

**TERMINATION OF EMPLOYMENT DURING THE PROBATION PERIOD IN A
FIXED TERM EMPLOYMENT AGREEMENT (PKWT)
(Study of Case Decision No. 271/Pdt.Sus-PHI/2018/PN.Mdn)**

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ABSTRACT

There is no probationary period in PKWT. Law Number 13 concerning Manpower of 2003 states: The employment contract imposed does not require a probationary period. If a probationary period is required in the employment contract, the probationary period does not apply. Certain provisions of the Temporary Employment Contract (PKWT) and the reasons for the probationary period change to a Permanent Employment Contract (PKWTT), so that when they carry out Termination of Employment (PHK) they are entitled to a fixed salary.

Keywords: Termination of Employment, Probationary Period, PKWT .

A. INTRODUCTION

Article 60 paragraph (1) of Law Number 13 concerning Manpower of 2003 , PKWTT can require a trial period of at least 3 months. This 3-month evaluation period can only be used during the performance evaluation period. The conditions under which there is a trial period in the operating system must be determined. What is meant by "can request" is that the employer can require a trial period (minimum 3 months) and may not apply a trial period to new employees with PKWTT. Thus, the company can implement PKWTT for its employees without a trial period. This means that the employee can immediately become a permanent employee.

The explanation of Article 60 paragraph (1) of Law Number 13 concerning Manpower of 2003 states that if the employment contract is made verbally, the employee concerned must be given a trial period and must be present at work in writing. Assuming there is no trial period, the employee will immediately become a permanent employee of the company.

If the employee works on a PKWTT during a probationary period, then the dismissed employee (PHK) will not be given compensation during the probationary period. As usual, companies use the probationary period to determine whether the employee's skills meet company standards. If the

employee does not meet the standards required by the employer, the probationary period has expired and the employer does not wish to re-employ the employee, then the employer has the right to terminate the PKWTT employee. In this case, the company is not obliged to pay termination fees and/or compensation and compensation for special rights.

The probationary period is not an employment contract, so wages accrued during the remaining probationary period are not taken into account. Either party may terminate the employment relationship during the probationary period. Unlike PKWTT, if one party terminates the contract before the end of the period specified in the contract or until the end of the employment relationship, this is not due to the death of the worker, termination of the employment contract, termination of employment. work; . period of work. In connection with certain projects, court decisions and/or decisions of competent authorities. In industrial relations disputes that have legal force or certain rules or customs in employment relations, company policies, or collective work agreements that can result in termination of employment, the party that terminates the employment relationship is obliged to provide compensation to the other party in the form of

back wages. until the employment relationship ends the employment contract.

One of the cases of temporary termination of employment contracts due to still being in the probationary period occurred in the Industrial Relations Court Decision at the Medan District Court with Case No. 271/Pdt.Sus-PHI/2018/PN.Mdn, the case occurred on June 30, 2018 where the worker was unilaterally dismissed by the employer without any notification and warning on the grounds that the employer did not meet the criteria and was necessary and dismissed the article stated verbally by the company.

If there is no written dismissal order, the worker still feels like an employee of the company, so on July 3, 2018, he still came to work and met with the National Director of PT. Interview Putra Persada. At the meeting held on July 3, 2018, the CEO of PT. Runding Putra Persada informed the employees that the decision to terminate the employment relationship was final and the Company would not provide Compensation Rights, because they were still employees of the Court.

According to Article 58 paragraphs (1) and (2) of Law Number 13 concerning Manpower of 2003, probationary periods cannot be used for certain jobs. If a probationary period is used in a PKWT, the program is canceled or deemed unavailable. The dismissal is therefore a violation of applicable law, where the company is obliged to pay in accordance with applicable laws and regulations.

B. LITERATURE REVIEW

1. Employment Law

Article 1 paragraph (1) of Law Number 13 concerning Manpower of 2003 defines workers as any person who has social contact before, during and after work. Labor law is the law that regulates work. The Labor Code was originally called the Labor Code.

2. Employment agreement

Contract In the Netherlands, the work is called *Arbeidsoverenkoms*, which has a different meaning. What is meant by labor according to Article 14 paragraph (1) of Law

Number 13 concerning Manpower of 2003 is a contract between workers/employees and traders or traders who work with both qualifications and rights. and responsibilities according to law. In addition to mutual legal understanding, Iman Soepomo said that in general labor relations, namely the relationship between workers and employers, arise when there is an agreement between workers and employers, namely that workers declare that they can employ labor for payment.

