

## **Legal Protection for Fixed-Term Employment Contract Patterns based on Law No. 6 of 2023 on The Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation**

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**Abstract.** *Legal Protection for Fixed-Term Employment Contract Patterns based on the Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law is an interesting topic to study to provide the public with information regarding Fixed-Term Employment Contracts. This is because the sector of Fixed-Term Employment Contracts plays a very important role for workers in determining their welfare. The research method used is qualitative, with secondary legal sources utilizing normative and empirical legal research. The data obtained from the research show that both the government and society play a crucial role in shaping and supervising labor law policies. Legal protection for workers in Fixed-Term Employment Contracts must be fair and balanced between Fixed-Term and Permanent Employment Contract Workers. However, in the government's efforts to protect the workforce, there are still obstacles. It can be concluded that the regulation of Fixed-Term Employment Contracts in various laws and regulations reflects the government's ability to protect its people. These regulations must continuously be improved in accordance with the changing times, and oversight from the public is necessary as a control function to ensure that the latest regulations aim for the welfare of the people.*

**Keywords:** *Contracts; Employment; Job; Protection.*

### **1. INTRODUCTION**

In every era, humans have various needs, both predictable and unpredictable, that drive them to work, whether through self-employment or working for others. Self-employment refers to working independently with one's own capital, while working for others means relying on another person who gives instructions and tasks, requiring obedience and adherence to that person's directives (Asikin, 1994). Having an adequate and skilled workforce is one of the key conditions for ensuring that a company can operate its business activities effectively. Business activities essentially require a workforce competent in their respective fields, and to address labor shortages, many companies hire workers through Fixed-Term Employment Contracts.

The rapid growth of the economy has led to fierce competition in the job market, with tight competition among job seekers in every sector of business. In short, a welfare state is a concept of governance in which the state plays a crucial role in protecting and promoting the economic and social well-being of its citizens comprehensively (Setiyono, 2024). The high level of competitive job market demands that job seekers adapt to market demands that require quick and flexible responses in improving the quality of their main competencies. Therefore, structural changes in business management are needed by reducing management control spans to make them more effective, efficient, and productive.

In this context, it is understandable that there is a tendency to hire workers for fixed-term employment. Empirically, job seekers cannot rely solely on the state to provide decent employment, even though the fulfillment of citizens' rights is a fundamental obligation of the state. In the context of a welfare state, there is no doctrine that justifies the state being fully responsible for the rights of its citizens (Kurniawan et al., 2015). This is also relevant when linked to one of the national goals as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia.

Legal protection for workers is the fulfillment of basic rights guaranteed by the constitution, as stated in Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which declares, "Every citizen has the right to work and to a livelihood that is humane," and Article 33, paragraph (1), which reads, "The economy is structured as a joint effort based on the principle of kinship." Therefore, violations of these constitutionally protected basic rights can be classified as human rights violations.

The proposed title stems from the recognition that many important facts surrounding this topic deserve to be discussed, with the goal of finding solutions that promote fairness for both employers and workers. This led the author to focus on Fixed-Term Employment Contracts, considering that the fundamental objective of law is to create an orderly society, ensuring balance and stability. In creating social order, it is hoped that individuals' interests will be protected (Mertokusumo, 2007). This is particularly important in the case of workers, especially those employed under Fixed-Term Employment Contracts, who also require serious attention.

Worker protection is aimed at ensuring workers' basic rights and promoting equality and non-discrimination in treatment on any grounds, to achieve the welfare of workers and their families while considering the development of business interests. Relevant legislation for protecting workers includes the Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law and its implementing regulations in the field of labor.

The rapid pace of change and increasing competition has made efficiency demands more pressing. Lean organizations are believed to be more flexible than larger ones. As a result, businesses tend to delegate certain non-core business tasks to other parties, allowing them to focus on activities that add value (Tunggal, 2013).

The labor issues in Indonesia, particularly regarding the imbalance in employment relationships between employers and workers, extend beyond the formation of employment contracts, as understood in contract law. They are closely tied to the

increasingly competitive business environment, which drives companies to cut production costs to meet the demands of economic law.

The rules analyzed in this research are based on the Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, along with its derivative regulations. The problem formulations defined by the author are as follows:

1. How is Legal Policy regarding Fixed-Term Employment Contracts regulated in Indonesian legislation?
2. What is the legal protection pattern for Fixed-Term Employment Contracts based on the Law of the Republic of Indonesia Number 6 of 2023?
3. What are the forms of labor contracts in the era of globalization in Indonesia?

Legal theory refers to an opinion based on research and findings supported by empirical data and sociological arguments (Eddy Damian, in his Lectures at UKI for the Third Batch of Students). Thus, a legal theory will significantly contribute to the field of law, which seeks to study the intricacies, nature, and development of law, as stated by Satjipto Rahardjo (Johnny Ibrahim, 2006; 196).

