

# Legal Protection for Contract Workers Post Changes to Labor Laws

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**Abstract:** An employment relationship is a relationship that occurs between workers/laborers and employers who bind themselves through an employment agreement. An employment agreement is the basis for an employment relationship, whether it is carried out for a certain period or an indefinite period. There has been a change in the Law regarding limiting the period of implementation of a contract work agreement, so that it causes injustice to workers. It is feared that the change in regulation will provide the status of lifelong contract workers/laborers. The methodology used in this study is normative legal research, using a statutory approach and a conceptual approach. The purpose of this study is to see the difference in legal protection for contract workers before and after the change in the Manpower Law. After seeing the difference in legal protection for contract workers. The results of the study indicate that changes in the unlimited work period of contract workers provide legal protection for the normative rights of contract workers that are not good, so it is necessary to conduct a material test at the Constitutional Court as a form of repressive legal protection for all levels of society, especially contract workers.

## 1. Introduction

In Indonesia, in the era of reform, information and globalization, there are many different kinds of companies running now from companies in various fields, which create working relationships.<sup>1</sup> An employment relationship is a legal relationship between an employer and an employee which is formed through a civil agreement based on an agreement. With the formation of a work agreement, a legal relationship arises where an obligation arises as a result. Employment relationships refer to obligations arising from employment agreements. According to Article (Ps.) 1 number 15 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment (Employment Law/UUK), the elements that form the basis of a work agreement are the existence of work tasks, giving orders, and giving wages. Apart from the components of a work agreement, UUK also regulates legal requirements for work as well as the rights and obligations of each party, namely workers and employers.

<sup>1</sup> Mustofa, Muhamad Dela Dwi, and Hufron Hufron. "PERLINDUNGAN HUKUM BAGI PEKERJA KONTRAK APABILA DI PHK PADA MASA KONTRAK BERLANGSUNG." *Bureaucracy Journal Indonesia Journal of Law and Social-Political Governance* 2, no. 1 (April 30, 2022): 155-70. <https://doi.org/10.53363/bureau.v2i1.22>.

Recently, regulations regarding the status of employment relations in Indonesia have become the subject of much discussion. The regulations regarding employment issued by the government have undergone changes since the promulgation of Law Number 11 of 2020 concerning Job Creation. As of March 31 2023, legal regulations governing employment aspects have reached the final stage with the issuance of Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as Job Creation Law/UUCK).

UUCK is the result of merging various regulations which previously had different regulatory substance, into one complete legal entity. This means that UUCK combines several laws into one document, including laws on taxation, employment, forestry, the environment, Indonesian water zoning, as well as the empowerment of small and medium businesses, and other legal regulations, which will provide legal protection for workers.<sup>2</sup> Legal protection and enforcement of individual rights are very important to maintain fairness and the continuation of healthy working relationships.<sup>3</sup>

UUCK has a mission to improve employee protection and welfare, including in terms of certain-term work agreements.<sup>4</sup> Chapter IV on Employment amends Ps. 59 paragraph (4) UUK, which is now changed to Ps. 59 paragraph (4) UUCK coincides with Article 8 of the Republic of Indonesia Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations (PP 35/2021). The rules in the UUK stipulate that a Certain Time Work Agreement (PKWT) can last a maximum of three years, and after that the worker will legally be elevated to the status of an Indefinite Time Work Agreement (PKWTT). However, the Job Creation Law changes the time limit for PKWT employment relationships to a maximum of 5 years and can be extended according to the provisions, but does not regulate the limit on how many times extensions can be made. This change in employment relationship status has an impact on the protection rights that employees obtain when their employment relationship (PHK) occurs.

However, it appears that although the Job Creation Law is expected to improve the welfare of workers, especially those who work on contracts, there is actually discrimination against the rights of contract workers in terms of changes in employment status. While the Employment Law provides legal certainty for contract employees so they can become permanent employees, this does not happen in the Job Creation Law due to the lack of clarity in the regulations regarding changes in employment relationship status from PKWT to PKWTT.

The public's response to the law, apart from being related to the legal ideology held, is also related to the aspects of justice contained in the law. If the application of the law in practice causes injustice, then of course the law will receive an unfavorable response from society. Even though the concept of justice is still debated among philosophers, it generally includes fair legal treatment regardless of social status and providing economic prosperity to society.<sup>5</sup>

<sup>2</sup> Manahan M.P. Sitompul, *Perkembangan Hukum Ketenagakerjaan dan Perlindungan Hak-Hak Konstitusional Pekerja/Buruh*, (Depok: Rajawali Pers. 2021) 185.

