination of the employment relationship is not due to the provisions as referred to in Article 61 Paragraph (1) of the UUK, the party terminating the employment relationship is required to pay compensation to the other party in the amount of the worker/laborer's wages until the end of the employment agreement. However, according to Article 61A UUCK, in paragraph (1) it is stated that in the event that a fixed-term employment agreement ends as referred to in Article 61 Paragraph letter b and letter c, and regulated in government regulations in Article 17 PP 35/2021 it is stated that for one of the parties who ends the employment relationship before the end of the period stipulated in the PKWT, the employer is obliged to provide compensation money as referred to in Article 15 Paragraph (1) PP 35/2021 which reads, Employers are obliged to provide compensation money to Workers/Laborers whose employment relationship is based on PKWT, the amount of which is calculated based on the PKWT period that has been implemented by the worker/laborer. Employers are obliged to provide compensation money to workers/laborers and in Paragraph (2) it is stated that compensation money as referred to in Paragraph (1) is given to workers/laborers according to the worker/laborer's work period at the company concerned.

If we pay close attention to the two regulations, both those contained in Article 62 of the UUK and Article 61A of the UUCK, specifically relating to the granting of rights to workers/laborers whose employment relationship is terminated during the contract period, there is a conflict of norms (antimony norms), where the UUK requires one of the parties terminating the agreement, either the employer or the worker/laborer to pay compensation to the other party in the amount of the worker/laborer's wages until the end of the work agreement period (remaining contract period), while the UUCK requires the employer to provide compensation money to the worker/laborer according to the length of service.

## **II. THEORITICAL STUDIES**

This research proposes a basic theoretical framework as an analytical tool for the legal issues being studied, namely the welfare state theory, the legal protection theory, and the theory of the purpose of law.

### **Legal Protection and the Welfare State**

Legal protection is a legal function aimed at providing justice, order, certainty, and benefit, while also protecting the interests of the less fortunate. In labor law, protection is classified into several types, including Economic Protection (guaranteeing a living wage and compensation), Social Protection, Technical Protection (K3), Protection of Employment Relations, and Protection of Legal Certainty. The concept of the Welfare State serves as an important philosophical foundation. This concept emerged as an antithesis to the *Nachtwakerstaat* (night watchman state), which prioritizes a *laissez-faire* approach. The Welfare State requires the state to actively intervene (*staatsbemoeienis*) to ensure general welfare. When employment regulations (such as Law 6/2023) tend to prioritize labor market flexibility and neglect economic protections (for example, eliminating compensation for remaining contractual periods), this can be seen as an ideological shift that contradicts the principles of the Welfare State.

Protection against termination of employment, particularly for non-permanent workers (PKWT), is a direct manifestation of the state's obligation to provide social and economic security for its citizens.

### **Legal Objectives (Gustav Radbruch)**

To analyze the conflicting norms between the Employment Law and the Job Creation Law, the Triad of Legal Objectives framework is used, which includes Justice (Gerechtigkeit), Legal Certainty (Rechtssicherheit), and Benefit (Zweckmässigkeit).

Legal Certainty is a normative requirement that a regulation must be clear, logical, and free from multiple interpretations or conflicting norms. The conflict between Article 62 of Law 13/2003 and Article 61A of Law 6/2023/PP 35/2021 significantly undermines legal certainty, leaving outsourced workers with fixed-term employment contracts (PKWT) unable to secure their economic rights in the event of unilateral termination.

Justice demands equal treatment and the right to rights. Contractual justice means honoring the promises contained in the PKWT (i.e., the promise of employment for a specified period). Eliminating compensation for remaining contractual obligations for workers unilaterally terminated (through no fault of the worker) is a form of injustice, as the loss of contractually guaranteed income is not reimbursed.

Legal benefits must benefit society. The Job Creation Law is claimed to be beneficial because it attracts investment. However, if these economic benefits are achieved by drastically reducing worker protection and welfare, then these benefits are partial and compromise the principle of social justice mandated by the 1945 Constitution.

The current conflict is not merely technical-legal but also philosophical. This new regulation, by ignoring the full contractual damages in PKWT, implicitly degrades the legal status of PKWT from a time-binding contractual agreement to merely an administrative work period.

#### **Dualistic Compensation Norms for Termination of PKWT Workers Before the Contract Expiration**

Changes in the labor law regime have created a conflicting dualism regarding compensation for PKWT workers who experience unilateral termination before the contract expires.

#### **Law Number 13 of 2003 (Article 62)**

Prior to the enactment of the Job Creation Law, Article 62 of the Manpower Law stipulated that a party terminating an employment relationship before the expiration of the PKWT period was obligated to pay compensation to the other party. The amount of this

compensation was calculated based on the worker's wages up to the expiration of the employment agreement (i.e., the remaining contract period).

This regulation reflects the civil law principle of *pacta sunt servanda*, where the agreement serves as law for the parties. This remaining contract compensation sanction serves as a strong economic disincentive for employers not to unilaterally terminate their employment through an arbitrator, thus providing maximum economic legal certainty to PKWT workers.

