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Analysis of Workers' Rights to Damages and Compensation Under Fixed-Term Employment Contracts (PKWT) Based on Government Regulation No. 35 of 2021

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Abstract

Changes to the labor law regime following the enactment of No. 6 of 2023 on Job Creation have led to a dual regulatory framework regarding the financial rights of workers under Fixed-Term Employment Agreements (PKWT) who experience termination of employment before the end of their contract term specifically, between compensation for the remaining contract period and compensation for the termination of the PKWT which is still frequently misapplied in industrial relations court practice. This study aims to analyze the normative regulations governing these two rights based on Government Regulation No. 35 of 2021, as well as their application in Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024. The study employs a normative legal method using a statutory approach, a case-based approach, and a conceptual approach, analyzed through the Theory of Legal Protection and the Theory of Legal Certainty. The results of the study indicate that the Industrial Relations Court at the Denpasar District Court erroneously applied the severance pay standards for permanent employees to a fixed-term employment contract (PKWT) case; consequently, the Supreme Court corrected this by establishing a cumulative obligation consisting of compensation for the remaining contract period and PKWT compensation, while simultaneously reaffirming the principles of proportionality and ultimum remedium in the termination of employment. The study concludes that there is a need for technical judicial guidelines that clearly distinguish among the three types of financial rights of fixed-term contract workers to prevent disparities in rulings and strengthen legal certainty.

Keywords Fixed-Term Employment Agreements; Legal Protection for Workers; Severance Pay.

INTRODUCTION

Article 27, paragraph (2) of the Constitution of the Republic of Indonesia states that every Indonesian citizen has the right to work and to a standard of living that is decent and humane (Sarwono & Hoesein, 2025), Article 28D, paragraph (2), states that every person has the right to work and to receive fair and decent compensation and treatment in employment relationships. With the enactment of this Constitution, the government aims to implement and establish various relevant policies. These include Law No. 11 of 2020 on Job Creation, Law No. 6 of 2023, and Government Regulation No. 35 of 2021.

Industrial relations in Indonesia are fundamentally based on the principle of balancing the interests of employers and workers, with the state serving as a guarantor to ensure that workers' statutory rights remain protected amid the business sector's need for labor flexibility (Listiyani, Nopliardy, & Justiceka, 2022). Given the principle of balancing the interests of employers and employees, it is not uncommon for many companies to use fixed-term employment agreements (PKWT) for their workers. One form of this flexibility is realized through fixed-term employment agreements (PKWT), which are employment relationships based on a specific duration of work (Dananjaya, 2023). While the flexibility provided by the PKWT scheme is relatively easy for employers to implement with their workers, it often creates legal uncertainty for workers Priyanto (2023). It is explained that the PKWT scheme is widely used by employers because it is considered cost-effective and simplifies labor administration; however, on the other hand, it is prone to creating legal uncertainty for workers, especially when the employment relationship is terminated unilaterally before the contract period ends.

The Indonesian government has made various efforts to establish regulations regarding fixed-term employment contracts (PKWT). Law No. 13 of 2003 on Manpower, which subsequently underwent significant amendments and was replaced by Law No. 11 of 2020 on Job Creation, was later replaced again by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. It was ultimately amended and enacted as Law No. 6 of 2023 (Sari & Fauzi, 2025). The revisions to laws and regulations carried out by the government are intended to address or update gaps in previous regulations, and it is hoped that these new regulations will promote fairness.

As an implementing regulation, Government Regulation No. 35 of 2021 on Fixed-Term Employment Contracts, Overtime, Working Hours and Rest Periods, and Termination of Employment provides more detailed provisions regarding the validity requirements for fixed-term employment contracts, the maximum duration, record-keeping obligations, and the obligation to provide compensation to workers under fixed-term employment contracts upon termination of employment (Darmawan et al., 2025). This regulation was enacted as a form of new legal protection because previous regulations or laws were not as comprehensive as Government Regulation No. 35 of

2021; this effort was undertaken to provide legal certainty to workers. Under the 2003 Labor Law, the regulations were not as comprehensive as they are now, and this regulation serves as a key distinction between the rights of fixed-term contract workers and those of permanent employees.

There is an issue with the implementation of this regulation, namely when an employer terminates a fixed-term employment relationship (PKWT) before the contract period expires without a valid reason as stipulated in Article 61(1) of the Labor Law (Moh. Nabil Jibran & Rizkianto, 2024). This provision indicates that a fixed-term employment relationship carries legally binding consequences for the parties throughout the contract period; therefore, premature termination of the employment relationship cannot be carried out unilaterally without incurring financial liability for the party initiating the termination. This regulation is intended to provide legal certainty and prevent the misuse of fixed-term employment contracts as a form of employment relationship that can be easily terminated without protection for workers.

