



Reconstruction of the Principles of Justice in Employment Agreements Post Constitutional Court Decision No. 168/PUU-XXI/2023

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Abstract: The Constitutional Court (MK) Decision No. 168/PUU-XXI/2023 marks a significant milestone in the development of labor law in Indonesia, particularly concerning Fixed-Term Employment Agreements (Perjanjian Kerja Waktu Tertentu or PKWT). The ruling sets a maximum duration for the implementation of PKWT at five years, including all possible extensions during the employment period. This time limit aims to provide legal certainty while ensuring maximum protection for workers employed under PKWT, who have often faced uncertainty and vulnerability in industrial relations.

Issued on October 31, 2024, the MK decision strengthens the principle of justice in industrial relations by offering clearer and better protection for PKWT workers. With the five-year cap, workers are no longer subjected to prolonged uncertainty regarding their employment status, securing their rights more definitively. The ruling also balances employers' authority to regulate employment relationships, allowing the use of PKWT under clear restrictions without arbitrary and unlimited contract renewals. This decision presents challenges for employers in adapting their contract practices to comply with the new regulations, especially in managing PKWT workers for short-term operational needs. MK Decision No. 168/PUU-XXI/2023 provides a stronger legal foundation to realize justice and legal certainty for workers, fostering harmonious, fair, and sustainable industrial relations, particularly for workers under PKWT status.

Keywords: PKWT, MK Decision 168/PUU-XXI/2023, justice, worker rights, labor law

INTRODUCTION

According to the Indonesian Language Dictionary (KBBI, 2021), reconstruction is defined as “reassembling or re-envisioning an event, building, or condition.” Reconstruction is not merely literal replication of the past but involves adjustments to meet evolving needs or conditions. In legal contexts, reconstruction often refers to efforts to renew, strengthen, or improve norms that are no longer relevant to societal development. When existing legal norms cause injustice or no longer align with social realities, legal reconstruction is necessary

to harmonize with the ideals of law. This process involves not only technical changes to regulations but also philosophical, sociological, and juridical dimensions.

Philosophically, legal reconstruction demands a re-examination of fundamental values and the purpose of law. Law is not just a rigid set of rules; it embodies values of justice, certainty, and utility within society. If existing legal norms no longer reflect these values, reconstruction is essential to restore law's function as an instrument of justice (Fuller, 1969). In other words, legal reconstruction must be grounded in a deep understanding of legal philosophy to ensure changes are substantive, not merely cosmetic.

Law mirrors the social and cultural dynamics of society. Legal norms develop within complex social interactions and cannot be detached from the social context where the law operates. A sociological approach to legal reconstruction requires adapting rules to changes in societal mindset, needs, and aspirations. As Eugen Ehrlich pointed out, "living law" must evolve alongside societal changes to remain relevant and effective (Ehrlich, 1936). Law that fails to respond to social change creates a gap between formal law and social reality, leading to injustice and conflict.

From a juridical perspective, legal reconstruction involves legislation, interpretation, and application processes. This process must uphold principles of legal certainty, transparency, and accountability to prevent uncertainty that harms society (Hart, 1961). Legal reconstruction should also involve stakeholder participation, including academics, to ensure the norms produced have legitimacy and broad acceptance.

Reconstructing justice in employment agreements is necessary to align labor law norms with societal needs. Employment agreements often reflect power imbalances between workers and employers that can lead to injustice. Justice reconstruction in employment agreements involves renewing legal norms and mechanisms to ensure fairness and balance for all parties. This includes protecting workers' rights and providing legal certainty for employees (Simanjuntak, 2014).

Justice reconstruction must also consider evolving economic and social conditions, such as new employment forms like outsourcing, freelance workers, digital sector employees, and globalization challenges affecting labor relations. Labor law norms governing employment agreements must be updated to respond to these challenges while ensuring adequate worker protection (Sutedi, 2017). Justice reconstruction forms the foundation regulating the dynamics between workers and employers, aiming to balance rights and obligations fairly. This principle is crucial to ensure employment relationships operate not merely mechanically but based on moral and ethical values prioritizing human rights and social justice.

