Legal Review of Fixed-Term Employment Agreements: Justice For Foreign Workers In Indonesia

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Article Info

Abstract

This study critically examines the legal framework governing Specific Time Work Agreements (Perjanjian Kerja Waktu Tertentu/PKWT) and the protection mechanisms afforded to foreign workers (Tenaga Kerja Asing/TKA) in Indonesia. As foreign direct investment continues to expand, particularly in strategic sectors such as construction, infrastructure, and information technology, the deployment of TKA has become increasingly prominent. However, the implementation of PKWT for foreign workers raises significant legal and human rights concerns, including ambiguity in contractual terms, unequal treatment, and insufficient safeguards for basic labor rights. Utilizing a normative juridical approach, this research analyzes existing statutes, legal doctrines, and regulatory practices to evaluate the extent of legal protections for TKA under PKWT arrangements. The findings reveal gaps between regulatory intent and implementation, underscoring the need for stronger institutional oversight, improved regulatory clarity, and enhanced legal literacy among both employers and foreign workers. The study concludes by emphasizing the importance of coordinated efforts between government authorities, private sector stakeholders, and legal institutions to establish a more equitable, transparent, and sustainable labor environment for foreign workers in Indonesia.

I. Introduction

Foreign workers in Indonesia come from various backgrounds, including professionals with specialised skills, technicians, and workers in the construction sector. According to the Investment Coordinating Board (BKPM), foreign workers are needed to support national strategic projects, especially in the infrastructure and information technology sectors. Foreign workers play an important role in Indonesia's economic development. In recent years, Indonesia has become one of the main destinations for foreign investment, which brings with it the need for foreign workers to fill positions that require specialised skills or technologies that are not yet fully available in the country.

According to a report by the Investment Coordinating Board (BKPM), foreign direct investment in Indonesia has increased significantly, and this has resulted in increased demand for foreign workers in sectors such as construction, mining, and information technology (BKPM, 2022). The importance of foreign workers is also seen in the transfer of knowledge and skills. Through the presence of foreign workers, local companies can learn and adopt new technologies and more effective business practices. This is in line with the government's strategy to improve national competitiveness in the globalisation era (Suharno, 2021). In 2023, the number of foreign workers in Indonesia reach around 168,000, an increase of 50.66% compared to 111,000 in 2022,where this foreign labour is dominated by workers from China (Muhamad, 2024).

Specified Time Work Agreements, herein after abbreviated as (PKWT), are regulated in Law No.13 Year 2003 on Labour. PKWT gives employers the flexibility to recruit foreign workers for specific projects with a clear duration of employment. This is particularly relevant in temporary or project industries, such as construction and mining, where labour needs are not permanent (Mardani, 2020). However, PKWT also poses its own challenges, especially regarding the protection of foreign workers' rights. Often, foreign workers under non-permanent contracts face uncertainty regarding contract extensions and their rights after the contract ends. This raises concerns about potential labour rights violations and discriminatory treatment (Yulianti, 2023), so it is important to review the legal protections available to foreign workers under non-permanent contracts to ensure their fairness and welfare in Indonesia.

PKWT is a form of employment agreement regulated in Law No. 13 Year 2003 on Manpower. PKWT provides flexibility for companies to hire foreign workers for projects with a certain duration. This allows companies to adjust the number of workers according to the temporary needs of the project.

This research aims to analyse the legal protection available to foreign workers in relation to fairness in fixed-term employment agreements (PKWT) for foreign workers, this research also analyses the legal issues faced by foreign workers in PKWT in Indonesia.

Foreign workers (TKA) have benefits, among others:

Knowledge and Technology Transfer, foreign workers often bring experience

and expertise needed to upskill the local workforce. This is in line with the government's goal to increase human resource capacity in Indonesia (Suryanto, 2021). Increased Productivity, with the presence of TKA, companies can increase productivity through expertise that local labour does not have. This is important to maintain competitiveness in the global market (Halim, 2020). Foreign Investment, The presence of TKA can attract more foreign investment, as foreign companies tend to be more confident to invest in countries that have a qualified workforce (Rizal, 2019).