3. Work termination

There are still many business terminations by employers or companies against employees. It is important to understand that the validity of termination of employment or employee relations must not conflict with the laws of the Republic of Indonesia for the operation. Employees or staff dismissed from the field by employers or companies are subject to the jurisdiction of the Industrial Relations Court at the District Court, unless an arbitration agreement is reached.

C. RESEARCH METHODS

The search type used was a standard search. The nature of the author's research used in compiling this rule is characteristic. The type of search data is library data. The data source for this research is secondary data. This study conducted qualitative data analysis.

D. RESEARCH RESULTS AND DISCUSSION

1. Trial Period in Fixed Term Employment Agreements (PKWT)

A probationary period, also known as a trial period, is the time a company gives new employees to familiarize themselves with their new roles and responsibilities. Companies often establish a probationary period for new employees to determine whether they are a good fit for the company environment or whether they will be hired as a permanent employee. During the probationary period, employees must demonstrate satisfactory performance to be

hired permanently upon completion of the probationary period.

The trial period is regulated by Law Number 13 of 2003 concerning Manpower . According to existing laws and regulations, there are two types of employee status: permanent employment contracts (PKWTT) and temporary employment contracts (PKWT). This trial period only applies to PKWTT employees. According to Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, the trial period can only be applied to PKWTT employees.

Article 60 Paragraph (1) of Law Number 13 concerning Manpower of 2003 It reads: "A fixed-term employment contract may require a probationary period of up to one month." As stated, there is an option to waive the probationary period for employees with fixed-term employment contracts (PKWTT). It's a good idea to include your requirements in your application when applying. If the contract is only verbal, the company must specify the probationary period when the permanent employee is issued a letter. There is no probationary period for employees with fixed-term employment contracts (PKWT), as working hours are determined from the start. This is in accordance with existing laws and regulations.

Article 58 of Law Number 13 concerning Manpower of 2003 states :

- (1) Temporary employment contracts do not require a probationary period.
- (2) In the event that the employment agreement as referred to in paragraph (1) requires a trial period, the trial period does not apply in accordance with the provisions of statutory regulations.

Things to remember from the test:

- a. If PKWTT personnel are required to undergo a probationary period, the company must document this requirement. If communicated verbally,

this information must be recorded in the Permanent Employee Register.

- b. The trial period only applies to PKWTT employees.
- c. The maximum probationary period is 3 (three) months. Violation of this clause will void the contract.

2. Compensation for Termination of Employment in a Fixed-Term Employment Agreement (PKWT) on the Ground of a Probationary Period

Legal regulations in termination of employment non-termination of employment, namely permanent employees are included in their work and permanent employees have rights according to the law, namely employees according to Article 155 of the law. Law Number 13 concerning Manpower of 2003. Worker protection is the achievement of basic worker rights and the provision of benefits and procedures without discrimination for any reason and ensuring the welfare of workers and their families while maintaining benefits in the world of work.

Protected workers are included in Law Number 13 concerning Manpower of 2003 The aim is to exert consistent pressure on the employment relationship between workers/employees and employers, but not from the strong to the weak. Consequently, operators with a strong social position must help implement safety measures in accordance with existing laws and regulations. This is because the law defines the interests of society that can be developed as enforceable legal rights. These rights are often referred to as property rights and are granted to the patent owner, which may be an intangible legal entity, namely the company, based on a legal finding.

Equality and job protection for key workers is a top priority of the Labor Code, but in reality, social injustice occurs for workers such as layoffs. Layoffs or PHK in everyday life are also often referred to as termination of employment between workers and employers, which may be due to prior agreement or consent and may arise due to

disputes between workers and employers, the death of the employee of the person or for other reasons.

Termination of Employment (PHK) is a situation where an employee is unable to work for a company, limiting the rights and obligations between the employee and the employer. This may be due to layoffs, business closures, or withdrawal of an application. In labor relations, termination of employment (PHK) is not uncommon. Problems arise when an employer terminates employment (PHK) by firing an employee. This is, of course, illegal unless the company is experiencing financial difficulties and needs to reduce its workforce to maintain operational efficiency.

Dismissal by an employer must be legal and can be proven according to the provisions of the Indonesian National Manpower Law. If an employee objects to termination of employment for reasons that violate Indonesian Federal Law, the employee can file a complaint with the Industrial Relations Dispute Court and the dismissal can be revoked and reinstated. Termination of Employment (PHK) is the termination of employment for reasons that result in the termination of rights and obligations between the employee and the employer.

When the employment relationship ends, the employee no longer has to work for the employer and the business owner no longer has to pay the employee. There are no provisions or definitions of termination of employment in several articles of the Civil Code. However, from the definition above, termination of employment can be interpreted as the process of terminating the relationship between workers /employees and the dismissed employer. /Manager due to certain circumstances.

