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Fithriatus Shalihah

MA (Law),
Department of Law,
Ahmad Dahlan University (Universitas Ahmad Dahlan)
Yogyakarta 55166, Indonesia
fithriatus.shalihah@law.uad.ac.id
ORCID ID: <https://orcid.org/0000-0002-6273-1381>



Oksep Adhayanto

MA (Law),
Department of Law,
Maritime University of Raja Ali Haji (Universitas Maritim Raja Ali Haji)
Tanjung Pinang, Kepulauan Riau, 29115, Indonesia
adhayantooksep@umrah.ac.id
ORCID ID: <https://orcid.org/0000-0002-1110-0280>



Mexasai Indra

MA (Law),
Department of Law,
Riau University (Universitas Riau)
Pekanbaru, Riau 28293, Indonesia
mexasai@yahoo.com
ORCID ID:
<https://orcid.org/0000-0003-3497-9950>



Agusmidah

MA (Law)
University of Sumatera Utara (Universitas Sumatera Utara)
Medan Sumatera Utara, 20222, Indonesia
agusmidah@usu.ac.id
ORCID ID: <https://orcid.org/0000-0001-8036-4688>

Determination of the maximum time limit on a specific time work agreement in the view of legal certainty and fairness

Abstract. Labour as a party with a relatively weak bargaining position must receive legal protection from the state. Justice for workers is a condition that ensures the continuity of their employment relationship status and justice for the welfare of workers. This study aims to provide an overview of the legal changes regarding the maximum time limit of a certain work agreement that changes the justice of legal certainty in Indonesia. This study used the descriptive qualitative method. This research is formative research on labour law in Indonesia. This study uses three approaches, namely: a legislative approach, a conceptual approach and a comparative approach. The information base of research has been formed through using documentation and literature studies on the problems that occur with changes in employment status in Indonesia. Data were analyzed using Miles and Huberman models, namely data reduction, data tabulation, data presentation and conclusion drawing.

The study results indicate that the application of the new regulation on employment is less fair and prosperous for workers with a certain time work agreement. The research results are expected to be taken into consideration for related parties to prioritize the welfare of workers for a certain period to improve the standard of living of workers for a certain period.

Keywords: Employment Protection; Labour; Legal Change; Labour Law; Welfare of Workers; Indonesia; Certain Time Work Agreements; Outsourcing; Working Time; Rest Time; Termination of Employment

JEL Classification: J01; J08; J21

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1. Introduction and Brief Literature Review

Knowledge of development and changes in the composition of the national workforce is an essential factor for the growth and improvement of welfare (Pawera & Jančíková, 2017). Therefore, labour is a crucial position as an actor and development goal. In consideration of letters c and d of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, it is stated that the workforce has a significant role and position as actors and objectives of the story in implementing national development. Worker protection is a multi-dimensional concept (Cui et al., 2018). However, labour law (development of employment relations and examination) is not coordinated; it is contrary to general civil law relations because it is subordinate.

Employment agreements in Indonesia are divided into work agreements for a certain time and work agreements for an indefinite time. Certain time agreements are better known as contracts or non-permanent work agreements (Oliskevych & Tokarchuk, 2018). Employment agreements can be used to provide legal protection to workers within the time limit of employment (Dewaelheyns et al., 2021). The presence of a work agreement can avoid the company's arbitrariness in carrying out continuous work or permanent/permanent work (Maltseva et al., 2021). The work agreement for a certain time is part of the amendment to the law in the field of the workforce.

Protection of workers to realize the welfare of workers/labourers and their families still pay attention to the development of the progress of the business world. Based on the Law of the Republic of Indonesia number 13 of 2003 that every citizen has the right to work and a decent living. In protecting workers, the Government of the Republic of Indonesia seeks to establish quality, flexible, responsive and straightforward laws. The product of law formation is a legal system called the Omnibus Law. This system is usually referred to as universal sweep law because it can replace several laws and regulations in one regulation (Wong et al., 2019).

Changes in several employment provisions in the Indonesian Omnibus Law on Job Creation have drawn much resistance from workers. One of them is removing the maximum time limit for a certain time work agreement previously expressly regulated in the Manpower Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower. In the Indonesian Omnibus law, the maximum time limit is left to the parties' agreement (Liu et al., 2019). Government Regulation No. 35 of 2021 is issued regarding Work Agreements for Certain Time, Outsourcing, Working Time and Rest, and Termination of Employment. Employment or work reorganization experienced at the employee or organizational level affects the level of employee confidence. Reform and implementation of laws for companies and individuals cannot anticipate changes in job protection (Dewaelheyns et al., 2021). New labour laws that include additional or amended legal requirements sometimes come into effect, and these new laws can also pose challenges for companies (Zhuang & Yu, 2021).

