

A Civil Law Review of Fixed-Term Employment Agreements Balancing Freedom of Contract and The Protection of Workers

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ABSTRACT

An employment relationship is a fundamental aspect of labor law, based on an agreement between an employer and an employee. Normatively, an employment agreement is the embodiment of the freedom of contract principle, as stipulated in Article 1338 of the Indonesian Civil Code (KUHPerduta). This research aims to analyze the limitations of the freedom of contract principle in the drafting of Fixed-Term Employment Agreement (PKWT) clauses, viewed from the principles of balance and good faith under Civil Law, and how Government Regulation Number 35 of 2021 serves as a protection instrument for the rights of contract workers in Indonesia. This study employs a normative juridical method with a statute approach, analyzing relevant laws and regulations. Data sources consist of primary data—comprising laws, regulations, and related literature—and secondary data from all legal publications that are not official documents, including legal textbooks, law journals, legal research findings, and scholarly opinions. The results of the study indicate that the freedom of contract is only legally valid if the drafted clauses do not exploit the weak bargaining position of workers, but instead reflect a proportional distribution of rights and obligations (balance) and are based on honesty and legal propriety (good faith). Government Regulation Number 35 of 2021 has successfully closed past loopholes of injustice by introducing the breakthrough of compensation money, tightening financial sanctions on premature termination of employment, and limiting the types of jobs that can be contracted, thereby balancing the operational freedom of employers with the certainty of protecting the fundamental rights of contract workers to achieve distributive justice.

Keywords: Fixed-Term Employment Agreement (PKWT), Freedom of Contract, and Labor Protection

INTRODUCTION

The principle of freedom of contract is a principle of civil law that gives the parties the freedom to make agreements and determine the content, form, and clauses in the contract. This principle is based on Article 1338 of the Civil Code (KUHPercivil) from the concept of individualism, which assumes that each party has a balanced bargaining position and is free to determine its will. In the business world, workforce flexibility is a strategy to maintain efficiency and adaptability to market dynamics. One of the legal instruments used is the Fixed-Time Work Agreement (PKWT).

PKWT is an employment relationship based on the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code (KUHPerduta). This principle gives the parties the freedom to determine the content, form, and terms of the agreement, as long as it does not conflict with the law, public order, and decency (Subekti et al., 2020).

Employment relations are one of the fundamental aspects of employment law, which is based on an agreement between employers and workers. Normatively, a work agreement is a manifestation of the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code (KUHPercivil), which provides sovereignty for the parties to determine the content, form, and terms of the agreement. However,

in the realm of employment, this freedom is not absolute because it is limited by the nature of the law, which is coercive (*dwingend recht*) to protect the interests of public order and basic human rights. In practice, the working relationship with PKWT often shows an asymmetrical imbalance in bargaining power. Companies, as parties with economic dominance, tend to use a standard contract format that is take-it-or-leave-it. This condition puts prospective workers in a subordinate position, where they often ignore fairness clauses to gain access to jobs. This phenomenon risks triggering the occurrence of Abuse of Circumstances (*misbruik van omstandigheden*), where agreements are born not from free will but from economic pressure.

Article 1338, paragraph (3), of the Civil Code emphasizes that an agreement must be implemented in good faith. Substantially, good faith prohibits one party from exploiting the weak position of an other. Standard contracts in PKWT that are made without room for negotiation for workers are often an entry point for abuse of circumstances (*misbruik van omstandigheden*). In this condition, even though the worker formally signs the contract, the agreement can be considered defective due to economic coercion (*economische dwang*).

In the discourse of labor law, the existence of PKWT is an exception to the form of permanent employment relationship or Indefinite Time Work Agreement (PKWTT). However, in its implementation, there has been a shift in the function of PKWT, which is no longer just an instrument of business flexibility but has transformed into a means of legal smuggling (*fraus legis*). This legal smuggling occurs when companies deliberately use the 'cloak' of PKWT to wrap up work that is essentially permanent, routine, and continuous to avoid the burden of legal obligations attached to permanent worker status.

