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Industrial Relations with Specific Time Work Agreements after the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in The Perspective of Legal Justice

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Abstract

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Introduction to The Problem: The constitutional court decision No. 91/PUU-XVIII/2020 stated that the establishment of Law No. 11 of 2020 on Job Creation contradicts the 1945 Constitution and is considered conditional unconstitutional. Thus, within two years of Law No. 11 of 2020, its derivative rules are still enforced until there is an improvement. However, two years is a legal certainty, but it is uncertain in the business and industrial worlds.

Purpose/Objective Study: This study aims to find out how the effect of the issuance of the Constitutional Court of the Republic of Indonesia No. 91/PUU-XVIII/2020 on the implementation of Law No. 11 of 2020 on the Employment Cluster and its derivative rules and how alternative efforts in creating harmonious industrial relations on the issue of working relations with Specific Time Work Agreements after the constitutional court decision No. 91/PUU-XVIII/2020.

Design/Methodology/Approach: The research method used is doctrinal legal research.

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Findings: This research resulted in a study that the influence of constitutional court decision No. 91/PUU-XVIII/2020 impacts the uncertainty of legal protection guarantees in the business and the industrial world. Because it takes two years to implement the provisions of Law No. 11 of 2020 in the Employment cluster and its derivative rules, namely Government Regulation No. 35 of 2021, the business and the industrial world cannot implement the provisions without any guarantee of sustainable time, and it will lead to injustice in industrial relations. One alternative to continue creating harmonious industrial relations with Specific Time Work Agreements is to return to local wisdom, prioritizing the principle of consensus deliberation that prioritizes the parties' agreement in working relations including the fulfillment of rights in compensation payments when there is a termination of employment.

Paper Type: Research Article

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Introduction

Labor Law is a rule that regulates all matters related to labor during the time before, during, and after the working period and contains sanctions for those who violate it (Fathammubina, 2018). This labor law is one of the scientific fields that fall within private Law and Public Law. Labor law is private because it regulates the legal relationship between the legal subjects, both person and person or person with *rechtsperson*, and can be public because it is related to the obligation to comply with and carry out what has been determined by the state as a provision of a legal nature. Regulations related to labor law in Indonesia have been regulated by Law No. 13 of 2003 concerning Manpower. The Law regulates the employment relationship, which is a legal relationship between employers and workers based on employment agreements that have elements of work, rights, and obligations of the parties.

The working relationship begins after the existence of an employment agreement, which contains rights and obligations between workers and employers (Sutedi, 2009). The employment agreement becomes the basis of the employment relationship (Sridadi, 2015). The employment agreement has also been regulated in Chapter VIIA Book III of the Civil Code or *Burgerlijk Wetboek (B.W)*, which states that the employment agreement is an agreement from the first party, namely workers who bind themselves to hand over their labor to other parties, namely employers, with wages for a specific time.

Employment Agreements in labor law are distinguished by Specific Time Work Agreements and Non-Specified Time Work Agreements (Djumialdji & SH, 2019). Law No. 13 of 2003 previously stipulated related to the working period of workers with a specific time work agreement of a maximum of 3 years with the provision that the agreement is held for a maximum of 2 years and can only be extended one time for a maximum period of 1 year so that work agreement based on a specific period should not be made for three years at a time. However, after the passage of Law No. 11 of 2020 concerning Job Creation, there were several changes regarding the arrangement of workers' working periods with Specific Time Work Agreements that changed to a maximum of 5 years.

Law Number 11 of 2020 concerning Job Creation is a Law that has accommodated several laws into one regulation (Sjaiful, 2021), one of them is Law No. 13 of 2003 concerning Manpower. Law Number 11 of 2020, which carries the concept of Omnibus Law, first appeared when Joko Widodo delivered his state of the nation speech (Prabowo et al., 2020). This law was passed and signed by President Joko Widodo on November 2, 2020. In its implementation, the enactment of Law No. 11 of 2020 received many rejections from most Indonesians (Nugroho & Syarifuddin, 2021). The rejection is based on the argument that Law No. 11 of 2020 only regulates particular groups' interests (Aprianti et al., 2021). In addition, the process of formulating Law No. 11 of 2020 is also considered to deviate from the rules of



formation of legislation. Thus, many people, including academics, file a lawsuit or judicial review to the Constitutional Court.