<sup>3</sup> Rasji Rasji, Calvita Calvita, and Marshella Cenvysta. Perlindungan Hukum bagi Para Pekerja yang Tidak Mempunyai Perjanjian Dan Kontrak Kerja. *MOTEKAR Jurnal Multidisiplin Teknologi dan Arsitektur* 1, no. 2 (November 1, 2023): 428-35. <https://doi.org/10.57235/motekar.v1i2.1244>.

<sup>4</sup> *Op.Cit*, hlm. 192.

<sup>5</sup> Muh Sjaiful, "Problematika Normatif Jaminan Hak-Hak Pekerja Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja". *Media Iuris* 4 (1) 2021 :37-60. <https://doi.org/10.20473/mi.v4i1.22572>.

This research will focus on observing aspects of employment, especially in the UUCK Employment Cluster which collects various laws such as UUK, the Law on the National Social Security System (SJSN), the Law on the Social Security Administering Agency (BPJS), and the Law on the Protection of Indonesian Migrant Workers. Deeper focus will be given to changes in Ps. 59 paragraph (4) UUCK which relates to worker contracts and how this affects the legal protection of the rights of contract workers.

With this background, questions arise such as: how are the legal arrangements for contract workers different before and after the amendment to article 59 paragraph (4) of the Manpower Law? So, does this change provide better legal protection for contract workers' normative rights? This thesis aims to analyze differences in legal protection before and after changes to Article 59 paragraph (4) of the UUK. Based on these changes, whether they can provide better protection of normative rights for contract workers.

There are many articles that discuss workers' rights in the realm of employment. However, the writing in this article has different problems and characteristics, as does the article written by Rafiatun Shaliha and Ufran, in the article entitled Juridical Review of Social Security Legal Protection for Migrant Workers Based on Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers. This article discusses the effectiveness of social security for migrant workers so that it can be used as protection or legal assistance.<sup>6</sup> Next, an article written by Mohammad Wilda Sayyid Tijani and Arinto Nugroho, with the title Legal Protection for Workers Against Termination of Employment for the Reason of Early Retirement Unilaterally by the Company.

The article discusses the unilateral termination of employment (PHK) for the reason of early retirement at PT. Dock and Shipping Surabaya (Persero) on the grounds that the company experienced cash flow deficit losses was justified based on legislation in the Employment Sector and the legal measures taken by PT workers. Surabaya Dock and Shipping (Persero) who experienced termination of employment for the reason of unilateral early retirement.<sup>7</sup> Next is an article written by Ida Hanifah, entitled Legal Protection Policy for Domestic Workers Through Legal Certainty. This article discusses the legal vacuum regarding protection for Domestic Workers which is not regulated in the Employment Law.<sup>8</sup>

## 2. Method

The research carried out is normative legal research. Normative legal research is an activity that examines legal aspects to solve problems in positive law. Normative legal research methods use a normative juridical approach. The normative juridical approach is an approach that is based on applicable laws and regulations.<sup>9</sup> The normative juridical research method was used because

<sup>6</sup> Rafiatun Shaliha, and Ufran Ufran. Tinjauan Yuridis Perlindungan Hukum Jaminan Sosial Bagi Pekerja Migran Berdasarkan Undang - Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia. *Indonesia Berdaya* 4, no. 1 (December 20, 2022): 389-96. <https://doi.org/10.47679/ib.2023428>.

<sup>7</sup> Tijani, Mohammad Wilda Sayyid. "Perlindungan Hukum Bagi Pekerja Terhadap Pemutusan Hubungan Kerja Dengan Alasan Pensiun Dini Secara Sepihak Oleh Perusahaan (Studi Kasus: PT. Dok Dan Perkapalan Surabaya (Persero) Dengan Pekerja)." *Novum: Jurnal Hukum* 8, no. 3 (January 11, 2021): 81-90. <https://doi.org/10.2674/novum.v0i0.37282>.

<sup>8</sup> Hanifah, Ida. "Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum." *Jurnal Legislasi Indonesia* 17, no. 2 (June 30, 2020): 193. <https://doi.org/10.54629/jli.v17i2.669>.

<sup>9</sup> Benuf, Kornelius, and Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (2020): 20-33. Accessed: February 9, 2024. <https://doi.org/10.14710/gk.2020.7504>.

the researcher wanted to analyze differences in laws and regulations relating to changes to Ps. 59 paragraph (4) UUK and legal protection for normative rights for contract employees. The problem approach methods used are the statutory approach and the conceptual approach.