Justice in employment agreements is divided into two main dimensions: distributive justice, which focuses on proportional allocation of rights, duties, and benefits; and procedural justice, which refers to fair and non-discriminatory legal mechanisms and procedures. These dimensions complement each other and provide an effective framework for harmonious and sustainable labor relations.

Distributive justice involves equitable division of rights and obligations between workers and employers. In industrial relations, this demands that workers' rights such as fair wages, social security, leave entitlements, and protection against unfair dismissal are met proportionally according to each party's contribution and needs. This concept emphasizes that all parties must receive their fair share without exploitation or imbalance that harms either side (Yuliana & Santoso, 2021). Distributive justice also includes recognition and appreciation of workers' contributions in production and operations. Failure to meet these rights fairly tends to cause industrial tensions and conflicts detrimental to both parties. Thus, distributive justice involves balancing obligations carried out in good faith by both employers and workers (Susanto, 2020).

In contrast, procedural justice emphasizes fairness in legal mechanisms and processes within employment agreements. It demands that every employment-related process such as contract renewals, termination, wage determination, and dismissal be conducted transparently, objectively, and with active participation from all stakeholders (Sari, 2023). Transparency is vital to prevent unilateral decisions that disadvantage one party, especially workers with weaker bargaining power. Worker participation, for example through unions or representatives, offers a platform to voice concerns, making decisions more just and balanced (Wahyuni & Prasetyo, 2023).

Procedural justice is essential for fair and swift dispute resolution, preventing prolonged conflicts that harm productivity and workplace climate. Hence, procedural justice must be maintained through a responsive, inclusive, and accessible legal system for both workers and employers (Anwar & Kurniawan, 2022). From a progressive legal perspective (Satjipto Rahardjo, 2009), procedural justice reflects law's responsiveness to human needs. Law should not be confined to texts but must live in practice to ensure fair treatment for weaker parties, here workers.

Both distributive and procedural justice must coexist. Distributive justice without procedural justice risks dissatisfaction, as outcomes might be perceived as illegitimate. Conversely, procedural justice without distributive justice can yield fair processes but unfair results that disadvantage one party (Yuliana & Santoso, 2021).

These justice principles are vital for fair employment relationships both in outcomes and processes. This is reflected in regulations governing Fixed-Term Employment Agreements (PKWT) and Permanent Employment Agreements (PKWTT) under Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2023 on Job Creation, and Government Regulation No. 35 of 2021 concerning PKWT, Outsourcing, Working Hours and Rest Time, and Termination of Employment.

Given PKWT's temporary nature, applying justice principles is critical, as implementation often causes uncertainty for workers. Distributive justice in PKWT means workers must receive adequate protection during their employment, including fair wages, social security, and legal certainty protecting them from arbitrary dismissal. Employers must also be granted proportional flexibility to manage workforce needs amid rapid market and economic changes (Yuliana & Santoso, 2021).

Procedural justice in industrial relations requires that all decisions related to PKWT such as contract renewals, termination, and work conditions be made through fair, transparent processes based on legal principles that allow workers to attain welfare. Employers must make decisions wisely (Susanto, 2020).

Justice principles in PKWT demand a balance between legal certainty for workers and flexibility for employers. Flexibility allows employers to adjust staffing to business conditions without excessive legal risks but must be limited to avoid sacrificing fundamental worker rights. In other words, PKWT policies should address business needs while guaranteeing adequate worker protection (Hidayat & Nugroho, 2022). The application of justice must also consider dynamic social and economic developments.

Under Law No. 13 of 2003, PKWT is designed for temporary or project-based work, offering flexibility for employers to adjust workforce needs for limited-duration projects. PKWT differs from PKWTT, which applies to permanent jobs.

Before Constitutional Court Decision No. 168/PUU-XXI/2023, Indonesia's PKWT duration regulation was ambiguous. Duration limits mainly relied on norms in the Job Creation Law and Government Regulation No. 35 of 2021 as implementing rules. These rules set limits on PKWT usage but left legal loopholes exploited by employers, known as contractual chaining, allowing workers to remain on PKWT contracts for years without chance for permanent status.

This ambiguity caused practical problems. Workers often faced uncertainty over employment duration and rights, including wages, benefits, and severance. Repeated PKWT contracts weakened workers' bargaining positions, as they feared losing jobs if demanding rights. This practice led to recurring industrial disputes, burdening the judicial system and damaging social justice in the workplace. It reflected an imbalance between employer interests and worker rights, which should be governed by distributive and procedural justice principles in modern labor law theory.