The issuance of Constitutional Court Decision No. 91/PUU-VIII/2020 caused many polemics in the community, including academics. The Constitutional Court held that the establishment of Law No. 11 of 2020 concerning Job Creation was contrary to the Constitution of the Republic of Indonesia of 1945. In addition, the Constitutional Court also judged that the Law was unconstitutional conditional and required revision. That way, the Constitutional Court has ordered the House of Representatives and the Government to improve Law No. 11 of 2020 on Job Creation within the next two years. Within two years, the Constitutional Court stated that what has been passed in Law No. 11 of 2020 concerning Job Creation and its derivative rules remains in place until there is an improvement within the next two years. However, if no improvement is made within two years, then Law No. 11 of 2020 becomes permanently unconstitutional. The Constitutional Court also stated that the government is prohibited from issuing new implementing regulations related to Law No. 11 of 2020 within the period of repairs that have been given.

The constitutional court's decision on Law No. 11 of 2020 certainly impacts legal certainty and the trial climate in Indonesia. Within two years, the Constitutional Court has provided a legal certainty by enacting Law No. 11 of 2020 and its derivative rules. However, it is an uncertain thing in the business world and the industrial world. So that with, the improvement of Law No. 11 of 2020 will significantly impact the certainty of the business world today (Ramadhan et al., 2021). Some of them are disrupting industrial relations between employers and workers (Jason & Tan, 2022). From the above description, this paper will examine how the effect of the decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-VIII/2020 on the implementation of Law No. 11 of 2020 in the Employment Cluster especially regarding the implementation of its derivative regulations, namely Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment and the alternative efforts in creating harmonious industrial relations on the issue of employment relations with a Specific Time Work Agreements after the issuance of the constitutional court decision No. 91/PUU-VIII/2020.

Methodology

This research uses doctrinal legal research methods, where the author only uses secondary data, namely laws and regulations, in this case, the Grand Norm of the Republic of Indonesia Pancasila, the Constitution of the Republic of Indonesia of 1945, the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, the Law of the Republic of Indonesia of 2020 concerning Job Creation, and Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment and the decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-



XVIII/2020. Secondary data is obtained through library studies. The approach methods used are the statue approach and conceptual approach. Therefore, this research is qualitative research by referring to laws and regulations as instruments.

Results and Discussion

Review of Constitutional Court Decision No. 91/PUU-VIII/2020

The existence of the Constitutional Court serves to deal with some instances in the field of statehood and maintain the implementation of a stable government (Sutiyoso, 2016). The Constitutional Court is the perpetrator of the independent judicial power to hold the judiciary to uphold law and justice (Darmadi, 2020). The establishment of the Constitutional Court aims to guarantee the constitution as the highest law so that it can be enforced. The Constitutional Court is therefore referred to as the guardian of the constitution.

Like the judiciary in general, the Constitutional Court also issued legal products in the form of rulings. The difference between the ruling issued by the constitutional court and other judicial institutions lies in the continued legal efforts of the ruling. If the decision issued by the judiciary, such as the Supreme Court and the below judiciary, can be carried out, further legal efforts, either in the form of appeals, cassations, or judicial review. The Constitutional Court did not adopt the mechanism (Maulidi, 2017).

The constitutional court decision No. 91/PUU-XVIII/2020 states that the establishment of Law No. 11 of 2020 on Job Creation is contrary to the 1945 Constitution and has no conditional binding legal force if it is not interpreted as no improvement is made within two years of this ruling is pronounced. Determine the product of a state institution as a binding product of law is solely determined by the political logic of representation (Safa'at, 2019). It is said in Article 24C paragraph (1) of the 1945 Constitution, which states that the constitutional court's decision is final, meaning that the constitutional court's decision has had permanent legal force since it was read in the Constitutional Court trial. Rulings that have legal force still have binding legal force to be implemented.