### **3. Main Heading of the First Analysis or Discussion**

#### **A. Differences in Legal Arrangements for Contract Workers Before and After Amendments to Article 59 paragraph (4) of the Manpower Law**

The focus of the analysis is on changes in ps. 59 paragraph (4) of the Employment Law regarding the PKWT period for contract workers. Ps. 59 paragraph (4) UUCK states that the status of a PKWT employment relationship has no time limit. Therefore, the question is what are the differences in employment law arrangements for contract workers when compared with previous provisions and the provisions of the UUCK that are already in effect. Employment law aims to protect employee rights. Employee rights, including normative rights for contract workers, are regulated in UUK from Article 77 to Article 101.<sup>10</sup> However, in the Employment Cluster established by UUCK, there have been substantial changes in almost all articles contained in the statutory regulations accommodated by it. It is therefore necessary to carry out further analysis to identify differences in legal arrangements for contract employees, as will be explained below:

Based on Ps. 57 paragraph (2) UUK, PKWT that is not filed in writing automatically changes to PKWTT. However, in contrast to these provisions, in Ps. 57 paragraph (2) UUCK does not require written requirements in the work agreement. Therefore, even though the PKWT is made verbally, the agreement still has validity as a PKWT. This situation results in an uncertain legal situation for contract workers in terms of claiming normative rights, due to the absence of a legally valid agreement.

According to the rules stated in Ps. 58 paragraph (2) UUK, carrying out a trial period of service for 3 months is not permitted and if carried out, it will be considered legally void. On the other hand, in Ps. 58 paragraph (2) UUCK, also stipulates that a trial period of 3 months cannot be applied; if there is a probationary period requirement, then this will be considered legally void and the employee's period of service will be counted in full. By providing wages during the trial period, UUCK has provided legal protection to contract workers regarding their income during the trial period run by the employer.

In accordance with Ps. 59 paragraph (1) b UUK, it is explained that types of tasks that are expected to be completed within a relatively short period of time and a maximum of three years can be carried out through PKWT. On the other hand, in Ps. 59 paragraph (1) b UUCK, only regulates the types of tasks that are estimated to be completed within a short time, without providing concrete limits regarding the completion of PKWT work obligations. Determining the limit for the end of the PKWT employment relationship is determined through the Employment Agreement in accordance with what is described in Ps. 56 paragraph (3) UUCK.

The types of tasks in certain sectors or certain tasks refer to the types of tasks that are carried out on an ongoing basis. As described in Article 3 paragraph (1) of Minister of Manpower and

<sup>10</sup> Moch T. Shadiqin "Perlindungan Hukum Terhadap Tenaga Kerja Asing Berdasarkan Asas Kepastian dan Keadilan." *Administrative Law and Governance Journal* 2, no. 3 (2019): 558-570. Accessed: February 9, 2024. <https://doi.org/10.14710/alj.v2i3.558-570>.

Transmigration Decree 223/2003, the types of tasks included include: a) Duties in the health services department; b) Assignment to the transportation services section; c) Assignment to the tourism business section; d) Assignment to postal and telecommunications services; e) Assignment to the section providing electricity, clean water (PAM), and oil and natural gas fuel; f) Assignments to supermarkets, shopping centers, and the like; g) Assignment to the mass media section; h) Duties in the security sector; i) Duties at conservation institutions; j) Tasks which if stopped will disrupt the production process, damage materials, and include maintenance/repair of production equipment.

The right to rest and leave is a right that workers deserve, so that they can use this time to rest after work, rest when they are sick, carry out recreational activities, and practice religion in accordance with the beliefs held by the worker. However, before obtaining the right to rest and leave, workers are required to carry out work duties according to the working hours described in Ps. 77 paragraph (2) UUCK.

Workers are required to attend a forty hour work week for a work schedule of six days, and seven hours a day and. It can also be a five day work week, as long as it is eight hours a day and forty hours a week. Taking a break during working hours is at least half an hour after working for 4 hours continuously, with this rest time not being counted as working hours. Details of the differences between working time and rest time will be explained in more detail below:

**Overtime:** Employers have the right to ask workers to work overtime, as long as the worker agrees to work more than the usual time. Overtime can be done after working hours end or even on national holidays. The length of overtime time is regulated in Article 78 of the UUK which states that overtime can be done for a maximum of three hours a day and fourteen hours a week. However, this regulation has been changed in Article 78 of the Job Creation Law, which stipulates longer overtime working hours, namely four hours a day and a maximum of eighteen hours a week. If workers receive overtime assignments, they are entitled to receive additional wages for the overtime performed.

**Long Break:** The right of workers to obtain longer leave after working continuously for a certain period is regulated. If workers have completed 12 months of continuous work, they can be allocated 12 days of leave with full pay. Furthermore, employees are also entitled to a two-month holiday if they have contributed for six years. In the sixth and seventh years, each can take 1 month of leave. After entering the ninth year, that year is counted as the first year in calculating the longer leave allowance. However, UUCK does not grant longer leave rights to contract workers who have served for six years.