MK Decision No. 168/PUU-XXI/2023 offers hope by ruling that unlimited PKWT contracts violate the 1945 Constitution due to legal uncertainty and weakened worker protections. A key point is the five-year maximum PKWT duration, including extensions, for certain temporary jobs. The ruling provides legal certainty for workers and limits employer authority to impose unlimited repeated contracts. It also affirms that permanent work cannot be performed under PKWT; workers performing permanent jobs have the right to convert to permanent status, including normative rights such as severance and permanent employment status.

This legal development affects not only workers but also employers and policymakers. Employers must adapt HR planning and recruitment strategies to comply with the new legal framework. The ruling raises broader questions regarding justice principles in Indonesian industrial relations, considering a work culture accustomed to repeated PKWT contracts that often disregard worker justice. It prompts inquiries on How justice principles should be applied to PKWT post-MK Decision No. 168/PUU-XXI/2023 ? How PKWT norms should be formulated to prevent violations ? and How far the extent labor law allows flexibility in workforce management?

METHOD

This study employs a normative juridical approach, which focuses on examining the applicable legal norms and the underlying legal principles governing their implementation. As explained by Peter Mahmud Marzuki (2020), normative juridical research is a method that involves reviewing and analyzing legislation, legal doctrines, and relevant legal principles as the basis for resolving legal issues. This approach primarily emphasizes the study of legal literature and legal documents as the main sources of data.

In this research, the normative juridical method is combined with a comparative analysis to contrast the legal conditions and practical implementation of Fixed-Term Employment Agreements (PKWT) before and after the Constitutional Court (MK) ruling. This comparative analysis aims to identify the changes and impacts brought about by the MK decision on the protection of workers' rights as well as employers' authority in regulating employment relationships through PKWT.

The study uses two principles of justice as its analytical framework: distributive justice and procedural justice. Distributive justice assesses the extent to which workers' rights under PKWT are allocated fairly and proportionately, while procedural justice evaluates whether the processes involved in exercising employers' authority are conducted transparently, fairly, and in accordance with applicable legal procedures (Wulandari & Putra, 2021). Conclusions are drawn based on this evaluation, ensuring that legal interpretation and application align consistently with these justice principles.

The primary objective of this research is to analyses the implications of the MK ruling on the protection of workers' rights regulated under PKWT, assess the conformity of employers' authority with justice principles, and provide policy recommendations aimed at fostering a fairer and more balanced implementation of PKWT that accommodates the interests of both workers and employers. These policy recommendations are expected to

serve as guidance for policymakers in formulating regulations responsive to the current dynamics of labor relations (Sari, 2022).

RESULT AND DISCUSSION

Application of the Principle of Justice in the Fixed-Term Employment Agreement (PKWT) System Post Constitutional Court Decision No. 168/PUU-XXI/2023

Fixed-Term Employment Agreements (PKWT) represent a specific form of employment relationship regulated under Law No. 13 of 2003 concerning Manpower. PKWTs are designed to accommodate employers' needs to manage labor for temporary or time-limited work. This contrasts with Permanent Employment Agreements (PKWTT), which grant permanent status to workers. Within the employment context, PKWT provides the flexibility employers require to adjust their workforce according to project or temporary work needs, yet it also raises significant challenges regarding the protection of workers bound by temporary contracts.

Article 59 paragraph (1) of Law No. 13 of 2003 stipulates that PKWTs may only be made for temporary jobs with clear time limits. These jobs fall into several categories:

- a. Jobs that are one-time or temporary in nature, meaning the work is performed once and completed, such as construction projects finalized upon completion.
- b. Jobs expected to be completed within a relatively short period, with a maximum duration of three years. This limits PKWT contracts for certain jobs to no more than three years, covering work that is shorter than ongoing permanent tasks but longer than one-time jobs.
- c. Seasonal jobs that occur only at certain times of the year, such as agricultural harvests or tourism-related work during holiday seasons, or manufacturing jobs tied to order fulfilment.
- d. Jobs related to new products, new activities, or experimental or trial products still under evaluation. This category allows firms to undertake innovative or experimental work without binding workers permanently.