Unlike ordinary court rulings that only bind everyone (persons), the constitutional court's ruling in the case of Judicial Review binds all components of the state, including the government, the House of Representatives, and citizens. In the case of judicial review, a broad, strategic and comprehensive legal norm is being reviewed or tested (Simamora, 2013). Even though the basis of the Application for The Test of the Act is the constitutional right of the aggrieved applicant, this action aims to represent the legal interests of the entire community for the sake of the establishment of the constitution. It must be recognized that the above constitutional court ruling is a breakthrough. In addition, the verdict is likely to have a less direct impact in the future.



The Constitutional Court made a new history in the judicial review of the Law on November 25, 2021, by granting the testing of Law No. 11 of 2020 on Job Creation through Decree No. 91/PUU-VIII/2020. The Constitutional Court granted part of the petitioner's application in the ruling. Generally, formal judicial review focuses on testing the conformity of procedures for forming an Act. However, in its development, there is an expansion of the meaning of formal judicial review, which includes testing the conformity of the procedure for the formation of the Law (formal review in a narrow sense) and is also related to everything that is non-material testing (formal review in the broader sense).

This procedural aspect is to realize three main functions, namely law enforcement functions, implementation and application of law (*law applying function*), and the creation or formation of law (*law-making functions*), including maintaining community participation (Asshiddiqie, 2019). So that, the function of formality is no less important than the material function of a Law. Therefore, its existence must be obeyed by the lawmaker, in this case, the government and the House of Representatives.

In the constitutional court decision No. 91/PUU-XVII/2020, the Constitutional Court emphasized the importance of fullness of the formalities in all stages of the law-making process and the meaning of meaningful participation. The Constitutional Court then firmly stated that Law No. 11 of 2020 was flawed because the procedures for its formation were not based on definite ways, methods, and standards and were not following the systematic formation of the Law.

Furthermore, some substance changes were made following the joint agreement between the House of Representatives, President and opposition concerning the principles of forming laws and regulations. The Constitutional Court handed down a conditional unconstitutional ruling. The Constitutional Court did not directly cancel the implementation of Law No. 11 of 2020. However, it delayed its implementation by providing an opportunity for the lawmaker to improve Law No. 11 of 2020 based on the procedures for forming laws that meet specific ways and methods, standards, and the principles of forming predetermined legislation.

The method of forming this Law must also be in line with the concept of forming a Law using the omnibus law method. So that then, Law No. 11 of 2020 can be improved after establishing the legal foundation. However, in another ruling, the Constitutional Court gave a dilemmatic position. It is because the Constitutional Court still opens the implementation room of Law No. 11 of 2020 if it is not related to matters of a strategic nature and broad impact, including forming new implementing regulations and not being the basis for state organizers in conducting strategic and broad-impact policies.

In addition, there is a gap in ambiguity to the meaning of "things that are strategic and have a broad impact," thus obscuring the meaning of what implementation actions can still be done under Law No. 11 of 2020 and what should not be done. Thus, the



formal ruling on Law No. 11 of 2020 shows the anomaly of the ruling, on the one hand, delaying the implementation of Law No. 11 of 2020, but on the other hand, it still opens the space for implementation of Law No. 11 of 2020. According to the author, these further distances the spirit of realizing the legal certainty brought by the Constitutional Court in deciding the formal review against Law No. 11 of 2020. Instead, it creates new legal problems at the level of its implementation. As for the decision of the Constitutional Court Number 91/PUU-XVIII/2020, there are points of explanation about the formal test of Law No. 11 of 2020 concerning Job Creation, including:

1. The Constitutional Court stated that the establishment of Law No. 11 of 2020 is contrary to the 1945 Constitution and has no conditional binding legal force as long as it is not interpreted as "no improvements have been made within two years since this ruling was pronounced (November 25, 2021)" (*Judicial Verdict No. 3*).
2. The Constitutional Court stated that Law No. 11 of 2020 remains in force until improvements are made following the grace period specified in this ruling (*Judicial Verdict No. 4*).
3. The Constitutional Court, in the ruling, ordered the President and the House of Representatives to make improvements to Law No. 11 of 2020 no later than two years. Moreover, all laws amended and repealed by Law No. 11 of 2020 are declared re-enacted (*Judicial Verdict No. 6*).
4. The Constitutional Court stated that the government should suspend all actions/policies that are strategic and have a broad impact and are not allowed to issue "new" implementing regulations related to Law No. 11 of 2020 (*Judicial Verdict No. 7*). It means that the government can do almost nothing to implement Law No. 11 of 2020 because the scope of Law No. 11 of 2020 is, as mentioned in Article 4 of Law No. 11 of 2020, all regulate matters of a strategic nature.

Following the Constitutional Court decision number 3, which states that Law No. 11 of 2020 concerning Job Creation does not have the legal force to bind conditionally as long as it is not interpreted, "no improvements have been made within two years since this ruling was pronounced on November 25, 2021," it is necessary to understand the difference between "conditionally constitutional" and "conditionally unconstitutional" of the ruling. In the case of conditionally constitutional, i.e., law or its passage is constitutional if it meets the conditions set by the Constitutional Court. Vice versa, if the conditions are not met, it becomes unconstitutional (contrary to the 1945 Constitution), and its decision is rejected and can be submitted for testing of the law again. Conditionally unconstitutional, i.e., law or its passage is unconstitutional (contrary to the 1945 Constitution) at the time the verdict is read, it becomes constitutional (not contrary to the 1945 Constitution) if the conditions as stipulated by the Constitutional Court are met, the ruling is granted. However, suppose the conditions set by the Constitutional Court are not met. In that case, it will become permanently unconstitutional (contrary to the 1945 Constitution), and all the



implementing rules of the law will also not have the legal power to be used as a basis for solving a problem related to the rule. It is in line with the concept of *the chain of validity of the regulation* that the enforceability of a regulation must be based on the rules above it that still have binding laws. Suppose the government continues to force the implementation of Law No. 11 of 2020 and its implementing regulations (derivative rules). In that case, it will be vulnerable to being the object of a lawsuit because it causes legal uncertainty in society.

Meanwhile, decision number 4 states that Law No. 11 of 2020 is still valid until improvements are made following the grace period determined in the constitutional court's decision. Then the phrase "still valid" can be interpreted in 2 things that apply the sense of validity or the sense of the power of binding law (*efficacy*). Validity is concerned with the position of statutory regulation, while efficacy concerns the binding power of a regulation that can be distinguished by place and time. So, although Law No. 11 of 2020 is still valid, its implementation must be suspended. As mentioned in the decision points six and point seven which provide the understanding that the Job Creation Law does not fully have binding legal force because the Constitutional Court has suspended all actions and policies and must not make new implementing rules from Law No. 11 of 2020. Some scopes, as mentioned in Article 4 of Law Number 11 of 2020, which regulates the strategic policy of Job Creation, include:

1. Improving the investment ecosystem and business activities
2. Employment
3. Ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises
4. Ease of effort
5. Research and innovation support
6. Land procurement
7. Economic area
8. Central Government investment and acceleration of national strategic projects
9. Implementation of government administration, and
10. Imposition of sanctions.