Law Number 6 of 2023 and Government Regulation Number 35 of 2021

Post-Job Creation Law changes the substance of PKWT termination compensation. Article 61A of Law 6/2023 and Article 17 in conjunction with Article 15 Paragraph (1) of Government Regulation 35/2021 state that employers are required to provide compensation to PKWT workers who are terminated during the contract period. This compensation is calculated based on the length of service the worker has performed. Based on Government Regulation 35/2021, compensation must be provided when the PKWT period ends, or in the event of a unilateral termination. The calculation is proportional, namely 1/12 (one twelfth) of the wages during the employment period, for each month of employment.

### **Conflict of Norms (Antonymy of Norms) and Economic Impact**

The conflict of norms arises because two provisions regulate the same worker's rights (unilateral termination of a PKWT contract) but provide very different compensation outcomes. Normative legal studies underscore that the norm of Article 16 of Government Regulation 35/2021 conflicts with a higher norm, namely Article 62 of Law 13/2003, and does not reflect equitable legal objectives.

This conflict has a significant economic impact and fundamentally changes the protections for PKWT workers, especially vulnerable outsourced workers.

**Weakening Economic Protection:** Under Law 13/2003, if a worker with a 5-year contract is terminated after 6 months, they are entitled to compensation equivalent to approximately 4.5 years' wages. Under Law 6/2023/PP 35/2021, they are only entitled to compensation equivalent to six months of employment, or approximately half a month's wages. This drastic difference eliminates the long-term income security that is the essence of fixed-term contracts.

The Job Creation Law has significantly reduced the costs of unilateral layoffs for employers by eliminating the obligation to pay the remaining contract. This eliminates the deterrent effect and makes it easier for employers to terminate PKWT contracts at any time, turning PKWTs into highly flexible and unstable employment instruments.

**Legal Discrimination:** This new regulation fails to distinguish between layoffs for administrative reasons (the end of the contract) and unilateral layoffs due to the employer's default. By only providing compensation based on the length of service, the Job Creation Law treats PKWTs as if they were PKWTTs, even though PKWTs are binding contracts with a fixed term.

A comparison of compensation schemes demonstrates a shift from default sanctions (civil law) to administrative normative rights (public law), which significantly harms workers.

Table 1: Comparison of Compensation Schemes for Unilateral Termination and PKWT

Aspek	UU No. 13/2003 (Pasal 62)	UU No. 6/2023 & PP 35/2021	Implikasi terhadap Perlindungan Ekonomis
Istilah Hukum	Ganti Rugi	Uang Kompensasi	Transisi dari <i>ganti rugi wanprestasi</i> (hukum perdata) ke <i>hak normatif administratif</i> (hukum publik).
Dasar Perhitungan	Upah pekerja sampai batas waktu berakhirnya jangka kerja yang waktu perjanjian kerja dilaksanakan. (sisa kontrak).	Proporsional berdasarkan kerja yang dilaksanakan.	Pelembahan Signifikan PHK sepihak oleh pengusaha berbiaya rendah, menghilangkan efek jera dan kepastian pendapatan pekerja.
Kepatuhan Terhadap Kontrak	Sangat Tinggi (Kontrak Dihargai Penuh)	Rendah (Kontrak Dianggap Sekedar Batasan waktu)	PHK sepihak menjadi lebih mudah dilakukan, yang kontradiktif dengan sifat perjanjian berjangka waktu

The Dual Compensation Synthesis Model includes two main elements:

**Basic Compensation (Period of Service):** Permanent workers receive compensation based on their length of service, calculated according to PP 35/2021 (1/12 of their monthly

wages). This is recognized as an absolute normative right regardless of the reason for termination.

**Proportional Contractual Compensation (Remaining Contract/Deterrence):** An additional obligation for employers who unilaterally terminate their employment (not due to contract expiration, completion of work, or employee misconduct) in the form of compensation calculated based on the remaining contract term. To balance the need for flexibility, the calculation of this Compensation can be limited, for example, to a minimum of 50% of the total remaining contract wages, or equivalent to a maximum of six months' wages remaining on the contract, whichever is greater. Applying this Synthesis Model to outsourced workers with PKWT contracts will ensure that:

The outsourcing company is required to bear the full costs of unilateral termination, which will then become a mandatory clause in the service agreement between the outsourcing company and the user company.

The worker receives compensation for lost income expectations, in line with the principles of Economic Protection and contractual fairness.

### **Implementing the Ideal Concept Through Regulatory Revision**

Implementing this ideal concept requires strategic legal steps. The government must immediately revise Government Regulation Number 35 of 2021, specifically Article 17, to explicitly include these two compensation components. This revision will eliminate existing normative conflicts and integrate the spirit of protection affirmed in Constitutional Court Decisions, such as Decision No. 91/PUU-XVIII/2020 (which calls for revisions to the Job Creation Law) and Decision No. 168/PUU-XXI/2023.