Article 15 of Government Regulation No. 35 of 2021 states that this obligation is cumulative with the obligation to pay compensation upon the expiration of a fixed-term employment contract (PKWT); therefore, workers who are laid off before the end of their contract should receive two types of financial entitlements simultaneously: compensation for the remaining term of the contract and PKWT compensation (Priyanto, 2023). Compensation for early termination and severance pay are two distinct entitlements because compensation for early termination is provided due to the premature termination of a fixed-term employment contract, whereas severance pay is based on the employee's length of service. Since they have different legal bases, both entitlements may be granted simultaneously if the respective requirements are met.

However, researchers have observed numerous cases where employers fail to include these obligations in employment agreements, fail to pay in full, and even cite disciplinary violations as a reason to avoid their obligation to pay compensation. This situation aligns with findings that employers' compliance with obligations to pay compensation and damages under fixed-term employment contracts (PKWT) remains low, partly due to a lack of legal awareness among employers (Tan & Lie, 2026)

The issue regarding workers' rights to damages and compensation under fixed-term employment contracts (PKWT) is clearly illustrated in Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024 between Plaintiff Hofni Michael Kereh and Defendant PT Matahari Perkasa Timur Raya. In this case, the Defendant terminated the Plaintiff's employment on May 22, 2023, on the grounds of a serious violation involving threats against a coworker, even though the Plaintiff's fixed-term employment contract (PKWT) began on January 30, 2023, and was set to end on January 30, 2024. The Supreme Court, as the competent authority, affirmed in its ruling that the Defendant failed to prove the alleged threats, and that the Plaintiff's actual misconduct—failing to report a guest's complaint to a supervisor—did not constitute a criminal offense or a violation that could be used as grounds for termination without prior counseling or a written warning. Based on these considerations, the Supreme Court ordered the Defendant to pay the Plaintiff two types of entitlements simultaneously: compensation for the remaining term of the contract pursuant to Article 62 of the Labor Law and compensation for the termination of the fixed-term employment contract pursuant to Article 15 of Government Regulation No. 35 of 2021, although the final amount awarded was reduced compared to the first-instance court's decision.

There are several aspects that make this ruling worth further examination. First, in this ruling, the Supreme Court did not automatically deem all employee misconduct sufficient grounds for termination. Without adequate evidence, this provision could be used by employers to unilaterally terminate an employment relationship without due process (Putra & Le, 2025). The Court distinguishes between errors of an administrative nature or those related to work ethics—which should first be addressed through guidance and written warnings—and serious violations that can indeed lead directly to termination. Second, this ruling clarifies that the residual contract compensation provided for in Article 62 of the Labor Law and the fixed-term employment contract (PKWT) compensation under Article 15 of Government Regulation No. 35 of 2021 are two distinct entitlements that workers may receive simultaneously, rather than just one or the other. As far as the author can determine, issues of this nature have not been extensively discussed through a case law analysis. The contract-termination compensation provided for in these regulations fills a gap in the protection of contract workers (Hamzah & Husni, 2025). Third, this ruling can also be used to assess the extent to which protections for fixed-term contract (PKWT) workers are truly effective following the enactment of the Job Creation Law and Government Regulation No. 35/2021, given that previous studies have mostly addressed legal protections for PKWT workers in general and few have specifically examined the reasoning of appellate judges when combining these two types of financial entitlements in a single ruling. The compensation safety net for fixed-term workers is effective only if the fixed-term employment contract is registered, the grounds for termination are legally valid, and the calculation and payment can be enforced (Harjanto & Gunadi, 2025).

This study aims to analyze the legal basis for the Supreme Court's decision to award workers both residual contract damages and compensation for fixed-term employment contracts (PKWT) on a cumulative basis in Decision No. 720 K/ Pdt.Sus-PHI/2024, as well as to examine its conformity with the provisions of Article 62 of the Labor Law and Article 15 of Government Regulation No. 35 of 2021, in relation to the theory of the function and purpose of labor law as an instrument of protection for parties who are structurally in a weaker position (workers).

METHODS

This study employs a normative legal methodology, which examines law as a written norm by using legislation and court decisions as its primary legal sources. The normative approach was chosen because the issue examined by the researcher concerns the regulation of the right to damages and compensation under Fixed-Term Employment Agreements (PKWT), which is essentially a matter of consistency and coherence of legal norms specifically between Article 62 of No. 13 of 2003 on Manpower and Article 81, point 45, of Law No. 6 of 2023 on Job Creation Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as a Law, 2023), and Article 15 of Government Regulation No. 35 of 2021, as applied and interpreted in Supreme Court Decision No. 720/K/Pdt.Sus-PHI/2024.