**Religious leave:** Article 80 of the UUK is still in effect and regulates that workers have the right to obtain sufficient time to carry out worship in accordance with their religious beliefs. When on leave, workers are entitled to receive full wages. **Period leave:** Regulations regarding menstrual leave are confirmed in Ps. 81 UUK is still valid. For workers who are experiencing menstruation and have notified the employer, they are not required to work on the first and second days of their menstrual period. When carrying out the leave period, workers are entitled to receive full salary.<sup>11</sup>

**Maternity Leave:** Regulations regarding maternity leave regulated by Ps. 82 UUK is still valid. Female employees can request rest time for one and a half months before giving birth and after

<sup>11</sup> Fitriani, Nurul Adliyah, Muhammad Ashabul Kahfi, and Nurhalisa Nurhalisa. 2022. "PERLINDUNGAN HUKUM TERHADAP HAK CUTI HAIID BAGI BURUH PEREMPUAN DI PT. ASERA TIRTA POSIDONIA". *Tadayun: Jurnal Hukum Ekonomi Syariah* 3 (2), 153-62. <https://doi.org/10.24239/tadayun.v3i2.78>.



giving birth or in case of miscarriage, which is calculated based on recommendations from the midwife or obstetrician. During the maternity leave period, workers are entitled to receive full wages. Breast-feed: Article 83 of the Manpower Law remains in force. During working hours, female workers are permitted to breastfeed their children appropriately if necessary.

Jobs in Certain Business Sectors/Tasks: According to Article 3 paragraph (1) of Minister of Manpower and Transmigration Decree 223/2003, types of tasks in certain sectors or special tasks refer to types of tasks that continue to be carried out regardless of working hours in accordance with existing laws and regulations. In accordance with Ps. 56 UUK, the implementation of assignments in certain business sectors or special tasks remains in line with the regulations in Ps. 77 UUK. If the working time exceeds the specified limit, the worker will be considered working overtime, and the employer must pay overtime wages. On the other hand, according to Ps 56 UUCK which is linked to Article 25 PP 35/2021, adjustments to workers' working time, whether more or less than the normal time standard, are regulated in work agreements, collective work agreements, or company regulations.

Regulations on Job Training: According to Article 13 of the Manpower Law, job training institutions run by the government or in collaboration with private institutions can provide job training. However, Article 13 of the Job Creation Law introduces three different entities in job training policies. This job training will be held by job training institutions from the government, private sector or the company concerned. Apart from that, there is an additional new policy through Minister of Manpower Decree 115/2022 which requires work competency certification for workers in the field of human resource management.

According to Ps. 88 paragraph (2) in the UUK, regulations regarding the provision of wages as part of workers' rights include 11 points, namely: minimum wages, wages when absent for certain reasons, wages when absent for activities outside of duty, wages for overtime work, wages during rest periods, wage payment methods, penalties and deductions from wages, aspects that can be calculated in wages, proportional wage structure and scale, wages related to income tax calculations, and wages for severance pay.

According to Ps. 88 paragraph (3) UUCK, the difference can be seen where the wage aspect is summarized into 7 points, including minimum wages, wages for overtime work, wages when absent or not working for certain reasons, structure and scale of wages, aspects that can be calculated in wages, methods payment of wages, as well as wages as a basis for calculating or paying other rights and obligations. Apart from that, there are also additional regulations included in the UUCK, such as Ps. 88A, Ps. 88B, Ps. 88C, Ps. 88D, Ps. 88E, and Ps. 88F. Additional content of these articles discusses government policy in determining minimum wages, even with the possibility of modification in certain situations. The special situation in question is the minimum wage calculation which considers the variables of economic growth, inflation and certain indices.

Ps. 88 paragraph (4) in the UUK emphasizes that the need for a decent living, productivity, efficiency and economic expansion are the government's considerations in formulating regulations regarding minimum wages. As a contrast, Ps. UUCK 88C reviews that if the Provincial Minimum Wage (UMP) is lower than the Regency/City Minimum Wage (UMK), it explains that the governor is obliged to implement the determination of the UMP and UMK

Referring to Articles 89 and 90 in the Manpower Law, the regulations regarding wage suspensions when employers are unable to pay decent wages or at least in accordance with the Regency/City Minimum Wage or Provincial Minimum Wage have been abolished by UUCK and added that the Minimum Wage provisions do not apply for Micro and Small Enterprises. Wage calcula-

tions are based on data from authorized statistical institutions, and are approved by each party by looking at the average consumption of the community. Article 92A in the UUCK explains the continuous review of wages by considering the company's capabilities and productivity if wages are unstable.