One of Mochtar Kusumaatmadja's legal theories emphasizes the importance of law in development. His ideas, which are part of the historical development of law in Indonesia, assert that law plays a crucial role in maintaining order in society. Considering its function, the nature of law is inherently conservative, meaning it preserves and upholds what has already been achieved (Kusumaatmadja, 2002). Mochtar also mentioned that law, as a tool, goes beyond being just law; because law is an "instrument," its application leads to outcomes similar to "legalism," making its use limited as it is merely a tool (Kusumaatmadja, 2002).

A theoretical legal framework is essential when studying a legal concept. A legal concept essentially defines the boundaries of a particular term. Each term is defined as sharply and clearly as possible within a definition and is used consistently. A legal concept is a constructive and systematic concept used to understand a legal rule or system of rules (Wijayanti, 2009). According to John A. Fossum's Bargaining Theory, "There is an upper and lower limit to wage levels": the actual level between these limits is determined by the importance of the employer's desires compared to the needs of the workers. The wage levels are set through an agreement between workers and employers, preceded by bargaining power (Sulaiman et al., 2010).

Legal protection is always related to power, and two key aspects often come under scrutiny: governmental power and economic power. Legal protection related to governmental power involves protecting citizens (the governed) against the government (the governing). In legal protection related to economic power, it protects the economically weak against the economically strong (Indiarsoro & Saptemo, 1996).

In enforcing labor law, there must be oversight to ensure compliance with labor regulations. This supervision is the duty and responsibility of labor inspectors, whose functions are as follows:

- a. Supervising the implementation of labor law provisions.

- b. Providing technical explanations and advice to employers and workers to ensure the effective implementation of labor regulations.

If there is an indication of an unfair position for workers, the only option for the worker may be to accept it or, if they have the courage, to report any misconduct or violations in the labor sector that are not clearly regulated by law to the authorities. However, such steps may not necessarily lead to the desired resolution.

## **2. RESEARCH METHODS**

This research is descriptive-analytical, meaning it describes phenomena that genuinely occur in the Indonesian labor sector as a core issue caused by the enactment of Law of the Republic of Indonesia Number 6 of 2023 concerning the stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as a Law, which regulates the patterns of Fixed-Term Employment Agreements. A term is explained through a description when the highest and closest genus is mentioned in a series of distinguishing characteristics of the same class. The difference with a definition is that a definition mentions only one characteristic, whereas a description includes more (Prof. Drs. Abintoro, Prakoso, S.H., M.S., 2023; 218).

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Politics in Indonesian Legislation Regulating Fixed-Term Employment Contracts**

Wirjono Prodjodikoro defines a contract as a legal relationship concerning assets between two parties who promise or are considered to promise to perform or refrain from performing certain actions, with the other party having the right to demand the fulfillment of the promise (Prodjodikoro, 1984). From this relationship arises an obligation between the two parties involved, making the connection between an obligation and a contract such that the contract is one of the sources of the obligation, alongside other sources. A contract is also referred to as an agreement because both parties agree to perform something, making the terms "contract" and "agreement" synonymous.

Generally, contracts are not bound to any specific form and can be made either verbally or in writing. This provision is more of an evidentiary tool should a dispute arise between the parties. However, certain contracts must follow specific forms as stipulated by legislation, and failure to comply with these forms renders the contract void or invalid. The conditions for the validity of a contract are mentioned in Article 1320 of the Indonesian Civil Code, which are:

1. Mutual consent of those who bind themselves,
2. Legal capacity to form a contract,
3. A specific object,
4. A lawful cause.

Employment contracts have unique characteristics that distinguish them from other types of contracts. However, all types of contracts share common legal principles, such as the legality of the contract, the subjects and objects involved, and the mutual

agreement between parties, as previously explained. The terms and conditions set forth in an employment contract contain the rights and obligations of both parties that must be fulfilled. Before the enactment of the Omnibus Law, employment contracts were regulated in Article 1, point 14 of Law No. 13 of 2003 on Manpower, which defined an employment contract as an agreement between an employee or worker and an employer containing the terms of employment, rights, and obligations of both parties.

Due to rapid developments in society, fixed-term employment contracts are now regulated under Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, which governs the framework of fixed-term contracts. This includes Government Regulation No. 35 of 2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours, Rest Periods, and Termination of Employment, as well as several provisions from Law No. 13 of 2003 on Manpower that remain applicable.

As a result of new regulations concerning fixed-term employment contracts, especially under the Omnibus Law, the maximum duration has changed from two years (with a possible one-time extension) to a maximum of five years.

### **3.2. Legal Protection Patterns for Fixed-Term Employment Contracts Under Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law**

The rapid flow of globalization occurring today has created various challenges in the legal protection framework for fixed-term employment agreements. According to the law, labor relations, including agreements or contracts, are considered part of general agreements. This is indeed true, as generally, someone who performs work will receive "wages" as a form of "counter-performance" (M. Yahya Harahap, S.H., 1986; 245). This issue touches upon social, cultural, economic, educational, and scientific aspects, as well as legal ones. In all of these aspects, the law must adapt in line with the changing behavior patterns within society, particularly regarding fixed-term employees.

