

LEGAL PROTECTION OF REMOTE WORKING WORKERS IN PARTICULAR TIME LABOR AGREEMENTS

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Abstract : In the Industrial Era 4.0, all electronic work systems can support the concept of remote working. The relationship between workers and companies arises from a work agreement. The fact is that work agreements are inseparable from conflicts, especially in Particular Time Labor Agreement. Remote working workers in a Particular Time Labor Agreement are carried out online which must comply with the applicable laws and regulations. This study uses a normative legal method by analyzing and approaching the norms of the Indonesian state legislation (*statue approach*) descriptively, namely the updated Labor Law, the Job Creation Law, and the ITE Law. And take a conceptual approach, namely the concept of *remote working* (*conceptual approach*). Furthermore, the researcher describes the formulation of the problem, namely the *Remote Working* Concept with a Particular Time Labor Agreement system and the *Remote Working* Concept Worker Protection is reviewed in the Job Creation Law. In principle, the mechanism for implementing the *remote working* concept is subject to the provisions of the Labor Law and the Job Creation Law. In addition, there is a need for a new clause regarding the concept of *remote working* in order to fairly protect *remote working* concept workers.

Keywords: *Remote Working*; Particular Time Labor Agreement; Job Creation Law

I. INTRODUCTION

Evolution in the world and in particular in Indonesia, are entering a new era of industrial marked by the era of digitalization in various sectors of life. Experts call this the era of the industrial revolution 4.0 (Suwardana, 2018). The Industrial Revolution 4.0 was marked by the emergence of the concept of the *internet of things* (H. Prasetyo & Sutopo, 2018). This concept is the use of the internet to communicate or connect remotely in the industrial or commercial world. The Industrial Revolution 4.0 is an effort to change the industrial world that takes advantage of digital developments.

Advances in technology at this time, it is possible the interaction of members of the organization does not require physical or face-to-face meetings. Organizational communication, especially the division of tasks, can be done in a virtual way. Then it is determined a *remote working* system or remote work system (Suswanto, 2020). Rohr (in Suswanto, 2020), gave the opinion that *remote working* refers to work that is carried out in

whole or in part, which is done outside the office as usual. It means, companies can provide jobs that workers do not need to come to the company. All activities can use communication technology devices.

The concept of remote work began in the late 20th century in line with technological developments. According to Huuhtanen (in Nuriskia & Nugroho, 2022), remote work is work performed by an employee whose work location is not in the office and uses telecommunication media to support they work. Based on the mentioned understanding, according to the *International Labor Organization* (ILO), there is no definition of *remote working* yet, but it can be described as a condition in which work is wholly or partly carried out other than in the workplace by considering all professions and status at work (ILO, 2020).

Research by Nobert Wiener (in Nuriskia & Nugroho, 2022), many terms mention working remotely is *telework, telecommuting, virtual work, home-based teleworking, mobile telework, dan remote work*. According Eldrige and Pabilonia (in Ismail & Sekarsari, 2022), Employees who work from home get reduced working hours, impact the effectiveness, quality of work, and employee life. *Remote working* is working remotely where the implementation of work can be anywhere (Anggraeny & Putri Hidayah, 2021). The concept of a multigenerational work place closely influences views and work perspectives (Sari, 2006). Gschwind (in Adhitya & Gorda, 2021), explains that remote working workers are able to work anywhere, in other words, workers do not have to go to the office to complete their tasks. Sedangkan menurut Carlson (in Wicaksono, 2019), Work flexibility is a formal policy applied by company management regarding work flexibility.

Remote Working, definitely creates a legal relationship between employers and workers because there is an agreement that arises due to an agreement in the form of a work agreement. With that agreement, a legal relationship arises which gives rise to the rights and obligations of the parties. Based on Article 1 point 15 of the Labor Law, it is explained that a working relationship must basically contain elements of work, wages and orders. The working relationship between the employer and the worker must be included in the work agreement, either a Particular Time Labor Agreement or an Uncertain Time Work Agreement.