Law 40/2004 concerning the National Social Security System (UU SJSN) regulates employment social security. In accordance with article 18 of the SJSN Law, types of social security programs include work accident insurance, health insurance, pension insurance, death insurance and old age insurance. Ps. 18 in the UUCK explains that the types of social security programs still consist of five programs as in the previous law, but there is one addition, namely job loss insurance. Details regarding job loss guarantees are regulated in new articles, namely the Job Creation Law Ps. 46A, 46B, 46C, 46D, and 46E. Benefits of the loss of duty insurance program include cash benefits, employment information and job training opportunities. This program will be funded by the central government.

The fourth part of the Employment Cluster in UUCK makes changes to Ps. 6, 9, and 42 in Law Number 24 of 2011 concerning Social Security Administering Bodies (UU BPJS). Based on the previous articles, BPJS is responsible for 4 activities, namely pension insurance, work accident insurance, death insurance and old age insurance. However, according to the new regulations, BPJS will also organize a loss of duty guarantee program. The initial funding for the loss of duty guarantee program has been set at a minimum of six trillion rupiah obtained from the APBN. Previously, regulations (article 42 of the BPJS Law) set initial funds for BPJS Employment and BPJS Health at two trillion rupiah.

Based on the provisions of Minister of Manpower Decree 150/1999, the social security programs accepted include pension security, work accident insurance, death benefit and health care security provided to contract employees who have worked for 3 months or more. Meanwhile, the death insurance program and work accident insurance are provided to contract employees whose work period is less than 3 months. If a contract worker's contract is extended after working for 3 months, then work accident insurance, death insurance, old age insurance and health insurance programs will be provided starting from the extension of the contract work period.

Referring to the provisions of Ps. 61 UUCK, completion of the work agreement occurs if: Worker Dies: Referring to Ps. 61 UUCK, a work agreement is automatically terminated in several circumstances, one of which is if the worker dies. In accordance with Ps. 18 of the SJSN Law, contract workers who die have the right to benefits as described in Minister of Manpower Decree 150/1999. These benefits will be given to the heirs of contract workers in accordance with the rules usually stated in the work agreement. When compared with UUCK, there are no differences in regulations regarding employment social security programs for the heirs of contract workers who die.

The validity period of the employment agreement has expired: Ps. 61 UUK, the completion of the employment relationship that arises is due to the completion of the validity period of the employment agreement and does not give the contract worker the right to receive compensation money. However, in Article 61A UUCK, when a certain term work contract is completed, the contract worker has the right to compensation money. More detailed provisions regarding compensation money are outlined in Ps. 15 PP 35/2021, which clarifies that employees are entitled to compensation money if they have worked consistently for at least 1 month. If the PKWT is extended, payment of compensation money is made before the extension, and a similar procedure is applied for subsequent extensions. Ps. 16 PP 35/2021 outlines the method for calculating the amount of

compensation money, namely by calculating the length of service (in months), dividing it by 12 months, and then multiplying it by one month's wages. If the assignment ends before the employment agreement period ends, compensation is calculated up to the time of completion of the assignment.

Completion of a Specific Work: Different policies also apply to contract workers who have completed certain tasks, similar to the situation when an employment agreement ends. Contract workers have the right to receive compensation commensurate with their length of service, as regulated by Art. 61A UUCK. In addition, the employment social security program regulated in Minister of Manpower Decree 150/1999 is still valid according to the duration of work carried out by contract employees.

There is a Court Decision and/or Decision or Determination of an Industrial Relations Dispute Settlement Institution which is *inkracht*: Article 155 of the UUK provides an explanation that as long as it is not finalized, the working relationship between both parties will continue. Workers who are in the process of being laid off can be suspended by their superiors, with the condition that employers must provide wages and other rights to workers as usual. This policy generally reflects the contents of Article 157A in the previous policy. After the Industrial Relations Court's Decision or Ruling has been entered into, the rights and obligations contained in the decision must be implemented by each party.

The existence of certain circumstances or events stated in the employment agreement, company regulations or company regulations which give rise to the termination of the employment relationship: According to UUK's explanation, the subjects who experienced this situation or event were more aimed at workers with permanent status. Departing from Ps. 156 paragraph (1) UUCK, the rights of permanent workers include severance pay, compensation rights and rewards during work. These rights are given as appreciation for the dedication of those who have served in a particular company for a long time. However, according to the Manpower Law, these rights do not apply to contract workers, but only apply to permanent employees. This is because in PKWTT, the employment relationship is carried out without a duration that can be determined by the employer and employee, even exceeding the 3 year limit. So there is a need for a more complex legal protection policy regarding the normative rights of permanent workers.