Besides the benefits of the presence of foreign workers, there are also challenges in the use of foreign workers such as first, regulations and policies: the process of applying for permits to hire foreign workers is often complicated and time-consuming. This can hinder companies in carrying out projects on time (Setiawan, 2022), second, competition with local labour: there are concerns that foreign workers may reduce employment opportunities for local labour. Therefore, it is important to ensure that foreign workers are only employed in positions that truly require specialised skills (Putri, 2023), third, social and cultural issues: foreign workers coming from different cultural backgrounds may face difficulties in adapting to the working environment in Indonesia, which may lead to social friction (Yusuf, 2021), Foreign workers play a vital role in supporting Indonesia's economic growth, especially in the context of non-permanent contracts. While there are challenges that need to be overcome, the benefits provided by foreign workers in terms of knowledge transfer, productivity improvement, and attracting foreign investment are significant. Therefore, it is important for the government and companies to create policies that support the synergy between foreign workers and local labour, in order to achieve sustainable development goals.

2. Research Method

The research used in this writing is normative juridical (Al-Fatih, 2023). Normative or doctrinal legal research methodology is an approach that focuses on the internal study of positive law (Ansari & Negara, 2023). In this research, the author applies normative legal research methods by examining laws relevant to the legal issues studied.

This research is prescriptive, which means studying the purpose of law, principles of justice, validity of legal regulations, and legal concepts and norms. As an applied science, legal studies establish standard procedures, provisions, and guidelines for the implementation of legal rules. In this writing, the author uses Doctrinal Research type because in this research will analyse how the conception of foreign workers (TKA) and specific time work agreement (PKWT) in Indonesia and how the form of legal protection of foreign workers in Indonesia with PKWT status.

3. Results and Discussion

Conception of Foreign Workers (TKA) and fixed-term employment agreements (PKWT) in Indonesia

Foreign workers play a very important role in Indonesia. From providing specialised skills and expertise to contributing to economic growth, the presence of foreign workers cannot be underestimated. Therefore, it is important to ensure adequate legal protection for them so that this contribution can continue and benefit all parties involved.

Foreign Workers and Fixed-Term Employment Agreements (PKWT) raises Legal Issues Related to Foreign Workers and Fixed-Term Employment Agreements The presence of foreign workers in Indonesia, especially in the context of fixed-term employment agreements (PKWT), has triggered various legal issues. While foreign workers can bring benefits, such as technology transfer and increased productivity, there are challenges in the protection of their rights and compliance with existing labour regulations.

PKWT, according to Law No. 13 Year 2003, is designed for temporary and non-permanent work. Foreign workers are often employed under PKWT to fulfil the needs of specific projects. According to Yulianti (2022), the use of PKWT for foreign workers should prioritise compliance with existing regulations, including the protection of workers' basic rights. However, in practice, many foreign workers do not receive adequate protection. PKWT is regulated in certain articles in the Labour Law, especially in Article 59 to Article 61. Some important points regulated such as PKWT can only be used for temporary work and must include a clear reason in the contract. This includes seasonal work, projects, or work that is completed within a certain time (Zainuddin, 2023). PKWT must be made in writing and include all relevant provisions, including the rights and obligations of both parties. This aims to avoid disputes in the future (Suharno, 2021). PKWT has a clear time limit, and if the contract expires, the employer must provide a valid reason if it does not want to extend the contract. If there is no valid reason, the contract can be considered a permanent employment agreement.

The clear legal framework in the Labour Law provides protection for workers, including foreign workers working under PKWT. However, there are still challenges in its implementation, such as workers' lack of knowledge about their rights and weak supervision from the authorities. According to Yulianti (2022), this can lead to labour rights violations that often go undetected.

One of the main legal issues is the violation of the rights of foreign workers under non-permanent contracts. Many foreign workers experience uncertainty regarding their rights, such as decent wages, benefits, and social security. According to Mardani (2020), foreign workers are often not clearly informed about the contents of their contracts, which can lead to exploitation. PKWT provides flexibility for employers, but also creates uncertainty for workers. Foreign workers often have no guarantee of fair contract termination. When their contract ends, they may not get the opportunity to extend their contract or find a new job. This raises concerns about their future in Indonesia.

Discrimination against foreign workers is also a significant legal issue. In some cases, foreign workers are not treated equally with local labour. They may not have equal access to facilities, training, and legal protection. According to Zainuddin (2023), this can create unfairness in the work environment and hinder their integration into society.

While there are regulations governing PKWT and the protection of foreign workers, enforcement is often weak. Many workers do not know about their rights and do not have access to adequate legal information. Therefore, legal education on the rights of foreign workers is essential to raise awareness and protect them from violations (Yulianti, 2022).