Article 59 paragraph (2) explicitly prohibits the use of PKWT for permanent jobs. Routine and continuous work must be governed by Permanent Employment Agreements (PKWTT). This provision prevents misuse of PKWT where employers avoid granting permanent worker rights by repeatedly extending temporary contracts. Such prohibition protects workers from uncertain employment status and ensures they receive rights comparable to permanent employees. The provision aims to create fairer and more stable employment relations, reducing uncertainty that has long been a major complaint among PKWT workers.

The Job Creation Law No. 6 of 2023 amended Article 59 paragraph (1), notably removing the three-year limit under point (b) and adding point (e), which covers "jobs with types, natures, or activities that are not permanent," as a condition for PKWT agreements.

Government Regulation No. 35 of 2021, as an implementing regulation of the Job Creation Law, provides detailed rules on PKWT duration. Articles 6 and 8 limit PKWT contracts, whether based on time or specific jobs, to a maximum of five years. These regulations aim to provide legal certainty and prevent PKWT misuse, which has been prevalent (Sari, 2023). However, a loophole remains allowing employers to rehire the same worker under new PKWT contracts after the initial five-year period ends. This is due to Article 56 paragraph (3) in the Job Creation Law's annex stating that the duration or completion of certain jobs is determined by the employment agreement. This ambiguity creates uncertainty over PKWT duration, allowing employers to extend contracts repeatedly without granting permanent status. Such practices negatively impact workers' welfare and social protection (Putra & Wibowo, 2021).

The changes to Article 59 paragraph (1) under the Job Creation Law clarify and expand the scope of jobs eligible for PKWT. The addition of point (e) explicitly accommodates non-permanent jobs, granting employers flexibility to manage labor according to dynamic business needs. Yet, this amendment also opens room for PKWT misuse as a means to avoid converting temporary workers to permanent status (Sari, 2022). Consequently, many workers become trapped in continuous contract employment systems, resulting in economic and social instability due to inadequate job security (Putra & Wibowo, 2021). Moreover, PKWT workers are vulnerable to termination, weakening their position further, compounded by the labor law system's limited capacity to effectively protect their fundamental rights. Despite existing regulations on PKWT duration and conditions, field practices reveal abuses detrimental to workers.

The prohibition against PKWT for permanent jobs is often subject to bias and irregularities in practice. Companies widely apply PKWT to all types of work, including those that are permanent and routine (Hidayat & Nugroho, 2022). Citing efficiency and flexibility, employers tend to employ nearly all workers under PKWT contracts without granting permanent status. This clearly contradicts the principles of justice and worker protection enshrined in labor law.

A significant development occurred with Constitutional Court (MK) Decision No. 168/PUU-XXI/2023, which declared Article 56 paragraph (3) in Article 81 number 12 of the annex to Law No. 6 of 2023 (Job Creation Law) unconstitutional. The provision stating that the duration or completion of certain jobs is determined by the employment agreement was ruled inconsistent with the 1945 Constitution and legally invalid unless interpreted to mean the duration does not exceed five years, including any extensions.

By imposing a five-year maximum duration for PKWT in certain jobs, this decision represents a vital step in improving Indonesia's labor regulations. It affirms workers' rights to more certain employment status after the limit is reached. Workers employed under PKWT for five years are entitled to permanent status (PKWTT) if the job continues, thus providing better legal certainty and protection (Sari, 2023).

The MK ruling not only clarifies PKWT contract duration but also reinforces justice principles in industrial relations. It reminds that while employers require labor flexibility, this must not come at the expense of workers' basic rights, including job security and adequate social protection. The decision encourages employers to take greater responsibility in human resource management, emphasizing worker welfare and rights. Employers are expected to plan labor needs more strategically and long-term to avoid reliance on temporary contractual labor lacking future certainty. This aligns with government efforts to promote harmonious, productive, and fair industrial relations (Wahyuni & Prasetyo, 2023).

Implementing the MK decision faces challenges. Some employers seek loopholes to avoid converting PKWT workers to permanent status after five years, such as systematic termination or replacing workers with new contracts. Such practices require strict supervision and firm sanctions to ensure the decision effectively protects workers (Anwar & Kurniawan, 2022). For workers, the PKWT duration limit offers clearer opportunities to plan their futures and improve welfare. More stable job status enables access to social benefits like health insurance, pensions, and labor protections. Thus, the MK ruling is expected to reduce protection gaps between permanent and contract workers (Putri, 2022).