This practice of legal smuggling takes advantage of a loophole in the principle of freedom of contract to obscure the job qualifications regulated in Article 59 of Law Number 13 of 2003 jo. Law Number 6 of 2023. By imposing contract status on a position that should be permanent, the company systematically evades responsibility for workers' normative rights, such as certainty of working period, severance guarantees, and protection from unilateral Termination of Employment (PHK). This creates a condition of sharp inequality, where the formal legality of contracts is used to legitimize actions that substantially violate workers' constitutional rights to decent work and livelihoods.

Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Job Creation Law) and Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment has brought significant changes in PKWT governance. On the one hand, this regulation provides flexibility for the duration of the contract up to five years; on the other hand, the state intervenes through the obligation to pay Compensation Money as an instrument of balancing rights. Problems arise when companies practice Legal Smuggling (*fraus legis*), which is to use PKWT "cloaks" for work that is essentially permanent (core business) to avoid the financial burden and job security inherent in permanent worker status (PKWTT). A phenomenon that often occurs in the field shows that there is a tendency for companies to use PKWT for work that is fixed, routine, and continuous (i.e., core business). Legally, this type of work should be accommodated through the PKWTT or permanent employee status. The use of this "forced" PKWT is strongly suspected to be an effort by the company to avoid the legal obligations attached to PKWTT's status.

Several previous studies have shown systemic problems in the implementation of PKWT:

1. Research by (Wibowo et al., 2021) found that many companies use PKWT to avoid obligations to permanent workers.
2. A study by (Seruni, 2025) reveals that the imbalance of bargaining positions causes workers to have no room to reject adverse clauses.
3. (Marten et al., 2025) states that the flexibility of employment contracts often comes at the expense of worker protection in developing countries.

Efforts to balance freedom of contract and labor protection are crucial (not to eliminate freedom of contract, but to limit them in good faith and law) so that employment relations can run in a fair and harmonious manner, and in accordance with fair legal principles. Based on the Theory of Balance, an agreement has moral binding power only if there is proportionality of achievement between the parties. Therefore, an in-depth civil law review is needed to determine the extent to which legal intervention and

civil principles (good faith and balance) can correct unfair PKWT clauses.

Based on the above background description, the author formulates the problems in this study as follows.

1. How are the limitations of the Principle of Freedom of Contract in the drafting of clauses of Fixed-Time Work Agreements (PKWT) reviewed from the Principle of Balance and Good Faith according to Civil Law?
2. What is the function of Government Regulation Number 35 of 2021 as an instrument to protect the rights of contract workers?

METHOD

This research is normative legal research that uses several approaches to analyze the legal problems studied. The approaches used include the statute, conceptual, and analytical approaches. The legislative approach is carried out by examining various laws and regulations related to the legal issues being studied, especially the Civil Code (KUHP *perdata*), Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation, and Government Regulation Number 35 of 2021. Furthermore, a conceptual approach is used by examining various views, theories, and legal doctrines that have developed, such as the principle of balance and the doctrine of abuse of circumstances, as a basis for building legal arguments on the problems being studied. The analytical approach is carried out through the interpretation of the content of the clauses of the Fixed-Time Work Agreement (PKWT) to determine the meaning of the norms contained in it and assess its consistency with the principles of legal protection for workers.

The data sources in this study are legal materials, including primary, secondary, and tertiary legal materials. Primary legal materials are authoritative legal materials because they have binding power, which includes the Civil Code, Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, and Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. This research also uses secondary legal materials from various legal publications, such as books, scientific journals, research results, and the opinions of legal experts relevant to the research topic. To complement and provide explanations for primary and secondary legal materials, this study also utilizes tertiary legal materials, such as legal dictionaries and encyclopedias.

The technique of collecting legal materials in this study was conducted through library research. Data collection was performed by inventorying and identifying various laws, regulations, scientific literature, and documents related to the research object. Furthermore, all legal materials that have been obtained are recorded and arranged systematically in accordance with the subject of the research to facilitate the process of analyzing the formulation of the problem that has been determined.