To address legal issues related to foreign workers and non-permanent contracts, several steps can be taken such as improving legal education programmes for foreign workers and employers to understand their rights and obligations. Government agencies need to strengthen supervision of the implementation of labour regulations, especially in sectors where many foreign workers are employed. There is a need to improve regulations, revise laws related to non-permanent contracts to provide better protection for foreign workers, such as guarantees of fair contract termination and social rights.

Foreign workers working in Indonesia under PKWT face various legal issues that need to be addressed. The protection of their rights must be prioritised to ensure that the presence of foreign workers brings benefits not only to employers but also to the workers themselves and society at large. Collaborative efforts between the government, companies, and legal institutions are essential to create a fair and sustainable working environment.

The important role of foreign workers in Indonesia is :

1. Provision of Specialised Skills and Expertise

Foreign workers play a crucial role in providing skills and expertise that are often not available domestically. Many sectors, such as information technology, energy, and construction, require specific technical expertise. Foreign workers are often hired to fill these gaps, helping to increase productivity and efficiency in these industries. According to a World Bank report, foreign workers contribute to local skills development through knowledge and technology transfer (World Bank, 2021).

2. Increased National Competitiveness

The presence of foreign workers also contributes to improving Indonesia's competitiveness in the global market. By utilising the expertise of foreign workers, local companies can better compete at the international level. For example, in the manufacturing sector, the presence of skilled foreign workers can help improve product quality and innovation, which in turn boosts economic growth (Suharno, 2021).

3. Foreign Investment Withdrawal

Foreign labour also plays an important role in attracting foreign investment to Indonesia. Foreign investors tend to have more confidence in investing in countries that have access to skilled labour. According to the Investment Coordinating Board (BKPM), the presence of qualified foreign workers is one of the determining factors

for investors in choosing an investment location (BKPM, 2022). This shows that foreign workers not only contribute directly, but also play a role in creating a better investment climate in Indonesia.

4. Contribution to Economic Growth

Foreign workers contribute significantly to Indonesia's economic growth. By increasing productivity in various sectors, they play a role in creating new jobs and increasing national income. According to data from the Central Statistics Agency (BPS), sectors that employ many foreign workers, such as construction and mining, have experienced faster growth than other sectors (BPS, 2023).

5. Diversification of Human Resources

The presence of foreign workers also helps diversify human resources in Indonesia. With the various backgrounds and work experiences brought by foreign workers, companies can be more diverse in their business approaches and strategies. This diversification can trigger innovation and creativity in facing increasingly complex market challenges (Mardani, 2020).

A Fixed-Term Employment Agreement (PKWT) is a work contract made for a specific period of time in accordance with the needs of temporary work. PKWT is regulated in Law No. 13 Year 2003 on Manpower, which provides the legal framework for this employment relationship. PKWT can be made for seasonal work, projects, or work that is completed within a certain time (Suharno, 2021). The main characteristics of non-permanent contracts include a clear time limit, specific types of work, and rights and obligations stipulated in the contract. PKWT must include clear reasons for the use of a specific time system, such as for projects that are not permanent (Mardani, 2020).

PKWT has several advantages, such as providing flexibility for employers to adjust the number of workers to the changing needs of the project. This is particularly useful in industries that require a large number of workers for a specific time, such as construction and mining. PKWT provides an opportunity for workers to gain work experience and improve skills within a certain period of time (Iskandar, 2019).

However, non-permanent contracts also have their drawbacks. One of them is the uncertainty for workers regarding the future of their employment. Workers under non-permanent contracts often lack stable job security, and they may experience difficulties in obtaining certain rights that permanent workers have, such as health and pension benefits. The Labour Law provides protection for workers on non-permanent contracts. Employers are required to ensure that workers obtain basic rights, such as appropriate wages and decent working conditions. In addition, non-permanent contracts must be made in writing and agreed upon by both parties to avoid disputes in the future.

However, despite legal protection, there are still many cases of violations. Workers often do not receive clear information about their rights or experience discriminatory treatment. Therefore, it is important for the government and relevant agencies to strengthen supervision and law enforcement against violations that occur in non-permanent contracts.

Some companies in Indonesia have implemented good practices in the management

of non-permanent contracts, such as providing training and opportunities for career development to non-permanent workers. This helps to improve skills and provide a sense of security for workers even though they are bound to a fixed-term contract. However, challenges remain, especially in terms of legal awareness among workers. Many workers are unaware of their rights under non-permanent contracts, making them vulnerable to exploitation. Therefore, legal education and counselling is essential to improve workers' knowledge of their rights.