According to the new rules Ps. 154 A UUCK, layoffs can occur because: The company implements efficiency followed by company closure or not followed by company closure due to the company experiencing losses; The company carries out a merger, consolidation, takeover or separation of companies and the worker is not willing to continue the employment relationship or the employer is not willing to accept the worker; The company closes due to compelling circumstances; The company closes due to consecutive losses for 2 (two) years; The company is postponing the obligation to pay debts; and The company goes bankrupt.

Apart from the reasons mentioned above, layoffs by employers can be carried out if workers submit a request on the grounds that the employer has taken actions, including: Perpetrating abuse, harsh insults, or threats against employees; Inducing or even forcing employees to carry out actions that are not in accordance with positive law; For 3 months or more, wages are always late, even though the employer pays wages on time after that; The strike provides workers with rights according to the agreement; Asking workers to carry out tasks other than those agreed upon; Handing over tasks that threaten the safety and morals, health and even the souls of workers, even though the tasks are not in the agreement; Workers wish to resign with the following conditions:



not on official duty, must carry out their duties simultaneously by submitting a written application no later than 30 days before resignation; For five consecutive days or more, employees have gone on strike without written information, and it is validly proven that the workers have been contacted by their employers in writing and in writing.

Employees violate the rules stipulated in the work agreement, collective work agreement or company regulations, and are always given one to three warning letters, all valid for a maximum of 6 months; The worker does not come to work because he is detained by the authorities on suspicion of a criminal act; The worker experiences a long illness or disability and has been unable to carry out his duties for twelve consecutive months. Each party carrying out layoffs unilaterally must pay a fine/penalty to the other party, as regulated in Article 62 of the Manpower Law.

Based on Ps. 64 UUK, a company is permitted to carry out an outsourcing agreement with an Outsourcing Company, provided that the agreement must be in writing. There are several differences in Article 64 UUCK which are also related to Articles 18, 19 and 20 PP 35/2021. According to this new policy, the agreement between the company and the outsourcing company must be in written form, either in the form of a PKWT or PKWTT. However, aspects such as wages, worker welfare, work conditions, and potential conflicts that arise are outlined in the Work Agreement, Collective Work Agreement, or Company Regulations. This aspect will be the burden of the outsourcing company. The transfer of workers' rights protection must be carried out, as recorded in the Work Agreement, Collective Labor Agreement, or Company Regulations in the event of a company transfer. If such a determination is not made, then the responsibility for protecting workers' rights will be the responsibility of the outsourcing company.

Outsourced worker services are used to carry out supporting tasks in the company that employs them. Ps. 65 and 66 UUK, the tasks in question are not the core tasks of a company, but rather tasks such as cleaning services, call center officers, security officers, transportation workers, food/catering providers, couriers or drivers, and facility management staff. However, UUCK's new policy changes Ps. 65 and 66 UUK which removes restrictions on job descriptions for outsourced workers. This means that outsourced workers can now engage in core tasks at the company that employs them.

The Employment Social Security Program is also described in Ps 11 paragraph (3) PP 35/2021, which explains that employers must comply with the rights of daily contract workers, including the social security program. The new policy regarding wages and compensation money is also adjusted to Articles 88 and 61A of the Job Creation Law.

**Table 1.** Differences in settings before and after changing Ps. 59 paragraph (4) UUK can be explained briefly as follows:

<b>Arrangements for Contract Workers</b>	<b>Labour Laws</b>	<b>Job Creation Law</b>
PKWT TO PKWTT	Ps. 57 (2): Written, if verbal then changes to PKWTT	Ps. 57 (2): Written or verbal, PKWT remains valid
Job Probation Period	Ps. 58 (2): 3 months trial is null and void	Ps. 58 (2): 3 month trial, including work period
Types of PKWT work	Ps. 59 (1): Implemented within a maximum of 3 years	Ps. 59 (1): No specific time period
Overtime	Ps. 78 (1): a day max. 3 hours and a week max. 14 hours	Ps. 78 (1): A day max. 4 hours and a week max. 18 hours