Policies related to the maximum time limit for certain work agreements in Indonesia must be following the principles of legal certainty and the principles of justice required for the rule of law. Regarding labour laws and regulations, especially regarding determining the maximum time limit on a work agreement for a specific time, it must also refer to or be based on the principle of legal certainty (Pawera & Jančíková, 2017). In other words, the determination of the maximum time limit of a work agreement for a specific time must reflect the principle of legal certainty (Cui et al., 2018). Previously, with the regulation regarding the maximum time limit of a particular work of time agreement as regulated in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, the aim was to provide social, economic, and technical protection fields. However, in this case, the government makes arrangements regarding certain time work agreements because there are jobs that have limitations in the process (Maltseva et al., 2021). Therefore, the government also issued a Ministerial Decree No. 100/Men/VI/2004 concerning implementing a specific work agreement.

The employment agreement is the basis of the relationship between the worker/labourer and the entrepreneur/company (Francis et al., 2018). Therefore, in HR, work agreements are significant and have a crucial role because there are specifics about work agreements that cause these two types of arrangements (PKWT and Outsourcing) to be interesting to study and discuss (Oliskevych & Tokarchuk, 2018). The maximum time limit is set at five years (Pawera & Jančíková, 2017). However, the determination of the total time is added two years from the previous. This study aims to provide an overview of the legal changes regarding the maximum time

limit of a certain work agreement that changes the justice of legal certainty in Indonesia. Labour as a party with a relatively weak bargaining position must receive legal protection from the state. Justice for workers is a condition that ensures the continuity of their employment relationship status and justice for the welfare of workers.

2. Research Method

This study used the descriptive qualitative method. Descriptive research is defined as analysing documents by participating in arguments based on the point of view of events. This research is formative research on labour law in Indonesia. Legal formative research is research on legal principles, legal rules regarding values (norms), concrete legal arrangements, and legal systems regarding the material being studied. This study uses three approaches, namely a legislative approach, a conceptual approach and a comparative approach. The Legislative Approach is an approach by studying all laws and regulations relating to the issues discussed. This approach method requires an understanding of the hierarchy and principles in the legislation. A conceptual approach is through assessments and concepts from experts related to discussions carried out when the law does not yet exist. A comparative approach is a comparative law both originating from other countries and from a certain time to other countries. The data were obtained using documentation and literature studies on the problems that occur with changes in employment status in Indonesia. Data were analyzed using Miles and Huberman models, namely data reduction, data tabulation, data presentation and conclusion drawing.

3. Results and Discussion

The enactment of the provisions regarding the omnibus law contained in the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation has been several changes to labour regulations, one of which is regarding the determination of the maximum time limit. For workers with work agreements for a specific time, where the implementing rules initially used a Ministerial Regulation, Law of the Republic of Indonesia Number 11 of 2020 concerning the Creation of Job Opportunities for labour clusters has changed the implementing regulations related to work agreements for a specific time, namely in the form of a Government Regulation of the Republic of Indonesia. Indonesia Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. Legislation that is domiciled as implementing regulation is needed to clarify the law's intent but obscures the purpose of the law. If examined in terms of legal certainty, changes to the provisions regarding the determination of the maximum time limit for certain time work agreements are based on the Government Regulation of the Republic of Indonesia Number 35 of 2021. Concerning Certain Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment have reflected the principle of legal certainty. The principle of legal certainty can be interpreted as a clear norm to guide the community to comply with regulations and the clarity and firmness of legislation (De Stefano, 2017).