Legal interpretation (especially by the Industrial Relations Court) must also always refer to the principle of constitutionality, namely the protection of workers' human rights, guaranteeing the right to work and a decent living as stipulated in the Constitution.

### **III. RESEARCH METHODS**

In order to compile and write this journal, the author uses a normative juridical research method, sources are obtained from binding legal materials such as regulations such as government regulations Article 17 PP 35/2021 number 35 of 2021, MK decision number 168, books, papers, reading materials from the internet related to Termination of Employment in

labor law, especially Law Number 13 of 2003 Article 62 and Law Article 61A number 6 of 2023 concerning Manpower.

#### **IV. RESEARCH RESULTS**

##### **Fixed-Term Employment Agreement (PKWT)**

A fixed-term employment agreement (PKWT) is defined as an employment agreement between an employee and an employer for a specified period of time or for a specific job. According to Article 59 of Law 6/2023, a fixed-term employment agreement (PKWT) can only be made for temporary, seasonal, or non-permanent work and cannot be made for permanent work. Violation of this limitation automatically changes the worker's status by law to an Indefinite-Term Employment Agreement (PKWTT) or permanent employment.

According to Government Regulation 35/2021, a fixed-term employment agreement (PKWT) can be valid for a maximum of 5 (five) years, including extensions. Fixed-term employment agreements (PKWT) workers are entitled to standard rights, such as a minimum wage, mandatory holiday allowances (THR) after a minimum of one month of service, and annual leave (after 12 months of service). However, the fundamental difference between a fixed-term employment agreement (PKWT) and a fixed-term employment agreement (PKWTT) lies in compensation upon termination of the employment relationship, which has become a key issue following the regulatory changes.

##### **The Concept of Outsourced Workers**

In the context of outsourcing, the employment relationship involves two contracts: a service contract between the user company and the outsourcing company, and an employment agreement between the outsourcing company (as the employer) and the worker. The outsourced work must be a supporting activity (non-core business).

Although the government believes that the outsourcing provisions in the Job Creation Law protect workers, outsourced workers are often employed on a fixed-term employment contract (PKWT), which places them in an economically and contractually vulnerable position, particularly when facing unilateral layoffs.

##### **The Concept of Layoffs**

Referring to Article 1, number 25 of Law Number 13 of 2003 concerning Manpower, as last amended by Law Number 6 of 2003 concerning the Stipulation of Government Regulation Number 2 of 2022 concerning Job Creation into Law (the Manpower Law),

layoffs are the termination of an employment relationship due to certain circumstances that result in the termination of the rights and obligations between the worker/laborer and the employer, either unilaterally or based on mutual agreement. Layoffs can occur for various reasons, such as company efficiency, bankruptcy, employee misconduct, or resignation. According to Law Number 13 of 2003, a legitimate termination of employment must follow applicable procedures and provisions, and provide employee rights such as severance pay and compensation.

#### Basic Concepts

1. Definition: A legitimate and qualified termination of employment, where the rights and obligations between the employee and the company end.
2. The reasons can be due to internal company factors (such as efficiency, restructuring, or bankruptcy) or employee factors (such as misconduct, absenteeism, or retirement).
3. The legal basis is regulated by labor laws, specifically Law Number 13 of 2003 and its amendments.

The relationship may end if:

- a. the employee dies;
- b. the employment agreement expires;
- c. the assigned work has been completed;
- d. a court decision or industrial relations dispute resolution body that has permanent legal force (inkracht van gewijsde), thus becoming a valid basis for resolving employment disputes; or
- e. certain conditions stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement that result in the termination of the employment relationship.

#### V. CONCLUSION

The conflicting norms between Law 13/2003 and Law 6/2023 have resulted in a decline in the quality of legal protection for outsourced workers with fixed-term contracts (PKWT). The elimination of compensation for remaining contractual obligations weakens the principle of justice and creates legal uncertainty. Therefore, regulatory reform is needed by adopting the Dual Compensation Synthesis Model to guarantee workers' rights in accordance with the mandate of the Welfare State.

Legal protection for outsourced workers who experience termination of employment (PHK) during the contract period focuses on four main aspects:

1. Responsibilities of the Outsourcing Company: The outsourcing company is fully responsible for wages, welfare, working conditions, and dispute resolution in accordance with applicable laws.
2. Transfer of Workers: If the employing company changes outsourcing provider, the new outsourcing company is obliged to accept the transferred workers/laborers, as long as the work performed remains ongoing.
3. Employment Continuity Guarantee (PKWT): For workers with Fixed-Term Employment Agreements (PKWT), the transfer of rights protection guarantees continued employment at the new outsourcing company.
4. Obligation to Fulfill Rights If workers/laborers do not receive a guarantee of continued employment, the outsourcing company remains responsible for fulfilling all the rights of the workers/laborers concerned.

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