Long Break	Ps. 79 (d): 6 years of service gets 2 months leave	Ps. 79 (4): No Long Breaks
Working Hours for Certain Business/Employment Sectors	Ps.56: Working hours can be less or more than Ps. 77. However, if it is more, you are entitled to overtime pay	Ps. 56 jo Ps. 25 PP 35/2021: Working hours can be less or more than Ps. 77. If more, it is regulated in PK, PP, or PKB
Job Training Provider	Ps. 13: Government and/or private LPK	Ps. 13: Government LPK, private LPK, and Company LPK. Ps. 88 (3): 7 Aspects
Wage Aspect	Ps. 88 (3): 11 Aspect	Ps.92A: Employers are obliged to review the remuneration aspects of the Company's capabilities and productivity
Wage Arrangements	Ps. 89 and 90: Suspension of wages if the employer is unable to pay	Ps. 90A and 90B: the amount of wages is regulated by contract workers with MSE Employers
Social Security Program	Ps.18: 4 Social Security programs	Ps. 18: 5 Jasmkostek Program (Job Loss Guarantee) Ps.46A-46E: Job Loss Insurance Program Benefits
Termination by Law	Ps. 61: 4 Aspect	Ps. 61: 5 Aspects (completion of a particular work)
Contract Worker Compensation	Ps. 61: Unable to Compensate	Ps. 61A: Entitled to Compensation
Layoffs by the Company	Ps. 61: Unable to Compensate	Ps. 61A: Entitled to Compensation
Layoffs by Ps. Workers	62: Must pay compensation	Ps. 61A: Entitled to Compensation Ps. 62: Must pay compensation
Outsourced Contract Workers	Ps. 65 and 66: Types of work are only work supporting production activities	Ps.66: There are no restrictions on types of work.
Daily Contract Workers	Daily Contract Workers	Daily Contract Workers

**B) Legal protection for contract workers after there is a change to Article 59 paragraph (4) of the Labor Law that is better or not.**

The basic rights of workers in the context of employment relations which are guaranteed and maintained by positive law are normative workers' rights.<sup>12</sup> Setiono's opinion states that legal protection aims to provide guarantees (legally) to the general public as a form of 'safety net' from arbitrary actions or actions that are contrary to positive legal rules, in order to maintain general order and comfort so that society can achieve high levels of security. comprehensive dignity as a human being. Workers have the right to protection, as explained in Ps. 86 paragraph (1) UUK, which includes protection for behavior that is in accordance with human dignity, religious and moral norms, as well as occupational safety and health.

<sup>12</sup> Zubi, Muhammad, Marzuki Marzuki, and Ibnu Affan. 2021. "Tinjauan Yuridis Perlindungan Hak-Hak Normatif Tenaga Kerja Setelah Berlakunya Undang-Undang Cipta Kerja (Omnibus Law)". *Jurnal Ilmiah METADATA* 3 (3):1171-95. <https://ejournal.steitholabulimi.ac.id/index.php/metadata/article/view/104>.

Based on Ps. 27 paragraph (2) of the 1945 Constitution, every country has the right to duties and a decent living for humans. This indicates that the government has a big duty to provide protection for individuals who are willing and able to work so that they can obtain tasks that suit their wishes and adequate income for a decent life, both for themselves and their families.<sup>13</sup> Even though legally workers and entrepreneurs have equal positions in contractual law, socio-economically, they have different positions.

Legal protection for guaranteed normative rights became very important and interesting to discuss after the enactment of the Job Creation Law because it relates to the normative rights of workers, where labor law is the law that regulates the relationship between workers and employers. Labor law functions to protect workers' interests against unlimited power from employers, this right can be regulated in Law Number 13 of 2003 concerning Employment.<sup>14</sup>

Analysis of differences in settings before and after Ps changes. 59 paragraph (4) shows that the government does not fully guarantee normative rights for contract workers. The rights and obligations between employee and employer tend to favor the employer. This is reflected in the absence of restrictions regarding the time period for implementing PKWT. This time period is given by the government through an agreement between the employee and the employer. Most likely, in such an agreement, the employer will have greater authority and can determine the clauses in the agreement unilaterally.

The principle of freedom of contract is a basic principle in contract law that allows both parties to regulate the content, form and parties involved in the agreement.<sup>15</sup> This concept, as Immanuel Kant said, is based on free will. Even though freedom of will is the basis for creating justice, often in practice, each party does not have an equal bargaining position. The meaning of freedom of will shifts to freedom with propriety.<sup>16</sup>

A form or draft of an employment agreement is often prepared by the employer, known as a standard agreement or contract. Although several provisions can be negotiated by each party, such as the PKWT period, wages, benefits and the Employment Social Security Program. The Job Creation Law has changed many policies related to protecting the normative rights of contract workers.

The work relationship between workers and entrepreneurs is subordinate (superior and subordinate) because seen from socio-economic position, the entrepreneur is at the top and the worker is at the bottom. This kind of employment relationship has an impact on contract workers' lack of freedom in entering into work agreements. So there is a need for employment law which is expected to provide legal protection to workers. Imam Soepomo is of the opinion that the essence of labor law is to protect workers because legally the position of workers is free, but sociologically their position is not free.

<sup>13</sup> Sugeng Hadi Purnomo, Pekerja Tetap Menghadapi Pemutusan Hubungan Kerja, *Jurnal Hukum Bisnis Bonum Commune*, Vol.2, No.2, (Agustus 2019) 137.

<sup>14</sup> Adrian Sutedi, *Hukum Perburuhan*, (Jakarta: Sinar Grafika. 2014) 56.