Particular Time Labor Agreement implementation often causes problems. The form of the work agreement is regulated in Article 51 of the Labor Law which explains that work agreements are made in writing or orally. The Problems that occur intentionally by one of the parties, namely the entrepreneur makes the Particular Time Labor Agreement orally with the aim of making the costs incurred cheaper in making a work agreement. According to Kemalsjah Siregar (in Pohan, 2020), there are indeed several companies that deliberately use PKWT to avoid the obligation to pay a fixed wage and severance pay when Laid off. This situation causes problems among workers/laborers with the Particular Time Labor Agreement system. This clearly does not provide protection for workers who work with the PKWT system.

Therefore, Particular Time Labor Agreement with the concept of remote working must be reviewed in accordance with labor laws and regulations. That remote working is

inseparable from other legal aspects, namely the Civil Code, and the ITE Law in carrying out electronic agreement making (Anggraeny & Putri Hidayah, 2021). The purpose of this research is to discuss the legal protection of workers who implement remote working.

II. RESEARCH METHOD

This study uses a normative method (Christiani, 2016) to answer research purposes regarding the protection of the Remote Working concept worker in a Particular Time Labor Agreement based on the Labor Law. The approach used in this study is the statutory approach and the conceptual approach. So that the regulatory approach used is Law Number 13 of 2003 concerning Labor, the Job Creation Law, and the ITE Law as the main study material. Whereas in the conceptual approach (conceptual approach) the research approach, which starts from the views and doctrines that have developed in legal science, especially the concept used, namely the concept of Remote Working in a Particular Time Labor Agreement (A. Prasetyo, 2020). Primary legal material in the form of Law Number 13 of 2003 concerning Labor, the Job Creation Law, and the ITE Law (Ari Atu Dewi, 2018). The research data were analyzed using qualitative analysis and presented in the form of descriptive analysis and providing critical reviews.

III. RESULTS AND DISCUSSION

The concept of Remote Working with a Particular Time Labor Agreement system

One of the existing work agreements in Indonesia is the Particular Time Labor Agreement. The work agreement is regulated in the Job Creation Law which aims to ensure that workers and employers receive the same legal protection in implementing Particular Time Labor Agreement (Afrianti & Wijayanti, 2020). According to Subekti (in Pohan, 2020), an agreement is a legal relationship between two parties based on which one party has the right to demand something from the other party, and the other party is obliged to meet the demand. The existence of the Labor Law and the Job Creation Law as reforms are legal umbrellas and labor provisions, including provisions of work agreements.

Based on Article 56 section (2) and (3) of the Job Creation Law it is explained that PKWT is based on the time period and completion of work specified in the work agreement. In general, people know Particular Time Labor Agreement as contract workers. In detail in Article 1 point 1 Decree of the Minister of Labor and Transmigration Number Kep. 100/MEN/VI/2004 Particular Time Labor Agreement is a work agreement between workers/laborers and employers for a working relationship for a certain time or for a certain job.

The updated Labor Laws and Regulations with the Job Creation Law, namely as equal legal protection in carrying out work relations. In fact, the Particular Time Labor Agreement practice of a company enter into a contract that extends beyond the time limit stipulated in the provisions of the law (Afrianti & Wijayanti, 2020). The reason why companies don't assign

workers as Uncertain Time Labor Agreement is because of wage issues. Based on the Constitutional Court Decision Number 109/PUU-XVIII/2020, which made the Job Creation Law conditionally unconstitutional, namely the abolition of Article 59 Section (4) of the Labor Law which resulted in no longer limiting the time period for contract labor status or Particular Time Labor Agreement. This regulation provides an opportunity legally to practice contract labor while working and there is no certainty of work. Furthermore, it does not guarantee a decent life for humanity which means a guarantee of a prosperous life.

Remote working is another name for working remotely which has developed into 'telecommuting', or the European term 'felxiwork' more broadly such as 'homerwork', 'alternative officing', and 'mobile working' (Mungkasa, 2020). According to Haethfield (in Mungkasa, 2020) explains the free work scheme which means that workers allow them to work different from conventional working hours. This means working remotely, workers are very possible to work outside the home or inside the home. Thus providing a distinctive from the concept of *remote working*.

Remote working has positive and negative impacts (Ma'rifah, 2020). This requires a serious study of the concept of *remote working*. Because this concept creates a working relationship between the worker and the employer. The labor relationship contains three main points, namely the existence of work by workers/laborers, the existence of wages, the existence of orders (Sinaga & Zaluchu, 2017). Strong legality before the law requires a work agreement between workers and employers. Based on Article 57 of the Job Creation Law, PKWT must be in writing. However, in this law, if the Particular Time Labor Agreement is not made in writing, it will not have legal consequences for the employer, in contrast to Article 57 of the Labor Law which provides legal consequences if the Particular Time Labor Agreement is not made in writing, it will change to Uncertain Time Labor Agreement.