The most important legal defenses in termination of employment relate to the employee's normal status in the employment relationship and the authenticity of the reasons for dismissal. Reasons for dismissal can be divided into two categories: permissible and non-permissible reasons.

In fact, labor laws and related legislation aim to achieve social justice by protecting workers from the power of employers. Each of these rules and regulations is mandatory and carries severe sanctions for companies that violate them. The situation of workers is not as it should be under the law, particularly under labor laws.

A company that unfairly terminates its employees, but the rights they are entitled to are not transferred by the employer to the employee. Provisions related to the payment of rights in the form of replacement housing and adequate care and maintenance often give rise to many interpretations. By applying the principle that employees who leave are not entitled to wages or compensation, employees are not entitled to replacement housing and maintenance and health care because the basis of their duties is accommodation in exchange for medical treatment and health care. is the use of wages or service fees that are not transferred to the departing employee.

Companies are strictly prohibited from firing employees. Regarding the prohibition on Termination of Employment (PHK), it is clearly regulated in the Criminal Code, namely Article 151 Paragraph (1): "Employees, Employees/Staff, Workers' Unions and the Government. and civilians. "There must be rules to ensure that there are no retaliatory attacks."

According to the law, workers are protected from the actions of business actors who terminate their business (PHK) unilaterally. Article 151(1) is a form of legal protection against state shutdown (SCC). Every worker must be treated equally and fairly without discrimination in the role of employer, therefore Article 151 paragraph (1) guarantees protection from unfair actions carried out by workers with the assumption that workers have high work value. employees. they believe that they have the right to terminate their activities (PHK) indiscriminately regardless of the results of their work.

Employees should not neglect their responsibilities to their employers by terminating their employment agreement

unilaterally. In fact, employers can terminate the employment relationship (PHK) at the end of the employment contract, and if the employee violates the employment contract, company regulations or employment contract (PKB) but before the termination of employment (PHK), the company must provide 3 consecutive warning letters, but of course the employer's actions against employees are not part of the policy, namely there are no warning letters or summons and there is no consideration of the problems and protection of employees. employees talk about employees.

Only signed documents are permitted by the Civil Code, as documents under the Civil Code must be used as proof of appointment. Documents not signed in accordance with the Constitution are not accepted because their author is unknown. Signed documents are called books. People often think they are signing a contract. This signature informs the signer of the content and purpose of the document they are signing. The contents of the book are also interesting.

However, compensation has many aspects that companies must consider. This is important, given that compensation is a key issue in negotiations. Organizational conflicts often arise from claims of inadequate wages, which can lead to job dissatisfaction. An example is the difference between the job offered and the salary received. Furthermore, there may be a gap between companies with similar status but different compensation. In addition to termination, compensation or severance pay, there are other rights that employees must agree to , including :

- a. Performance allowances (salary, wages, etc.) in accordance with the agreement to fulfill obligations.
- b. Equipment and special allowances or benefits are contractual and will be provided by the employer or company.
- c. Treat him well with the respect and honor he deserves, remembering his dignity as a human being.
- d. Deal fairly and equally between him and his friends, according to their work and income.

- e. Reasonable and satisfactory life insurance from the employer.
- f. Trust that they and their interests will be protected and safe in the work relationship.
- g. Description and clarity of employer's character, time and work.

Law Number 13 of 2003 concerning Manpower regulates: " After termination of employment, the employee is responsible for payment of termination compensation and/or wages and termination compensation in exchange for his rights to his rights." Then, according to Law Number 13 concerning Manpower of 2003 regulates that severance pay is calculated in accordance with paragraph (1) at least as follows:

- a. minimum wage 1 (one) year 1 (one) month;
- b. work period of 1 (one) year or more but less than 2 (two) years, salary of 2 (two) months;
- c. work period of 2 (two) years or more but less than 3 (three) years, salary of 3 (three) months;
- d. 3 (three) years or more but less than 4 (four) years salary for 4 (four) months;
- e. work period of 4 (four) years or more but less than 5 (five) years, salary of 5 (five) months;
- f. 5 (five) years or more, but less than 6 (six) years, 6 (six) months salary;
- g. worked for 6 (six) years or more but less than 7 (seven) years with 7 (seven) months' salary;
- h. work period of 7 (seven) years or more but less than 8 years (reduced) with 8 months' salary (reduced);
- i. Work period of 8 years (less) or more, salary of 9 months (nine)..