<sup>15</sup> Mahendar, Fahdelika, and Christiana Tri Budhayati. 2019. Konsep Take It Or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak. *Jurnal Ilmu Hukum: ALETHEA* 2 (2):97-114. <https://doi.org/10.24246/alethea.vol2.no2.p97-114>.

<sup>16</sup> Alvon Kurnia Palma, 5 Tahun PKWT Terus-terusan? Bisakah Saya Menuntut jadi Karyawan Tetap", *Detik.com*, 19 Oktober 2022, (07 Agustus 2023).

Amendments to Article 59 paragraph (4) of Law Number 13 of 2003 concerning Employment are a polemic that is currently occurring in the scope of employment in Indonesia. Problems arise because the Employment Cluster UUCK does not provide the opportunity for a contract worker to become a permanent worker. A fixed-term employment agreement into a fixed-term employment agreement can only be regulated in the employment agreement, company regulations and collective labor agreement. Regulations for the protection of normative rights for contract workers have not yet found a clear light. The imbalance in the rights and obligations of each party is due to the fact that there are many substances in the UUCK which do not seem "coercive". This can be seen from the fact that there is no time limit for implementing a specific work agreement. The duties and obligations of outsourcing contract workers can be greater than in the previous law. The long leave policy has been abolished by UUCK. wage arrangements calculated based on inflation and economic growth in an area plus a certain index.

A sharp focus was placed on the PKWT issue because the President of the Confederation of Indonesian Trade Unions (KSPI) Said Iqbal said that Article 59 paragraph (4) of the Job Creation Law could make a worker contract for life. The workers also firmly rejected the birth of this regulation. "What we are highlighting is the PKWT which in the Job Creation Law does not have a limited contract period. There is no change in the Perppu so workers reject this, because with this article work contracts can be made repeatedly," he said, Monday (2/1/2023). According to Said Iqbal, the government's implications in protecting the normative rights of contract workers are still lacking, and are not even in favor of workers. So the Job Creation Law prioritizes the interests of entrepreneurs.<sup>17</sup>

#### **A) Differences in Legal Arrangements for Contract Workers Before and After Amendments to Article 59 paragraph (4) of the Manpower Law**

Differences in settings before and after Ps change. 59 paragraph (4) UUK has its own advantages and disadvantages. When the UUK comes into effect, contract workers can only work for a maximum of 3 years and after that have the opportunity to become permanent workers. If layoffs occur under PKWT, contract workers are not entitled to compensation money, but can still access the social security program that has been registered by the employer. However, if the worker switches to permanent employment, the rights associated with layoffs are greater. These workers are entitled to receive severance pay, compensation for their rights, rewards for working, and social security programs. In addition, all permanent workers are entitled to long breaks, including permanent outsourced workers and casual daily workers.

After the UUCK was implemented, opportunities for contract workers to become permanent workers were very limited, even without compelling provisions in the UUCK. This has the potential to open up the possibility of implementing PKWT without a clear time limit. However, contract workers still have the right to compensation and social security programs in the case of layoffs. In addition, UUCK introduced a new policy for contract workers, namely the right to a loss of duty guarantee program. Both outsourced workers and casual daily workers are entitled to compensation and employment social security protection. According to UUCK provisions, outsourced workers have no restrictions in carrying out their duties, because the new policy does not limit the types

<sup>17</sup> Ferry Sandi, "Heboh Pekerja Dikontrak Seumur Hidup? Ini Penjelasannya", [CNBC.com](https://www.cnbc.com) Indonesia, 06 Januari 2023, (12 Agustus 2023).

of tasks that can be carried out by outsourced workers. In practice, outsourced workers may carry out core roles in company production in accordance with employment agreements, collective labor agreements or company regulations.

#### **B) Legal protection for contract workers after changes to Article 59 paragraph (4) of the Employment Law are better or not.**

Labor Law establishes an equal position for employers and workers, in accordance with the principle of balancing interests and justice in employment relations, by avoiding discriminatory treatment from employers. Government intervention in employment implementation has the aim of protecting the normative rights of employees from abuse of employer power, as part of implementing the values contained in the 1945 Constitution and UUCK. However, in practice government policies actually benefit employers and harm workers. The government has a significant role as a balancer in the employment structure, especially in terms of maintaining equal legal status between workers and employers.

Even though there have been changes to the term provisions for contract employees, better legal protection for the normative rights of contract workers has not been fully guaranteed. As a binding legal rule, UUCK should be the basis for ensuring welfare in the work relationship between employees and employers. However, UUCK implementation tends to prioritize the interests of employers rather than providing adequate protection for the normative rights of contract workers. Therefore, the implementation of UUCK is still not fully in line with its initial objective, namely increasing protection and welfare for workers.

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