Employment Relationship with Specific Time Work Agreements Based on Law Number 11 of 2020

An Employment Agreement is an agreement in which the first party binds itself to do a job for the other party by receiving wages (Tampongangoy, 2013). In Law No. 13 of 2003 concerning Manpower, it is also stated that an agreement between workers with employers contains the terms of work, rights, and obligations of the parties. Employment agreements are the foundation of the birth of legal relations between workers and employers. The legal terms of an agreement, as stated in Article 1320 of the Civil Code, are:

1. There is an agreement between those who bind themselves.
2. There is an ability to ally.



3. About a particular thing.
4. There is a lawful reason.

Based on the principle, in an agreement, there are five principles known in civil/private law, including the principle of freedom of contract, the principle of consensual (*consensualism*), the principle of legal certainty (*pacta sunt servanda*), the principle of *good faith*, and the principle of *personality* (Muhtarom, 2014). As for the explanation of the principle:

1. *The Principle of Freedom of Contract* is a principle that gives freedom to the parties to make or not to make agreements, enter into agreements with anyone, and determine the form of the agreement, whether written or oral. This principle can be concluded in Article 1338 paragraph (1) of the Civil Code or *Burgerlijk Wetboek (B.W)*, which reads, "All Agreements made legally apply as law to those who make them."
2. *The Principle of Consensualism* is a principle that states that agreements are generally not held formally but are sufficient with the word agreement from both parties that will bind themselves in a treaty. This principle can be concluded in Article 1320 paragraph (1) of the Civil Code or *Burgerlijk Wetboek (B.W)*.
3. The Principle of Legal Certainty (*Pacta Sunt Servanda*) is a principle related to the consequences of the agreement. This principle affirms that judges or third parties must respect the substance of the agreement made by the parties and must not intervene in the treaty's substance, as is the case with law. This principle can be stated in Article 1338 paragraph (1) of the Civil Code or *Burgerlijk Wetboek (B.W)*.
4. The Principle of *Good Faith* is a principle by which the parties carry out the agreement's substance based on the parties' firm beliefs and goodwill. This principle is contained in Article 1338 paragraph (3) of the Civil Code or *Burgerlijk Wetboek (B.W)*, which reads, "The Agreement must be implemented in good faith."
5. *Personality* principles determine that a person who will make or make a covenant is only for the benefit of individuals. Article 1315 of the Civil Code or *Burgerlijk Wetboek (B.W)* asserts that "In general a person cannot enter into an agreement or agreement other than for himself" and Article 1340, which states, "The Agreement applies only between the parties who make it."

In the Specific Time Work Agreement, employers can create harmonious and dynamic working relationships as mandated by the Constitution of the Republic of Indonesia of 1945. Article 33, paragraph (1) affirms that the economy is structured as a joint effort based on family principles. The working relationship between employers and workers in specific time work agreements/contract workers must also reflect legal protection to workers following the state objectives set out in the opening of the Constitution of the Republic of Indonesia in 1945, namely "protecting the entire nation and all blood spilled in Indonesia and to advance the general welfare based on Pancasila in order to achieve social justice for all Indonesian people."



A specific time work agreement intends to fill a job with a time limit in its work and provide protection and legal certainty for workers. So that there is no arbitrariness of employers in the appointment of labor carried out through agreements in the form of work agreements of a specific time to do work that is continuous or is a permanent worker in a business entity. In addition, Specific Time Work Agreements are also part of the legal changes in the field of employment (Azis, 2016).

Today, many companies prefer to work with a specific time work agreement or contract work instead of entering it as a permanent worker. This is due to productivity and wage inequality. Employers often complain about the low productivity of workers with wages given inappropriately. So that by implementing a contract work system, employers will benefit from the avoidance of the obligation to provide severance pay, employment award money, rights replacement money, and separate money to their workers when the agreement period has expired (Surya et al., 2020).

Changes in some provisions regarding employment in the Indonesian Omnibus Law contained in Law No. 11 of 2020 concerning Job Creation have attracted much resistance from workers. One of them is regarding eliminating the maximum time limit of Specific Time Work Agreements that have previously been stipulated in Law No. 13 of 2003 concerning Manpower.