The analysis of legal materials was conducted qualitatively using a normative approach. The analysis process uses a deductive method, which draws conclusions from general legal norms to specific or concrete problems, especially related to clauses in the Fixed-Time Work Agreement (PKWT). The analysis aims to provide juridical arguments regarding the validity of an employment contract clause and the form of legal protection that workers should receive. Before the analysis, all legal materials that were collected were categorized and classified based on criteria relevant to the formulation of the research problem. The next stage was to conduct a descriptive-analytical analysis, which is a method that is not intended to test hypotheses or theories but to evaluate legal concepts, such as legal definitions, legal norms, and structures in the legal system. Through these stages, it is hoped that this research will be able to produce conclusions that are in accordance with the formulation of the problem and the research objectives that have been set (Efendi et al., 2016).

RESULTS & DISCUSSION

The analysis of the limitations of the Principle of Freedom of Contract in the preparation of clauses of the Fixed-Time Work Agreement (PKWT) is reviewed from the Principle of Balance and Good Faith according to Civil Law.

The principle of freedom of contract, as stipulated in Article 1338 paragraph (1) of the Civil Code, grant the parties the right to freely determine the content, form, and conditions of an agreement. However, in labor law, the principle of freedom of contract cannot be applied absolutely. The theory of freedom of contract is a fundamental basis in civil law that gives autonomy to the parties to determine the content of an agreement. This principle is rooted in classical liberalism, which emphasizes the freedom of individuals in conducting legal relations (Subekti et al., 2020). However, in modern developments, the freedom of contract is no longer absolute. Restrictions are necessary to prevent injustice, especially in unbalanced relationships, such as employment relationships (Sjahdeini, 2019). Therefore, the freedom of contract must be balanced with the principles of good faith and justice.

The Theory of Balance Principle (*Evenwichtsbeginsel*) from (Herlien, 2015) is one of the most crucial concepts in modern treaty law in Indonesia. He criticized the classical view that the freedom of contract was absolute: The Basis of Balance is inherent in Objective Good Faith. The agreement must be executed properly. An unbalanced agreement (to the great detriment of one of the parties) is considered a form of impropriety or a violation of good faith. The principle of Freedom of Contract (Article 1338 paragraph 1 of the Civil Code) cannot stand alone. This freedom is only considered valid and legally valuable if there is a balance between the parties involved. If freedom of contract is left without a basis of balance, the economically strong (such as the employer) will always "win" against the weak (labor).

Herlien, (2015) mentions the three main functions of this principle:

- a. Regulatory Function: Ensure that the division of rights and obligations in contracts is proportional.
- b. Adding Function: If there are things in the contract that have not been regulated, then it must be filled with balanced provisions for both parties.
- c. Corrective/Restrictive Function: If the content of the contract is grossly unfair (exploitative), the judge or the law reserves the right to correct or cancel the clause for the sake of justice.

The principle of balance emphasizes the existence of an equal and balanced position in the fulfillment of rights and obligations between parties. In preparing the PKWT clause, the principle of balance acts as an instrument to correct the inequality of the bargaining position. The principle of balance prohibits the existence of exoneratory or unilateral clauses that are detrimental to workers. An example is a disproportionate penalty or compensation clause if the employee terminates the contract prematurely, while the employer can lay off at any time without equal compensation. Employers' rights to work productivity must be balanced with the fulfillment of workers' rights to a living wage, social security, and safe working conditions. If the PKWT clause contains a burden of obligations that are biased toward the workforce without fair compensation, then the clause has injured the principle of balance of civil law.

The imbalance in the bargaining position between employers and workers (not only economically, but also structurally) causes the application of freedom of contract to be often pseudo. Employers tend to be the party that dictates the content of contracts through a standard contract scheme (adhesion contract), while workers are in a take-it-or-leave-it position to get a job. Therefore, civil employment law intervenes in this freedom of contract to protect the weak through coercive legal limitations (*dwingend recht*). PKWT has characteristics that differ from those of general civil agreements (pure bipartite).

In the context of PKWT, employers often use the freedom of contract to draft clauses that benefit their parties without considering the protection of workers. This shows a deviation from the original purpose of this principle (Husni, 2020). Previous research has shown that many employment agreements are formally legal but substantially detrimental to workers. A study by Nasution et al. (2021) in the *Journal of Employment Law* found that PKWT clauses often contain provisions that weaken the position of workers, especially in terms of termination of employment.