Non-permanent contracts are an important instrument in the Indonesian labour market, providing flexibility for employers and allowing for customisation of the workforce as needed. Despite its many advantages, non-permanent contracts also face challenges in terms of protecting workers' rights. Therefore, it is important to continuously improve regulations and practices in the field so that non-permanent contracts can provide maximum benefits for all parties involved.

Difference between non-permanent contracts and fixed-term employment agreements

In the world of employment, there are various types of employment contracts that regulate the relationship between workers and employers. Two commonly used types of contracts are the Fixed-Term Employment Agreement (PKWT) and the Indefinite-Term Employment Agreement (permanent employment). Understanding the differences between these two types of contracts is important for both workers and employers in determining their respective rights and obligations.

Fixed Term Employment Agreement (PKWT): PKWT is a labour contract that has a specific duration agreed by both parties. This contract is usually used for temporary work or specific projects (Law No. 13 Year 2003 on Labour).

Fixed-term employment or Indefinite Time Work Agreement, is a type of contract where there is no specific time limit. Workers are employed for an indefinite period of time, as long as they fulfil the conditions (Law No. 13 Year 2003).

The main difference is in the duration of the contract PKWT has a clear time limit, usually specified in the contract. After the contract period ends, the employment relationship can be terminated without the need for a good reason. Permanent employment has no time limit. The employment relationship continues until one of the parties decides to terminate the contract. Differences in the implementation of rights and obligations. Non-permanent workers do not have the same rights as permanent workers, especially in terms of termination of employment (PHK) and benefits. In some cases, non-permanent workers may not get the same health or pension benefits as permanent workers (Mardiasmo, 2021). Permanent employees have the right to better benefits, leave, and legal protection in the event of termination of employment. They are also entitled to severance pay if terminated (Suhardjo, 2020). The difference in terms provides flexibility for employers to adjust the size of the workforce according to needs. This is particularly useful in industries that experience seasonal fluctuations in demand (Setiawan, 2022), whereas fixed-term employment provides stability for workers, but can be less flexible for employers in terms of adjusting headcount as market situations change. Non-permanent workers often feel less secure than permanent workers due to the uncertainty associated with their tenure. Research shows that workers on short-

term contracts tend to experience higher stress and greater job dissatisfaction compared to permanent workers (Kahn, 2021). The legal protection of foreign workers in Indonesia is becoming an increasingly important issue as the number of foreign workers working in various sectors increases. In the context of globalisation and an increasingly open labour market, it is important to understand how Indonesian law regulates and protects the rights of foreign workers.

Legal protection for foreign workers in Indonesia is regulated in several laws and regulations, including:

Law Number 13 Year 2003 on Labour: Regulates the rights and obligations of workers, including foreign workers, as well as monitoring mechanisms.

Regulation of the Minister of Manpower of the Republic of Indonesia Number 16 of 2015: Regulates the procedures for the use of foreign workers and the protection of their rights.

Under the Labour Law, foreign workers have the same rights as local workers in terms of:

1. Fair wages
2. Occupational safety and health
3. Protection from discrimination

Despite the legal framework, several challenges are still faced in the protection of foreign workers, such as Uncertainty of legal status, many foreign workers work with unclear legal status, especially in terms of licensing and employment contracts. Many workers do not understand their rights and obligations under PKWT, which can lead to disputes (Prasetyo, 2021). Workers on non-permanent contracts often do not receive the same protection as permanent workers (Wati, 2020). This can lead to abuse of rights and exploitation (Harris, 2020). It is not uncommon for foreign workers to receive discrimination and unfair treatment. Foreign workers often face different treatment compared to local workers, both in terms of wages and work environment. Research shows that discrimination is still rife in several sectors (Pratiwi, 2021). Supervision of the application of existing laws is still weak. This is due to the lack of adequate human resources and infrastructure in the relevant agencies (Setiawan, 2019).

To improve legal protection for foreign workers in Indonesia, several strategic steps can be taken, namely:

a. Increased Education and Awareness

Increase legal awareness among foreign workers about their rights and obligations, as well as procedures for reporting violations.

b. Policy Reform

Revise existing regulations to ensure stronger protection for foreign workers. This includes the enforcement of sanctions for companies that violate the rights of foreign workers (Wibowo, 2022).

c. International co-operation

Establish cooperation with foreign workers' home countries to create a more effective protection network. This is important to ensure that the rights of foreign workers are protected in both countries (Halim, 2021).