Law Number 13 concerning Manpower of 2003 It is stated that the calculation of awards for requests for services is as follows:

- a. 3 (three) or more but less than 6 (six) years, 2 (two) months' salary;
- b. work period of 6 (six) years or more but less than 9 years (minus) 3 (three) months' salary;

- c. 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months salary;
- d. work period of 12 (twelve) years or more but less than 15 (fifteen) years, salary of 5 (five) months;
- e. work period of 15 (fifteen) years or more but less than 18 (seventeen) years, 6 months (six months) salary;
- f. work period of 18 (seventeen) years or more but less than 21 (twenty one) months salary;
- g. 21 (twenty one) years or more but less than 24 (twenty four) years, 8 months (minus) salary;
- h. Work period of 24 (twenty four) years or more, 10 months' salary.

Article 156 paragraph (4) of Law Number 13 concerning Manpower of 2003 regulates the amount of compensation that must be received:

- a. annual leave is not taken and does not expire;
- b. levies or reimbursement of employee and family expenses to the employee's office;
- c. Replacement, repair and maintenance costs are subject to a 15% (fifteen percent) deduction and/or compensation fee;
- d. Other provisions of the employment contract, company charter or collective labor agreement.

Law Number 13 concerning Manpower of 2003 confirms the report on changes in the calculation of laundry wages, calculation of allowances, and payment of rights in accordance with Article (2), Article (3) and Article (4) and SK. This is a legal issue related to wages, according to the law at that time no. 13 of 2003 until the enactment of Government Regulation of the Republic of Indonesia Number 78 of 2015 concerning Salaries which lasted for approximately 12 years, the person concerned was dismissed. dismissal during the probationary period is not excluded.

3. Analysis of the Judge's Considerations in Granting Compensation for Termination of Employment in a Fixed-Term Employment Agreement (PKWT) on the Ground of a Probationary Period Based on the

Decision of Case No. 271/Pdt.Sus-PHI/2018/PN.Mdn

If one of the parties in a PKWT terminates the contract before the end of the time period specified in the contract or termination of employment :

- a. The employee died;
- b. termination of employment contract;
- c. Completion of Work;
- d. have a decision and/or verdict in an Industrial Relations Dispute that has permanent legal force; one
- e. There are conditions or events in the employment contract, company regulations, or collective work agreement that can terminate the employment relationship.

The parties in an employment relationship require one party to pay the other party a certain amount of the employee's salary until the termination of the employment contract. Therefore, even though the contract period is 3 months, if the PKWT terminates the employment relationship with the employee in the second month and the employment relationship does not end for the reasons mentioned above, the company must pay the employee's salary up to the end of the PKWT period, which is 1 month.

In addition to compensation, companies must also provide monetary compensation to employees with fixed-term contracts (PKWT). If either party terminates the employment relationship before the end of the PKWT period, the employer is required to pay appropriate compensation, calculated over the duration of the PKWT covered by the night worker. Regarding payment rates, the type of PKWT used must be understood.

If a PKWT is based on a specific time period, extending it does not violate regulations, as it does not exceed the maximum limit of five years. It is also important to note that at the end of the PKWT period, the company provides compensation to PKWT workers who have worked continuously for one month. If the PKWT is to be extended, the payment is made at the end of the PKWT period before the PKWT is extended, and the extension is the next

payment after the PKWT expires or expires. Thus, PKWT and its extension will receive three times the worker's salary.

Thus, instead of receiving severance pay, PKWT employees whose work contract period has ended or a certain project has been completed will receive compensation based on the length of service, namely:

- a. PKWT for 12 consecutive months, with 1 month return
- b. PKWT 1 month or more but less than 12 months:
- c. PKWT for 12 months, calculated based on average weight.

Based on the Decision in Case no. 271/Pdt.Sus-PHI/2018/PN.Mdn where the Probationary Burden of PKWT Employees upon termination as described above, if the PKWT conditions include a probationary period, then those conditions are void and the work year is still recalculated. Therefore, if a PKWT employee has a probationary period, then the probationary conditions do not apply and the company must still cover the rights of the PKWT employee.

E. CONCLUSION

1. There is no trial period in a Fixed Term Employment Agreement (PKWT) and it is impossible because the trial period was initiated from the start in accordance with Article 58 of Law 13 of 2003 concerning Manpower. (1) Temporary employment contracts may not require a trial period. (2) The trial period is eliminated in employment contracts as referred to in paragraph (1).
2. Compensation for termination of employment based on a Temporary Work Contract (PKWT) as a result of the probationary period changing its status to a Work Contract Without Guarantee (PKWTT).
3. The judge's consideration in the matter of terminating employment with a fixed-term employment contract (PKWT), even though it is in the probationary period, then the

conversion of a fixed-term employment contract into a temporary employment contract 'has no time limit, because there is something in the arbitrator's decision, namely payment of the remaining contract, not payment of severance pay.

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