Under the old rules of the Labor Act, companies can only perform a specific time employment agreement contract for a maximum of 3 years. After that, the company must appoint workers as permanent workers if they want to hire them after three years. Whilst, in Law No. 11 of 2020, the maximum time limit on a specific time work agreement is submitted to the parties' agreement. To meet the demands for legal certainty protection, a derivative rule of Law No. 11 of 2020 was born, namely Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. Those are stipulated in Article 6, which regulates the maximum time limit of a specific time work agreement to 5 years, as well as Articles 8 and 9, which regulate the period of specific work agreements setting a limit on the most extended period of a specific time work agreement for five years with the agreement of the parties, as well as the extension of a specific time work agreement submitted to the parties with a maximum of five years calculated since the occurrence of the working relationship. This will give the staff room to be unfair to workers. Because after five years of being a contract worker, there is no guarantee of being appointed a permanent worker.

Furthermore, the provisions regarding compensation money given to workers with Specific Time Work Agreements stipulated in the third section of articles 15, 16, and 17 of Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment. Article 15 states that the compensation money is entitled to be received



by work that works for at least one month and is given after a specific time work agreement expires. Article 16 regulates the proportional calculation of the amount of compensation money received by workers. While article 17 regulates the obligation of employers to provide compensation money.

Suppose the company does not ¹ provide compensation money to workers with the status of a specific time work agreement who have qualified to get compensation money. ² In that case, the company may be subject to sanctions as stipulated in Article 61 of Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. Sanctions are carried out gradually, ranging from written reprimands, restrictions on business activities, temporary suspension, or all means of production to freezing business activities.

When compared with the deadline for employment agreements to five years in the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation delegated in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, And Termination of Employment, contract workers get compensation money as stipulated in article 15, 16, and 17 Government Regulation Number 35 of 2021. With the provision of one year of work, get compensation money equivalent to one month of wages and other proportional regulations that have been regulated in its English translation. Government regulation serves as an implementing regulation. The implementing regulations regulate matters of a more specific nature in line with the Law that delegates (Cakra & Sulistyawan, 2020). The need for harmonization and synchronization of implementing regulations with the above regulations aims to conform to the substance of the content material in statutory regulation.

Regulation of Industrial Relations with a Specific Time Work Agreements After the Constitutional Court Decision Number 91/PUU-XVIII/2020

A rule must ¹³ be made and promulgated with certainty because it regulates clearly and logically. It does not cause doubt (multi-interpretation) and is logical so that it becomes a system of norms with other norms that do not clash or cause conflicts of norms. Conflicts of norms arising from the uncertainty of rules can take the form of norm contestation, reduction of norms, or distortion of norms (Marzuki, 2021).

³ The existence of the Constitutional Court Decision Number 91/PUU-XVIII/2020 certainly causes uncertainty for the broader community because the ruling seems unequivocal and hanging. By being declared a conditionally unconstitutional legal product. The Constitutional Court has declared that Law No. 11 of 2020 and its rules of descent formil have been legally flawed or contrary to the Constitution of the Republic of Indonesia of 1945. However, the Constitutional Court stated that the Law is still in force for two years until there is an improvement from the House of Representatives and the Government. The enactment of Law No. 11 of 2020 and its



rules within two years certainly has guaranteed a legal certainty for the organizers. However, the constitutional court's decision has also stated that if the Law is not corrected within a 2-year grace period, the Law becomes permanently unconstitutional. So that in the business world and the industrial world, it is uncertain because in carrying out the working relationship of employers, it is impossible to only do a working relationship in just two years. If, after the improvement in Law No. 11 of 2020, there is a change in the substance of the Law, it will undoubtedly impact the uncertainty of legal protection guarantees in the business and industrial world. Because within two years of implementing the provisions of Law No. 11 of 2020, the Employment Cluster and its derivative rules, namely Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, is impossible to be implemented by the business world and the industrial world without any guarantee of sustainable time. Instead, it will cause injustice in industrial relations.