In addition to the principle of freedom of contract, there are several important principles of agreement such as the principle of consensualism (conformity of will, that is, that the agreement is valid from the existence of an agreement without certain formalities, which can be inferred from Article 1338 Paragraph (1) and Article 1320 Number (1) of the Civil Code (KUHPer)), the principle of binding power of agreement

(*pacta sunt servanda*, clearly described in the words in Article 1338 Paragraph (1) which states "applicable as a law for those who make it"), the principle of good faith (divided into two, namely subjectively/self-honesty/clean intentions of the parties and objectively, i.e. its implementation must heed the norms of propriety and decency), personality principle (an agreement is binding on the party who made the agreement itself so that it is personal/for himself and not for others outside the agreement, except in certain cases) (Noor, 2015).

Based on Article 1338, paragraph (3) of the Civil Code, an agreement must be implemented in good faith. In the preparation phase (pre-contractual) until the signing of PKWT, the principle of good faith requires honesty, openness, and propriety from both parties, especially from the entrepreneur, as the drafter of the contract. Employers are obliged to provide clear, transparent, and non-misleading information about job status, targets, work risks, and employment termination. The concealment of legal facts or the use of multi-tasking (ambiguous) sentences that are deliberately designed to harm the workforce in the future is a form of violation of good faith (bad faith). The principle of good faith limits employers from abusing the situation (*misbruik van omstandigheden*) due to workers' economic desperation. Employers should not insert clauses that exploit the workforce, such as diploma withholding clauses, without clear return regulations.

An example is the Supreme Court (MA) Cassation Decision Number 538 K/Pdt. Sus-PHI/2020, This decision is an important reference that the unilateral detention of personal documents to limit the movement space of workers violates justice. Cases like this hurt the Principle of Good Faith because they take advantage of the economic desperation of workers. The Supreme Court's decision concluded that: first, the laws and regulations on employment agreements in Indonesia do not explicitly regulate whether or not the clause to withhold the employee's original diploma as a guarantee of employment is permissible; and second, the legal considerations and the decision of the Panel of Judges based on the Supreme Court's Cassation Decision Number 538 K/Pdt. Sus-PHI/2020, are appropriate because they are based on 2 (two) important substances: (1) the resignation of the Cassation Respondent of his own volition is juridically valid; and (2) as a result of the validity of the resignation, the termination of the employment relationship becomes valid, which leads to the obligation for the petitioner to return everything guaranteed by the plaintiff, including the original diploma belonging to the plaintiff, in a whole, good, and undamaged condition.

The results of the analysis show that the principle of freedom of contract is no longer absolute but is limited by the principles of propriety, justice, and public order. The limits of the principle of freedom of contract in PKWT are regulated externally by law (Article 1337 of the Civil Code) and internally corrected by the Principle of Balance and the Principle of Good Faith. The principle of balance requires protection for workers from employer domination, while the principle of good faith (Article 1338 paragraph 3 of the Civil Code) requires transparency and fairness from the beginning of the making to the implementation of the agreement. Freedom of contract is only legally valid if the clause that is drafted does not exploit the weaknesses of the bargaining position of workers, but reflects a proportionate distribution of rights and obligations (balance) and is based on honesty and legal propriety (i.e., good faith).

The function of Government Regulation Number 35 of 2021 as an instrument for the protection of contract labor rights.

Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment is a direct mandate from Law Number 11 of 2020 concerning Job Creation (which is now Law No. 6 of 2023). This regulation has brought about a significant paradigm shift in Indonesian labor law.

Laws and regulations in Indonesia have imposed various restrictions on the use of PKWT, both related to the type of work and the duration of the employment relationship. This restriction is a form of legal protection intended to prevent the continuous use of employment contracts for work that is essentially permanent. The regulation of PKWT in Indonesian labor law has developed in line with changes in labor regulations.