Legal certainty and justice are two legal goals that are often incompatible and difficult to avoid in legal practice (Li et al., 2020). The power of law and justice belongs to everyone (Mutalib et al., 2019). The advantage here is a claim that is not allowed because the law is applied or enforced so that it causes unrest in the community (Sato et al., 2020). Companies tend to choose to bind workers with work agreements for a certain time. This is because companies see inequalities in productivity and wages. Employers often complain about the low productivity of workers, and the wages paid are not appropriate. By implementing a contract work system for their workers, employers will benefit by avoiding the obligation to provide severance pay, service fees, compensation rights, and severance pay to their workers when the term of the agreement has ended (Al & Anil, 2016). Therefore, the company's tendency will have an impact on the loss of workers for a certain time. Therefore, it is clear that legal protection and certainty are needed for Indonesian citizens as mandated by Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

In Indonesia, 17,839,458 workers were categorized as Workers with Fixed Time Work Agreements in February 2020. Workers with certain time work agreements generally have a weak position in a company (Nawi et al., 2019). If a contract worker makes a mistake, his employment relationship with the employer can be quickly and unconditionally terminated. Termination of

employment is one of the types of industrial relations disputes that often arise in work (Gaffar et al., 2021). In addition, in terms of the work environment, workers with permanent status are entitled to various supporting facilities, paid salaries and allowances, to pension benefits. It is very different from contract workers, where the compensation received is less significant than permanent (Oliskevych & Tokarchuk, 2018). However, it is essential because of employees' perceptions of fairness and whether these criteria significantly affect their work motivation. In such conditions, the employment relationship that arises because the work agreement made with a work agreement for a specific time does not provide proportional justice (Gomółka & Flisikowski, 2020).

In the old rules in the Manpower Act, companies can only enter into a work contract with a work agreement for a certain period of no longer than three years. After that, the company must appoint workers or labourers as permanent employees if it wants to employ them after three years have passed. However, in the Manpower Act, there is no guarantee to be appointed as a permanent employee. The regulated in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, regulated in Article 6, which governs the maximum time limit for a job. It is detrimental to workers because the longer the work agreement for a specific time will benefit the employer because workers with a work agreement for a particular time do not get any guarantees from their workplace (Franceschini, 2018). Furthermore, there is a decrease in the protection of workers because the government, as a public policymaker, is considered unable to protect the workers' rights and interests. The active role of the state in realizing prosperity for all Indonesian people must be guided by welfare and justice (Lenhart, 2019).

Provisions for the benefits paid to workers with a certain time work agreement are regulated in the third part of Articles 15, 16, and 17 of Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time, and Rest Time, and Termination. Connection. Work. Article 15 states that the compensation money is entitled to be received by workers who work for at least one month and are given after the expiration of a certain work agreement. Article 16 regulates the proportional calculation of the amount of compensation to be received by workers. Article 17 regulates the obligation of the entrepreneur to provide a balance. Otherwise, the entrepreneur will be subject to sanctions. Sanctions are given in stages, starting from written warnings, restrictions on business activities, temporary suspension of all production equipment, and freezing of business activities (Lenhart, 2019). The nature of labour costs has changed dramatically due to regulations that enhance job protection (Wu & Lim, 2021).

When compared with the five-year work agreement deadline in the Law of the Republic of Indonesia Number 11 of 2020 and the Law of the Republic of Indonesia Number 13 of 2003, it is different. The Law of the Republic of Indonesia Number 13 of 2003 provides an overview (Gomółka & Flisikowski, 2020). In the Law of the Republic of Indonesia Number 11 of 2020, after completing a certain time work agreement regarding Job Creation, there is no certainty to be appointed as a permanent employee. The quality of workers is uncertain remains the goal of a worker dedicating himself to the employer (Maltseva et al., 2021). Labour as a source of income for economic entities and material and metaphysical values, which determine human motives. Harmonization of work and family life is one of state policy goals and is part of corporate management in practice (Oliskevych & Tokarchuk, 2018). When they (workers) get a new job in a different place, their employment relationship status is a certain worker. Thus, it can be said that this new law is further away from the highest goal of the law, namely justice.

4. Conclusion

Determining the maximum time limit of a certain time work agreement in terms of legal certainty has provided legal certainty in determining the maximum time limit. Employment Relations meant that completing work with a work agreement for a certain time is carried out for a maximum of five years. There is no provision for further appointments as permanent workers resulting in the absence of continued status. However, if the work agreement expires for a certain time, then the status of the employment relationship changes to a work agreement for an indefinite period. So that the certainty of determining the maximum time limit of 5 years in the

Law of the Republic of Indonesia Number 11 of 2020 concerning Employment Creation (omnibus law) is less prosperous and fair for workers with work agreements for a certain time. The research results are expected to be taken into consideration for related parties to prioritize the welfare of workers for a certain period to improve the standard of living of workers for a certain period.

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