Prior to the decision of the Constitutional Court Number 91/PUU-XVIII/2020, the Law No. 11 of 2020 of Employment Cluster has changed and removed several provisions related to employment relations in Law No. 13 of 2003 on Manpower. Its derivative rules, namely Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, have changed the working period for workers with Specific Time Work Agreements. In the Law No. 13 of 2003 concerning Manpower previously regulated regarding the working period of workers with specific time worker agreement maximum of 3 years, namely with the provision held for a maximum of 2 years and can only be extended one time for a maximum period of 1 year. After issuing Law No. 11 of 2020 and its derivative rules, the working period for workers with a specific time work agreement changed to 5 Years. In addition, it is related to compensation money for workers with Specific Time Work Agreements that have been stipulated in the third section, articles 15, 16, and 17 of Government Regulation No. 35 of 2021. This compensation money is given whenever the period of a specific time work agreement expires, including an extension of a Certain Time Work Agreement; the company must pay compensation money before the extension. Once the Specified Time Employment Agreement extension expires, the worker is entitled to receive compensation money for the extension of the Specified Time Work Agreement.

The improvement of the Law after the issuance of the Constitutional Court decision No. 91/PUU-XVIII/2020 will eventually become a new problem in employment relations related to fulfilling workers' rights with contract employment status (*workers of a specific time*). There will be workers who experience termination of employment by receiving compensation money. After the change, later it could be that the regulation has changed to eliminate the rights previously regulated by the mechanism in Government Regulation No. 35 of 2021.



The Constitutional Court's ruling in the judicial review case has permanent legal force since it was read at the plenary session. This is a consequence of the presumption of constitutionality principle in Article 58 of Law No. 24 of 2003 concerning the Constitutional Court regarding the enforceability of the Law until there is a ruling that states the Law is contrary to the constitution. The provision indicates that the Constitutional Court's ruling is forward-looking or non-retroactive.

The application of the law retroactively, in principle, is prohibited because it can cause chaos that results in legal chaos and legal uncertainty. The retroactive application of formal law can also result in a very complicated administrative justice chaos. Therefore, in principle, all regulations or the application of law must be prospective.

In its ruling, the Constitutional Court ordered the President and the House of Representatives to improve Law No. 11 of 2020 no later than two years. If no improvements are made in these two years, then Law No. 11 of 2020 becomes permanently unconstitutional, and all laws amended and repealed by Law No. 11 of 2020 are declared permanently valid. So, if it is not improved within two years, then Law No. 11 of 2020 does not apply again, and the arrangements related to employment relations are back on the provisions of Law No. 13 of 2003 concerning Manpower. This will undoubtedly impact the business world and the industrial world because, so far, Law No. 11 of 2020 has been implemented and has become the basis for making work agreements for workers with Specific Time Work Agreements. In the case of employers having a working relationship with workers in a specific working time agreement, although Law No. 11 of 2020 and its derivative rules are no longer enforced, employers and workers can exclude laws or regulations in conducting work relations with Specific Time Work Agreements by using agreements made between 2 parties as a legal basis in employment relations, and it can be legal certainty for employers and workers. This follows the criteria for forming an agreement wherein Article 1338 paragraph (1) of the Civil Code, or *Burgerlijk Wetboek (B.W)*, affirms that all agreements made legally apply as law to those who make them. So that everyone is free to enter into agreements both regulated and that have not been regulated in law. The agreement is a manifestation of the principle of freedom of contract.

The principle of freedom of contract as the basis for establishing an employment agreement between the parties has become the basis for the continuity of working relations. The parties, in this case, employers and workers, are free to determine the object of the employment agreement, such as working time, the amount of wage value, and other provisions related to the implementation of the working relationship as long as there is an agreement between the two parties. Thus, it returns to the basic principle of the validity of the agreement, namely upholding the agreement (*consensualism*) of the parties by prioritizing consensus deliberation.

⁴ Article 1320 paragraph (1) of the Civil Code or *Burgerlijk Wetboek (B.W)* states that one of the legal conditions of the agreement is the word agreement between the two



parties (principle of consensual/consensualism). So that the agreement that employers and workers have made in conducting an employment relationship can be said to be valid and valid to be the legal basis if it has been agreed upon by both parties and follows the principle of *pacta sunt servanda* (Schmalenbach, 2018). Judging from distributive justice based on contract justice, that justice as fairness (eligibility) or as pure procedure justice, justice born from a procedure accepted by all parties (the parties) must also be accepted as a concept that deserves to apply to the public (Alotaibi, 2001). As the theory of justice put forward by John Rawls dotted to, rejecting the term of the *Default Position* is the initial status quo that asserts the fundamental agreement reached is fair (Rawls, 2006). Everyone has the same right in the procedure of choosing principles; everyone can make proposals, convey their reasoning, and others (Yudha, 2010).