Initially, the provisions regarding PKWT were regulated in Article 59 of Law Number 13 of 2003 concerning Manpower, which stipulates that PKWT can only be made for certain jobs that, according to the

type and nature or activity, will be completed within a certain time, and cannot be used for permanent work. Furthermore, after the enactment of Law Number 11 of 2020 concerning Job Creation, which was later enacted into law through Law Number 6 of 2023, the provisions regarding PKWT have changed. In Law Number 6 of 2023, the regulation regarding PKWT still refers to the provisions in Article 59, which has been amended, providing more flexibility in the arrangement of contractual employment relationships. Further arrangements regarding PKWT are then regulated in detail in Government Regulation Number 35 of 2021, especially in Articles 5 to 15, which regulate the types of work that can use PKWT, the maximum term and limit of employment contracts, the extension and renewal of PKWT, and workers' rights in the form of compensation money after the end of the employment relationship.

The Government Regulation is an important basis for determining how contractual employment relationships are implemented, as well as an instrument of legal protection for workers so that there is no abuse of the PKWT system in industrial relations practices. One of the important aspects of the PKWT arrangement is the provision regarding the duration of employment relationships. Article 6 of Government Regulation Number 35 of 2021 emphasizes that PKWT based on the period can be made for a maximum of five years. This provision provides a clear limitation that employment relationships under contract cannot be entered into without a definite time limit. These provisions are regulated by Articles 8 and 9 of Government Regulation Number 35 of 2021.

In Article 8 paragraph (1) it is stated that:

"PKWT based on the period as referred to in Article 5 paragraph (1) letter a is made for a maximum of 5 (five) years."

Furthermore, in Article 8 paragraph (2) it is emphasized that:

"In the event that the PKWT period will end and the work carried out has not been completed, the PKWT can be extended with the provision that the overall PKWT period is not more than 5 (five) years."

An example is the Supreme Court Decision Number 23 K/Pdt. Sus-PHI/2025, which provides legal protection to workers in the form of PKWT compensation money in accordance with the provisions of Government Regulation Number 35 of 2021. The Supreme Court Decision Number 23 K/Pdt. Sus-PHI/2025 is an industrial relations dispute case that was previously examined and decided by the Industrial Relations Court at the Medan District Court with Number 277/Pdt. Sus-PHI/2022/PN Mdn. Based on the legal considerations of the Supreme Court (MA) in Decision Number 23 K/Pdt. In Sus-PHI/2025, the panel of judges emphasized that the employment relationship between the parties was a PKWT that ended because the term of the agreement had expired. In its consideration, the Supreme Court basically stated that the employment relationship of the parties is based on a written employment agreement that meets the elements of PKWT, and the termination of the employment relationship is a consequence of the expiration of the agreed period. In addition, the Supreme Court also emphasized that the termination of the employment relationship is a form of termination of employment because of the expiration of the term of the employment agreement, as stipulated in Article 154A paragraph (1) letter g of Law Number 6 of 2023 concerning Job Creation. The Supreme Court Decision Number 23 K/Pdt. Sus-PHI/2025 can be seen as providing certain legal protection to workers through the provision of compensation in accordance with the provisions of Government Regulation Number 35 of 2021.

This shows that Government Regulation Number 35 of 2021 functions as a progressive protection instrument for contract workers in Indonesia. The main function of Government Regulation Number 35 of 2021 as an instrument for the protection of contract labor rights (PKWT) is to balance the company's operational flexibility with the certainty of financial rights, limits on the duration of work, and legal guarantees for workers to not be exploited. This regulation balances employers' operational freedom with the certainty of protecting the basic rights of contract workers to achieve distributive justice.

CONCLUSION

The limits of the principle of freedom of contract in PKWT are regulated externally by law (Article 1337 of the Civil Code) and internally corrected by the Principle of Balance and the Principle of Good Faith. Freedom of contract is only legally valid if the clause that is drafted does not exploit the weaknesses of the bargaining position of workers, but reflects a proportionate distribution of rights and obligations (balance) and is based on honesty and legal propriety (i.e., good faith).

Government Regulation Number 35 of 2021 functions as a progressive protection instrument for contract workers in Indonesia. Despite extending the maximum contract term to five years, Governing Regulation Number 35 of 2021 has succeeded in closing the gap in past injustice by presenting a breakthrough in compensation money, tightening financial sanctions on premature layoffs, and limiting the type of work that can be contracted. This regulation balances employers' operational freedom with the certainty of protecting contract workers' basic right to achieve distributive justice.

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