By setting a five-year PKWT maximum, including extensions, the decision corrects fundamental issues. It introduces distributive justice by limiting employer dominance and giving workers a chance for more certain employment status after this period. This creates a more proportional balance of rights and obligations. Constitutionally, distributive justice is reflected in Article 27 paragraph (2) of the 1945 Constitution guaranteeing the right to work and a decent living, and Article 28D paragraph (2) affirming the right to fair remuneration

and treatment in employment. The Court's decision strengthens these constitutional principles to ensure workers receive fair shares previously diminished by business-biased regulations.

Before the MK ruling, PKWT creation and renewal often lacked fair procedures. Many workers had limited access to information about their rights and were presented with standard contracts prepared by employers. This process ignored procedural justice principles by depriving workers of the chance to advocate for their interests legally. The MK decision improves this by establishing procedural certainty regarding contract duration. With a clear five-year limit, contract renewals become more measured and transparent, reducing procedural uncertainty for workers.

Violations in PKWT practices also stem from an industrial relations paradigm focused on labor exploitation. Workers are often seen as interchangeable production factors. This mindset drives excessive PKWT use without regard for worker welfare. Such a paradigm must shift toward a more participatory and just model.

Justice principles in PKWT are essential to balance workers' and employers' rights and obligations. Distributive justice demands fair and proportional allocation of rights and duties, while procedural justice stresses transparent decision-making aligned with legal regulations. The old paradigm viewing workers as production objects must evolve into one recognizing workers as equal partners in economic development. MK Decision No. 168/PUU-XXI/2023 can be seen as a first step to integrating distributive and procedural justice in employment relations.

Reformulation of Legal Norms Regarding Fixed-Term Employment Agreements (PKWT)

Ambiguous and multi-interpretable norms concerning the duration limits of PKWT, the types of work eligible for PKWT, and the protection mechanisms for workers under PKWT status have led to the phenomenon of contractual chaining where employment contracts are extended indefinitely even though the work is permanent in nature. The Job Creation Law and Government Regulation No. 35 of 2021 actually expanded the flexibility of PKWT without providing clear duration certainty, thereby increasing workers' vulnerability.

The lack of clarity in PKWT norms has serious implications for the principle of legal certainty. Theoretically, legal certainty is a fundamental pillar of the rule of law (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution. When legal norms are open to multiple interpretations, it creates room for abuse, often disadvantaging the weaker party in bargaining power namely, the worker. The ambiguity of PKWT norms results in practices that violate the principle of distributive justice, as benefits tend to be skewed towards employers while workers lose certainty over their status, compensation rights, and social security.

Workers employed under PKWT for permanent roles such as production operators in factories, cashiers in modern retail, or administrative staff in offices often never attain permanent worker status despite years of service. This situation contradicts justice principles and denies workers protection as part of their human rights. The unclear norms also foster industrial conflicts. Workers who feel wronged frequently file lawsuits at the Industrial Relations Court (PHI), but legal processes are lengthy and costly, leading many workers to remain silent and accept exploitative conditions.

As a corrective measure, the Constitutional Court (MK) through Decision No. 168/PUU-XXI/2023 set the maximum duration of PKWT, including extensions, at five years. This ruling is a milestone as it provides legal certainty previously absent in the Job Creation Law and Government Regulation No. 35 of 2021. Fundamentally, the MK decision affirms two key points: first, PKWT contracts cannot be extended indefinitely, and workers who have

served over five years must be converted to permanent status; second, PKWT norms must be clearly formulated to align with social justice principles as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, which guarantee every person's right to work and fair treatment in employment. This decision is corrective in nature and requires follow-up by lawmakers to revise PKWT regulations for greater clarity and to eliminate ambiguities. Without comprehensive regulatory reform, the MK decision risks remaining a legal text without effective binding power in practice.