In this context, Rawls calls "justice as fairness," characterized by the principles of rationality, freedom, and equality. Therefore, the principles of justice are needed that prioritize the principle of rights rather than the principle of benefits. One of the principles of distributive justice put forward by Rawls is the principle of the greatest equal principle that everyone should have the same right to the broadest fundamental freedoms, as broad as the same freedom for all. This is the most basic human right that everyone should have. In other words, only with the guarantee of equal freedom for all people will justice be realized (Principle of Equal Rights) (Yudha, 2010). The theory of justice put forward by Rawls pioneered in "justice as fairness," characterized by the principles of rationality, freedom, and equal rights for everyone. The freedom referred to has been stated in the Civil Code or *Burgerlijk Wetboek (B.W)* Article 1338 paragraph (1) and Article 1320 paragraph (1).

A fair outcome is basically due to a fair process as well. On the contrary, an unfair process will not be expected to bring fair results. In other words, if an employment agreement is implemented by the party who performs the agreement, following the principle of freedom of contracting will undoubtedly result in an honest working relationship (industrial relations). Therefore, putting the consensus deliberation principle and justice for both parties in the working agreement may become an alternative to creating harmonious industrial relations with the Specific Time Work Agreements

The use of the principle of consensus deliberation in fulfilling rights and obligations on employment relations with Specific Time Work Agreements certainly does not ignore general matters as stipulated in the provisions of legislation or, in this case, law No. 13 of 2003 concerning Manpower, where some provisions are not removed and amended in Law No. 11 of 2020 concerning Job Creation. By using the principle of consensus deliberation as a basis in making work agreements based on the agreements of the parties and applied in matters related to arrangements in the employment agency in Law No. 11 of 2020 and Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest



Time, And Termination of Employment. Because it further guarantees the legal certainty of the parties with the issuance of the Constitutional Court's decision, which may change after the next two years as the actual working relationship is a personal relationship between the subjects of law.

Conclusion

The issuance of Constitutional Court Decision No. 91/PUU-XVIII/2020 impacts the certainty of legal protection guarantees in Indonesia's business and industrial world. The order to improve Law No. 11 of 2020 for the next two years will undoubtedly have a significant impact on the certainty of the business world and the industrial world because two years to continue to implement the provisions of Law No. 11 of 2020 is impossible to be implemented by the business world and the industrial world without any guarantee of continuous-time. It will lead to injustice in industrial relations. By using the principle of freedom of contract as the basis for the formation of an employment agreement, prioritizing the principle of consensus deliberation that prioritizes the agreement of the parties in the working relationship, including the fulfilment of the right in the form of compensation payments when there is a termination of employment, it becomes one of the alternatives to create a harmonious industrial relationship with a specific time work agreement with local wisdom. This follows the theory of justice pioneered by justice as fairness, which is based on rationality, freedom, and equal rights for everyone.

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Declarations

Author contribution : Contribute in thoughts on fair legal solutions in the employment relationship with a specific time work agreement that following the issuance of the constitutional court decision number 91/PUU-XVIII/2020, it has experienced legal uncertainty in its implementation; therefore, if the problems in the employment relationship based on a specific time work agreement with the concept of fairness are returned to local wisdom, namely deliberation of consensus in the language law is a treaty that we knew as an agreement. The agreement of the parties becomes the highest law in the conditions of positive legal regulation, which in the job market, both in



terms employers and workers themselves are considered unable to provide legal certainty, meaning that deliberation of consensus becomes the fairest law for the realization of harmonization in industrial relations with a specific time work agreement.

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