Legal protection for foreign workers in Indonesia is a complex issue that requires

serious attention. While there is an underlying legal framework, challenges such as uncertainty of legal status, discrimination, and lack of oversight remain a problem. Improvement efforts through education, policy reform, and international cooperation are needed to create a fair and safe working environment for foreign workers in Indonesia.

Dispute resolution mechanisms for foreign workers in Indonesia are an important aspect of safeguarding workers' rights and creating a conducive work environment. The legal process available and the role of relevant institutions are very influential in resolving disputes that occur.

Mediation is the first step in dispute resolution. In the context of TKA, mediation can be conducted by a mediator appointed by the local Manpower Office. Mediation aims to reach an agreement between the disputing parties without going through a formal litigation process (Halim, 2021). If mediation is unsuccessful, the dispute may proceed to arbitration. Arbitration is an out-of-court dispute resolution process involving a neutral third party. This process is faster and more flexible than litigation (Pratiwi, 2021).

If the two methods above do not work, the aggrieved party can file a lawsuit with the Industrial Relations Court (PHI). PHI has the authority to resolve disputes between workers and employers, including those involving foreign workers (Setiawan, 2019).

Available Legal Process

a. Complaints

Foreign workers who feel their rights have been violated can file a complaint with the Manpower Office. The Office will conduct an initial investigation and mediation to resolve the issue.

b. Filing a lawsuit

If the complaint does not result in a solution, the foreign worker can file a lawsuit with the Industrial Relations Court. This process is regulated in Law No. 2/2004 on Industrial Relations Dispute Resolution. In this process, parties are required to present relevant evidence (Wibowo, 2022).

c. The Verdict

After going through the trial process, PHI will issue a binding decision. The losing party in the dispute can appeal to the Supreme Court if they are not satisfied with the decision (Harris, 2020).

The settlement of industrial relations disputes in Indonesia is regulated in Law No. 2 Year 2004 on Industrial Relations Dispute Resolution. Under this law, litigants include workers, either individually or through trade unions, as well as employers or employers' organisations. Foreign workers working in Indonesian companies are also included in the category of workers who are entitled to file a lawsuit (Law No.2, 2024).

Foreign workers can file a lawsuit regarding several types of disputes, including:

Rights Dispute: Disputes relating to violations of workers' rights, such as wages, benefits, and working conditions.

Termination of Employment (PHK) Disputes: Foreign workers can sue if they feel they were unfairly terminated by their employer.

Interest Dispute: Disputes arising from negotiations between workers and employers over terms of employment.

Although foreign workers have the right to file a lawsuit, they often face challenges in the process, including:

Dependence on Residence Permit: Employers can cancel a foreign worker's residence permit, which makes them vulnerable to dismissal and difficulty in filing a lawsuit (Palmer, 2024).

Legal Costs: Many foreign workers have to hire private lawyers to represent them in legal proceedings, which can be a financial burden.

Complicated Process: The dispute resolution process in Indonesia is often slow and tends to favour the employer, reducing the effectiveness of legal protection for foreign workers.

Role of Relevant Institutions

1. Labour Office

The Manpower Office acts as the initial mediator in dispute resolution. They are also responsible for overseeing the implementation of labour regulations, including those relating to foreign workers (Halim, 2021).

2. Industrial Relations Court

PHI functions as a judicial institution that handles disputes between workers and employers. PHI specialises in labour cases, so it is expected to provide fair and fast decisions (Setiawan, 2019).

3. Worker Organisation

Workers' organisations or trade unions also play an important role in protecting the rights of foreign workers. They can provide legal support and advocacy for foreign workers in disputes with employers (Pratiwi, 2021).

4. Conclusion

The conception of Foreign Workers (TKA) and Fixed-Term Employment Agreements (PKWT) in Indonesia are two important aspects in the interrelated dynamics of employment. Foreign workers are presented to meet the needs of labour with certain skills that are not available in the local market, providing benefits in knowledge transfer and industrial development. However, the presence of foreign workers also poses challenges, such as competition with local labour and issues of social injustice.

On the other hand, non-permanent contracts provide flexibility for companies in managing human resources, especially in dealing with fluctuations in demand. While non-permanent contracts offer an opportunity for workers to gain experience, there is a risk of contract abuse and legal uncertainty that can be detrimental to workers. Overall, creating a balanced and sustainable work environment requires clear regulations, strict supervision, and education on workers' rights. With the right approach, foreign workers and non-permanent contracts can contribute positively to economic growth and labour welfare in Indonesia.

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