By establishing clear legal norms, these reforms will serve as instruments for both prevention and enforcement. In regulating PKWT, clear norms should cover four main aspects: first, the types of jobs eligible for PKWT limited to temporary, seasonal, or specific project-based work; second, PKWT duration reinforced by the MK ruling to a maximum of five years, eliminating unlimited contract extensions; third, compensation rights PKWT workers are entitled to compensation upon contract termination, as regulated in Government Regulation No. 35 of 2021 Article 15; and fourth, sanctions for violations employers breaching PKWT provisions should face financial, administrative, or criminal penalties to ensure deterrence. Clear norms empower workers to reject invalid PKWT agreements or raise objections when rights are violated. Simultaneously, explicit norms provide employers with certainty regarding PKWT limits and compliance requirements.

However, legal clarity is insufficient without effective oversight. Within Indonesia's labor law framework, supervision is carried out by labor inspectors as regulated under Law No. 23 of 2014 on Regional Governance. Such supervision is a state instrument to ensure compliance and protect workers from exploitative practices. Yet, supervisory capacity remains very limited. Data from the Ministry of Manpower (2022) shows that the number of labor inspectors is disproportionate to the number of companies monitored. Consequently, many labor violations, including PKWT abuses, go undetected.

Supervisory reform is necessary, including increasing both the quantity and quality of inspectors. Recruitment and training must be enhanced to equip inspectors with the skills to understand the complexities of modern industrial relations. Digitalization of supervision systems and online reporting platforms can facilitate worker reporting and improve transparency. Strict sanctions for violators must accompany supervision to ensure legal norms do not remain mere formalities. Without effective oversight, even clear PKWT norms will fail to protect workers.

Reformulating PKWT norms is an urgent necessity within Indonesia's labor law system. Existing ambiguous and multi-interpretative norms have caused exploitative practices such as unlimited contract extensions, uncertain employment status, and violations of distributive justice principles. MK Decision No. 168/PUU-XXI/2023 has constitutionally corrected this by setting a five-year maximum PKWT duration, but it must be followed by regulatory revisions making norms clearer, firmer, and unambiguous. In addition to clarifying norms, the government must strengthen sanction and supervision systems to ensure effective implementation. Without strong sanctions and supervision, legal norms will remain ineffective rules without real power.

Workforce Management Flexibility Based on PKWT Provisions

The PKWT provisions in Indonesia refer to Article 56 paragraph (2) of Law No. 13/2003, which restricts PKWT usage to jobs that, based on their type, nature, or activities, are expected to be completed within a certain timeframe. This rule emphasizes that PKWT is not intended as an instrument to fulfil permanent job needs. However, loose legislative practices and broad interpretations through derivative regulations have expanded flexibility to the point where contractual chaining repeated PKWT contracts has become a troubling phenomenon. In many sectors, workers performing routine and permanent tasks have been

classified as PKWT employees for years, resulting in income uncertainty, limited access to social security, and weakened collective bargaining power. Recent empirical and analytical studies indicate that labor regulation changes under the Omnibus Law have indeed created flexibility that requires careful oversight to avoid undermining worker protection principles. Fundamentally, PKWT is designed to provide employers the leeway to adjust workforce size according to production demands, market fluctuations, and technological developments. This flexibility must remain bounded by clear legal norms to prevent exploitative practices against workers (Harahap, 2021).

However, legal principles still allow flexibility as long as it is applied within fair boundaries, taking into account legal certainty, proportionality, human rights protection, and non-discrimination. Within this framework, flexibility entails several concrete elements: (1) limiting PKWT exclusively to genuinely temporary job types; (2) clear and reasonable contract duration; (3) proportional compensation rights relative to length of service; and (4) accessible and expedited dispute resolution mechanisms. The Constitutional Court Decision No. 168/PUU-XXI/2023 underscores that flexibility mechanisms must not eliminate workers' rights certainty. The Court affirms a maximum PKWT duration of five years, including extensions, as corrective action against harmful practices. The ruling stresses that flexibility must be balanced with constitutional protection of the right to work and a decent livelihood.

The legally permitted flexibility manifests in several workforce management models. First, the project model, where labor is hired for a fixed period tied to measurable outcomes, common in sectors like construction, IT, or R&D. Second, the seasonal model, used in agriculture, tourism, and retail to manage temporary surges. Third, the specific expertise model, recruiting certified specialists for defined phases without converting them into permanent employees if the project ends. These models are realistic and justified provided contracts, job scopes, and durations are clearly documented in accordance with legal standards. When flexibility is combined with workers' rights certainty, the outcome often benefits both operational efficiency for employers and fundamental protection for workers.