There is no specific format required for an employment contract, which means it can be made verbally, with an appointment letter from the employer, and must adhere to Article 1320 of the Indonesian Civil Code. Alternatively, it can be in writing, in the form of a contract signed by both parties and executed according to several applicable legal provisions, such as Article 54 of Law No. 13 of 2003 on Manpower and Article 13 of Government Regulation No. 35 of 2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours, Rest Periods, and Termination of Employment.

A new provision in the Omnibus Law, specifically Article 61A, introduces a protection pattern for workers, requiring employers to provide compensation of one month's salary at the end of each contract. The government and parliament have remained consistent in protecting workers by mandating that fixed-term employment contracts must be made in writing to ensure legal certainty for employees.

It is currently understood and explained that fixed-term employment agreements should only be used for jobs of a non-permanent or temporary nature. However, this interpretation is not fully grasped by employers, and there is even a tendency to potentially violate the essence of fixed-term employment agreements. Ideally, a fixed-term agreement should be a mutually beneficial contract between the employer and

the employee. A reciprocal agreement is one in which both parties have obligations to fulfill their respective performances (H. Riduan Syahrini, S.H., 2004; 230). Although general law and common sense dictate that contracts should be made based on principles of fairness, not all contracts place the parties involved in truly equal positions (Budiono Kusumohamidjodjo, 2017; 118).

Disputes over fixed-term employment contracts often arise from disagreements over whether the contract is for a permanent or non-permanent job. However, if the aggrieved party (the worker) does not wish to file a lawsuit, the law automatically imposes a sanction by changing the status of the contract from a fixed-term to a permanent employment contract.

### **3.3. Forms of Labor Contracts in the Globalization Era in Indonesia**

Contract workers/non-permanent workers/outsourced workers (hereinafter referred to as contract workers) are employees who work based on a fixed-term employment agreement (PKWT), which is an employment agreement between the employer and the worker for a specified period or for specific work (Nurachmad, 2009). The regulations regarding outsourcing are stipulated in Article 64 of the Law of the Republic of Indonesia Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, as well as Articles 18 through 20 of Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment.

If the outsourcing regulations are properly implemented, this system can have positive impacts on employers, workers, and the government itself. The positive impacts of the outsourcing system include:

1. For employers:
  - a. Increased company focus,
  - b. Better utilization of capabilities,
  - c. Shared risk in employee turnover,
  - d. Cost efficiency.
2. For society and workers:
  - a. Encouragement of supporting economic activities within the community,
  - b. Reduction of unemployment,
  - c. Prevention of urbanization.
3. For the government:
  - a. Promotion of national economic growth,
  - b. Development of small, medium, and cooperative enterprises.

However, despite these positive impacts, many issues have arisen regarding outsourced labor, including:

1. Uncertainty of employment status,
2. Threats of layoffs for workers,
3. Lack of career certainty,
4. Worker exploitation.

If we look at the regulations, the existing rules should be able to protect outsourced workers. However, in practice, many parties continue to reject the implementation of this outsourcing system. The reason outsourced workers still resist this system is that a law or regulation must be implementable and requires a monitoring system. Therefore, the regulation can protect the interests of both parties, employers and workers. Moreover, a strong monitoring system is needed so that outsourcing companies do not act arbitrarily and to ensure that these companies comply with the laws and regulations. Due to the current weak monitoring system, many outsourcing companies fail to adhere to the rules, resulting in workers not receiving adequate protection. The government must take firm action against outsourcing companies that violate the law. If necessary, the government should revoke the license of such companies. Furthermore, the government is expected to socialize its policies to both workers and employers so that they understand the rights and obligations of each party.

#### **4. CONCLUSION**

The legal politics of labor regulations in Indonesia must continue to improve with the government's constructive efforts, while remaining under public scrutiny, in line with the development of the times. Newly created or revised regulations must provide justice not only for workers but also for employers, to foster a healthy investment climate for the prosperity of the Indonesian nation. The government should reward companies that comply with labor laws, and impose appropriate sanctions on companies that violate fixed-term employment contracts. From the outset, the government has appeared to lack firmness in enforcing existing regulations, creating uncertainty and leading the public to become sceptical of the government. The hope is that with the passage of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as a Law, a breath of fresh air will be provided to the nation, potentially leading to justice in terms of state revenue, which currently seems to be heavily disadvantaged by foreign interests. However, there are also opinions that the Fixed-Term Employment Contract regulations are already quite good, even above average, providing clear certainty for the workers. The facilities enjoyed by contract employees and permanent employees are often indistinguishable. There is no denying that many foreign companies are highly sought after by job seekers, as their wages and benefits are above average. The prosperity of a company is also an important aspect to consider when determining whether a company truly follows regulations properly. At present, the existing forms of employment contracts in the system are permanent employment contracts and fixed-term employment contracts. However, there are issues in practice within many companies, despite the existence of regulations. Sometimes, company-made rules are not in line with the laws. In this era of globalization, it is crucial to consider whether workers are being treated fairly. The current forms of employment contracts—permanent and fixed-term—continue to face practical problems within companies, even with regulations in place. Bureaucratic processes, especially those related to production, are often slow and costly, impacting

workers, as employers' profits are significantly reduced. The government must create clear and firm regulations to ensure that investments continue in this country.

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