FINDINGS AND DISCUSSION

Case and Legal Factual Findings

The issues in this case stem from the employment relationship between the Plaintiff, Hofni Michael Kereh, and the Defendant, PT Matahari Perkasa Timur Raya, based on the Fixed-Term Employment Agreement (PKWTT) No. 002/HRD - AHS/01/2023 dated January 30, 2023, with a term of 12 months commencing on January 31, 2023, and ending on January 30, 2024, at a monthly salary of Rp. 6,700,000. As of May 22, 2023, the Plaintiff had been working for approximately 3.5 months of the total 12-month contract period. The Defendant issued Letter No. 001/HRD/AHS/05-2023 terminating the Plaintiff's employment on the grounds that the Plaintiff was deemed to have committed a serious violation by threatening a coworker on the sales team to cover up a guest complaint.

The legal facts revealed during the trial indicate that the situation is more complex than the Defendant's initial argument. Based on evidence P-1 and T-6, it has been proven that the employment relationship between the parties was a fixed-term contract (PKWT) rather than an indefinite-term contract (PKWTT), as had been considered by the Industrial Relations Court at the Denpasar District Court. The

Defendant was unable to prove in court the allegation that the Plaintiff made threats against a coworker. In fact, what was proven and acknowledged by the Plaintiff was an administrative oversight, namely failing to report a guest's complaint to his supervisor. The fundamental discrepancy between the initial claim which involved threats against coworkers and the proven fact which involved an administrative oversight served as the basis for the Supreme Court's reversal of the lower court's decision.

Normative Provisions on Damages and Compensation for Fixed-Term Employment Contracts

One of the key contributions of this ruling to the study of labor law is the affirmation that there are two rights of workers under fixed-term employment contracts that have different legal bases and apply cumulatively in the event of termination of employment before the end of the contract period. On page 9 of the ruling, it is stated that "The Defendant is ordered to pay damages for the remaining term of the fixed-term employment contract (PKWT) in the amount of Rp60,300,000.00 (sixty million three hundred thousand rupiah)." This affirmation provides legal certainty that workers are not only entitled to compensation for the unilateral termination of their contract but also retain the right to compensation for the period of service already completed. Thus, this ruling clarifies that the existence of one right does not preclude the fulfillment of another right, provided that the respective statutory requirements are met. This interpretation is consistent with the principle of legal protection, which requires the full restoration of workers' rights when a violation of the employment relationship occurs.

Compensation for the remaining term of the contract is based on Article 62 of Law No. 13 of 2003 on Manpower. This provision stipulates that if one party terminates the employment relationship before the expiration of a fixed-term employment contract (PKWT) for reasons not justified by law, the party terminating the employment relationship is obligated to pay compensation equal to the worker's wages until the expiration of the employment contract. The purpose of this provision is to compensate for the economic loss suffered by the worker due to the loss of certainty regarding the receipt of wages for the remainder of the contract period. In this case, the remaining contract period was calculated from the date of termination on May 22, 2023—with wages having been paid through April 2023—until the contract's expiration on January 30, 2024; consequently, the Supreme Court set the compensation at 9 × Rp.6,700,000 = Rp.60,300,000. These considerations demonstrate that the Supreme Court correctly applied Article 62, as it was proven that there were no legal grounds justifying the unilateral termination of the fixed-term employment contract. In addition to providing legal certainty, the application of this article also reflects the repressive function of legal protection namely, restoring the worker's losses through court rulings after their rights have been violated.

Compensation for the termination of a fixed-term employment contract (PKWT) is based on Article 81, Item 45 of Law No. 6 of 2023 in conjunction with Article 15, Paragraphs (1) and (2), in conjunction with Article 16, Paragraph (1) of Government Regulation No. 35 of 2021. Unlike damages, this compensation is a statutory right inherent to every fixed-term employee who has worked for at least one month continuously, regardless of the reason for the termination of the employment relationship. Therefore, the employee remains entitled to compensation even if the employment relationship ends before the contract term expires. In this case, the Supreme Court calculated the compensation based on an effective period of employment of 3 months, namely 3/12 × Rp.6,700,000 = Rp.1,675,000. The application of this provision demonstrates that the Supreme Court is not only focused on dispute resolution but also on safeguarding workers' statutory rights as stipulated in Government Regulation No. 35 of 2021. This ruling further reaffirms that the right to compensation under a fixed-term employment contract is a standalone right and cannot be waived merely because the worker has received severance pay due to the termination of the contract.