Substantive legal aspects supporting legitimate flexibility include explicit objective criteria for jobs eligible for PKWT. These criteria should clearly state project start and end points, measurable outputs as benchmarks, and job types that are seasonal or project-based. Clarifying these criteria reduces overly broad interpretations, including limiting contract extensions and total employment duration. Normative indicators should also define when flexibility becomes rights circumvention.

A prudent policy approach to flexibility must consider long-term projections. Sustainable flexibility is that which does not sacrifice social productivity. Capital flows and investments may require adaptability, but the social and political legitimacy of the labor system depends on perceptions of justice. If PKWT is understood and implemented as a temporary instrument accompanied by protective provisions, the state gains social stability supporting long-term investment. Conversely, if flexibility evolves into exploitation, the effects include industrial instability, reduced productivity, and social burdens detrimental to all parties. Recent analyses affirm that reconciling flexibility and protection is not only possible but necessary as a foundation for post-pandemic labor policies.

Legally permitted PKWT flexibility is a vital instrument for the dynamics of modern industrial relations. Flexibility must remain grounded in justice principles and legal certainty. Constitutional Court Decision No. 168/PUU-XXI/2023 provides a new direction for regulating PKWT, balancing employer needs and worker protections. PKWT flexibility, combined with a fair labor relations paradigm, clear norms, and effective oversight, can serve as a strategic tool to create a healthy and sustainable employment climate.

CONCLUSION

The ambiguous and multi-interpretable norms surrounding Fixed-Term Employment Agreements (PKWT) have led to the practice of contractual chaining, where employment contracts are extended indefinitely despite the work being permanent in nature. This issue is further complicated by the Job Creation Law and Government Regulation No. 35 of 2021, which broaden PKWT flexibility without clear duration limits, making workers increasingly vulnerable and deprived of legal certainty. This situation results in both distributive and procedural injustice, as employers reap most benefits while workers lose their right to permanent status—an essential guarantee of job security and severance pay. The unclear norms also contradict the principle of legal certainty, which is a fundamental pillar of the rule of law.

PKWT workers performing permanent tasks often are not promoted to permanent status despite years of service. Their weak bargaining position causes many to remain silent and accept exploitative conditions. In response, the Constitutional Court, through Decision No. 168/PUU-XXI/2023, set a maximum PKWT duration of five years, including extensions. This ruling emphasizes the need for legal certainty and social justice in employment relationships. However, this decision must be followed by regulatory revisions to make PKWT norms clearer, firmer, and unambiguous to ensure effective implementation in practice.

On the other hand, PKWT is needed as a legal tool to accommodate human resource requirements through a flexible system. Policy approaches to flexibility must focus on long-term projections while preserving social productivity and justice. When applied as a temporary instrument with adequate protection, healthy flexibility can foster social stability and support sustainable investment.

Therefore, the author recommends three actions for the government and legislators to address these issues:

First, shift the paradigm in formulating PKWT legal norms toward greater alignment with distributive and procedural justice. Laws should guarantee a balance between the rights and obligations of workers and employers. Distributive justice demands fair and proportional allocation of rights and duties, while procedural justice stresses transparent decision-making processes in accordance with legislation.

Second, formulate PKWT norms clearly and firmly. Clear norms aim to avoid ambiguity, and firm norms include sanctions and strengthened labor oversight to prevent repeated violations. The lack of clarity in PKWT norms seriously undermines legal certainty, a core pillar of the rule of law as enshrined in Article 1 paragraph (3) of the 1945 Constitution. Without comprehensive regulatory reform, the Constitutional Court's decision, while corrective, risks remaining an ineffective legal text in practice.

Third, respond to industrial developments and investment needs by maintaining workforce flexibility, but ensure this flexibility is regulated by clear legal norms with objective criteria regarding the types of jobs eligible for PKWT. Grounded in justice principles and legal certainty, combined with effective supervision, PKWT flexibility can serve as a strategic instrument to create a healthy and sustainable labor climate, supporting investment while protecting workers' rights in a balanced manner.

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