Distinguishing between these legal bases is a crucial aspect because the two rights serve different purposes. Damages serve as redress for losses arising from an employer's termination of the employment relationship before the expiration of the fixed-term contract period, whereas fixed-term contract compensation is a form of recognition by the state of a contract worker's period of service as part of strengthening legal protections in industrial relations. The introduction of fixed-term employment contract compensation through Government Regulation No. 35 of 2021 reflects a development in labor law policy that expands protections for workers compared to the provisions in Law No. 13 of 2003. Thus, Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024 not only applies the provisions of the law literally but also reaffirms that these two rights have distinct legal characteristics yet complement each other in providing protection for fixed-term contract workers. This ruling can serve as a guideline for the resolution of future industrial relations disputes to prevent errors in distinguishing between the right to damages and the right to compensation under fixed-term employment contracts.

Errors in the Application of the Law by the Judex Facti and Corrections by the Judex Juris

Industrial Relations Court Decision No. 15/Pdt.Sus-PHI/2023/PN Dps of the Denpasar District Court only ordered the Defendant to pay severance pay in the amount of Rp. 3,350,000 pursuant to Article 52(1) of Government Regulation No. 35 of 2021. This is where the error in the application of the law lies, which was corrected by the Supreme Court. Article 52 of Government Regulation No. 35 of 2021 essentially governs severance pay in the context of termination of employment for workers under a permanent employment contract (PKWTT), whereas the proven legal facts in the present case indicate that the employment relationship was a fixed-term contract (PKWT) that was terminated before its term expired. This context should be governed by Article 62 of Law No. 13 of 2003 and Articles 15–16 of Government Regulation No. 35 of 2021, not the severance pay provisions for the termination of permanent employees. If an employment relationship that is actually a fixed-term contract (PKWT) is treated as a permanent employment relationship (PKWTT), the worker's entitlements may be calculated based on severance pay for permanent employees, even though a fixed-term worker (PKWT) whose contract is terminated before its expiration is actually entitled to compensation for the remaining contract period and fixed-term contract (PKWT) compensation.

In its reasoning, the Supreme Court explicitly stated that the trial court's finding that the Plaintiff was a permanent employee of the Defendant and that the fixed-term employment contract (PKWT) was null and void ab initio could not be justified; therefore, the correction was made not merely regarding the nominal amount but concerning the fundamental error in the characterization of the legal relationship between the parties. On page 8 of the decision, it is stated: "Considering that, based on the foregoing, the Supreme Court is of the opinion that the decision of the trial court/Industrial Relations Court at the Denpasar District Court must be corrected." This correction by the judex juris is of significant importance because the Supreme Court has restored the application of the law to its proper normative basis, namely Article 62 of Law No. 13 of 2003 and Articles 15–16 of Government Regulation No. 35 of 2021. The Supreme Court affirmed that workers under fixed-term employment contracts (PKWT) are entitled to receive both compensation for the remaining contract period and severance pay cumulatively. This ruling also emphasizes the importance of determining the status of the employment relationship as the basis for the application of workers' rights.

Pert Judicial Considerations in Assessing the Termination of a Fixed-Term Employment Contract (PKWT)

Another key point in Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024 is the judge's assessment of the grounds cited by the Defendant as the basis for terminating the employment relationship. The Supreme Court held that the administrative negligence committed by the Plaintiff failing to report a guest's complaint to a supervisor constituted a serious violation that could serve as grounds for unilateral termination of employment. Conversely, such conduct still falls under the category of violations that should be resolved through disciplinary counseling or by issuing a written warning. This reasoning demonstrates that employers cannot use every form of employee misconduct as grounds for termination without considering the severity of the misconduct and the resolution procedures established under labor regulations.

This consideration is consistent with the principle of ultimum remedium in industrial relations. This principle also reflects the principle of proportionality, which holds that the legal consequences of a termination imposed by an employer must be commensurate with the severity of the misconduct that has been conclusively proven, not based on allegations that fail to be substantiated such as the Defendant's claim that the Plaintiff threatened a coworker. Interestingly, although the grounds for termination presented by the Defendant were ultimately declared invalid, the Supreme Court still ordered financial compensation to be paid to the Plaintiff as a form of redress. This was because the termination had already been carried out in fact by the Defendant, and the Defendant remained adamant about proceeding with the termination. This approach demonstrates that Indonesian labor law prioritizes the restoration of workers' economic losses over mere formal validity issues.

Theoretical Analysis of the Theory of Legal Protection and the Theory of Legal Certainty

According to Philipus M Hadjon (1987) legal protection is divided into two forms: preventive legal protection which refers to protection provided by the government through norms that prevent disputes from arising—and repressive legal protection—which refers to protection provided through dispute resolution after a violation has occurred. In this case, Article 62 of Law No. 13 of 2003 and Articles 15–16 of Government Regulation No. 35 of 2021 constitute forms of preventive legal protection because they clearly regulate the rights of workers under fixed-term employment contracts (PKWT) if the employment relationship ends before the contract period expires.

However, this preventive protection has not been fully implemented because the trial court applied a legal basis that did not align with the parties' employment status. This situation demonstrates that the existence of legal norms alone is insufficient if not accompanied by proper enforcement by legal authorities. Through its cassation ruling, the Supreme Court exercised its function of repressive legal protection in accordance with applicable provisions. This correction not only provides justice for the Plaintiff but also reaffirms that fixed-term (PKWT) workers who are laid off before the end of their contract period remain entitled to both severance pay and compensation on a cumulative basis. Thus, Decision No. 720-/K/Pdt.Sus-PHI/2024 reflects the implementation of legal protection as articulated by Philipus M. Hadjon, namely the synergy between preventive protection through legal norms and repressive protection through court decisions.

According to Gustav Radbruch in Markos & Halim (2025) the law must be able to realize three fundamental values: justice (Gerechtigkeit), utility (Zweckmäßigkeit), and legal certainty (Rechtssicherheit). In this case, these three values are evident in the process of resolving industrial relations disputes. The decision of the Industrial Relations Court at the first instance did not fully reflect legal certainty because it relied on a legal basis that was inconsistent with the parties' employment status. Consequently, the rights to which the worker was entitled under the provisions of the fixed-term employment contract (PKWT) were not properly granted.

The Supreme Court corrected this error by applying Article 63 of Law No. 13 of 2003 and Articles 15–16 of Government Regulation No. 35 of 2021 as the basis for resolving the case. This reasoning not only establishes legal certainty through the application of the appropriate legal norms but also upholds substantive justice, as the worker receives all the rights to which they are entitled under the law. Furthermore, this ruling serves as a useful guideline for judges and the parties involved in resolving disputes regarding fixed-term employment contracts (PKWT) with similar characteristics. Therefore, Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024 not only resolves an individual dispute but also strengthens the consistent application of labor law and enhances legal certainty in industrial relations judicial practice.

CONCLUSION

This study shows that Government Regulation No. 35 of 2021 governs two rights of workers under Fixed-Term Employment Agreements (PKWT) that have different legal bases and are cumulative in nature. Compensation for the remaining contract period under Article 62 of Law No. 13 of 2003 on Manpower serves as compensation for losses resulting from the termination of the employment relationship before the contract period expires, while PKWT compensation under Article 81(45) of Law No. 6 of 2003 in conjunction with Article 15 -16 of Government Regulation No. 35 of 2021, which is an automatic right of the worker regardless of the cause of the termination of the employment relationship. An analysis of Supreme Court Decision No. 720 K/Pdt.Sus-PHI/2024 reveals that the Industrial Relations Court at the Denpasar District Court erroneously applied Article 52(1) of Government Regulation No. 35 of 2021 to a case that, in fact, involved a fixed-term employment contract (PKWT) that was unilaterally terminated prematurely, thereby leading the Supreme Court to correct this error by ordering the Defendant to pay both components of the entitlement cumulatively: Rp.60,300,000 as compensation for the remaining contract period and Rp.1,675,000 as compensation for the fixed-term employment contract.

This ruling also reaffirms the application of the principle of proportionality and the principle of ultimum remedium in termination of employment, whereby minor administrative errors by employees cannot be automatically classified as serious violations without first undergoing a guidance process or receiving a written warning. Drawing on Philipus M. Hadjon's Theory of Legal Protection, this cassation ruling represents a concrete manifestation of repressive legal protection that restores workers' rights after preventive protection failed to be properly applied by the trial court. Meanwhile, from the perspective of Gustav Radbruch's Theory of Legal Certainty, the disparity in the application of legal norms across different levels of the judiciary in this case indicates the need for clearer technical guidelines for judges of the Industrial Relations Court. This study recommends the development of technical guidelines or a Supreme Court Circular that explicitly distinguishes the application of norms regarding severance pay, damages, and compensation for fixed-term employment contracts (PKWT), as well as strengthening education for employers regarding their obligation to provide gradual counseling before imposing termination. This is intended to prevent the recurrence of errors in the application of the law that undermine the statutory rights of contract workers in Indonesia.

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