The concept of *remote working* in the Particular Time Labor Agreement system is in principle the same as workers in general. Where there is a working relationship between employers and workers. By making a *remote working* agreement indirectly making it through electronic media (*online*). Based on Article 46 section (2) PP Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, it regulates the legal requirements of electronic agreements, namely the existence of an agreement between the parties, carried out by competent legal subjects, there are certain matters, the object of the transaction may not conflict with laws and regulations, decency, and public order. Based on the explanation of the Government Regulation, the obligation to provide a *remote working* clause must be in accordance with Article 46 section (2) PP Number 71 of 2019 because *remote working* is a legal relationship that uses an electronic system. So it doesn't cause problems. And it can also be regulated in the rights and obligations of the parties of the *remote working* concept used by the agreed PKWT.

***Remote Working* Concept Worker Protection is reviewed in the Job Creation Law**

According to Soepomo (in Milinum, 2022), there are three types of labor protection, namely the first is economic protection which protects sufficient wage income. Second, social protection that protects from occupational health aspects and relates to the social life of workers. Third, technical protection in the form of work security and safety. The purpose of protecting workers is to guarantee the continuity of a system of harmonious working relations without any pressure from any party. With this, employers are obliged to carry out labor protection in accordance with applicable laws and regulations (Azis et al., 2019).

Regarding the protection of workers, it is regulated in the Labor Law which was amended in 2020 by the Job Creation Law. The law regulates workers' rights to minimize problems in the labor field. Once there have been several amendments to the article, the Labor Law is still valid, and various regulations under the law related to labor.

The differences in the concept of workers who work from offices with workers with the concept of *remote working*. Regarding work agreements, the company makes and is agreed upon by the company and workers before doing a job (Anggraeny & Putri Hidayah, 2021). The agreement bring forth to an agreement between the parties to carry out the obligations and rights of the parties (Sancoko, 2018). Based on Article 54 section (2) of the Labor Law, the provisions of work agreements may not conflict with company regulations, cooperation agreements, and applicable laws and regulations. In the *Remote Working* concept, work agreements are made electronically and must include *remote working* elements in the work agreement so that there are no deviations from the work agreement that has been made.

Furthermore, the regulation of working hours has been regulated in Article 77 of the Labor Law, which is amended in the Job Creation Law is explained that working time is 7 hours/day 6 working days or 8 hours/day 5 working days. With the concept of *remote working*, workers can experience a work-life imbalance. Because of very flexible time where workers can determine when they are working or holiday. In contrast to workers from offices who have set times, days, and holidays. So, *remote working* does not have clear work boundaries (Ismail & Sekarsari, 2022). However, *remote working* has a positive side in setting working hours, namely the flexibility of work. According to Carlson (in Adhitya & Gorda, 2021), work flexibility is a formal policy set by the company. Where work schedule settings can choose the place and time of work. This means that workers with the concept of *remote working* can choose their own schedule when they can work or rest. With a record of *deadlines*, work from the company can be completed on time.

Likewise, regarding the protection of company facilities that have been regulated in Article 100 of the Labor Law. These provisions provide an obligation for companies to provide and give welfare facilities for workers according to the needs and capabilities of the company. Providing of facilities to workers is not only in the form of wages but in other forms that increase welfare, such as prayer facilities, canteens, rest rooms, and other forms of facilities that can support welfare (Kandarani, 2020). Working with the *remote working* concept, workers carry out their work outside the office or workplace remotely, for example at home. With these conditions, the provision of facilities to workers with the concept of *remote working* was not conveyed. This means that companies that provide jobs with the *remote*

working concept are able to find solutions so that the protection of facilities for workers is conveyed in accordance with statutory provisions. The facilities that make it possible can be provided by companies, namely internet quota subsidies that are used to support workers with the concept of *remote working*.

Workers with the *remote working* concept are very likely to have work accidents. Because these workers can work anywhere that cannot be controlled directly by the company. Occupational safety and health protection is regulated in Article 86 section (1) of the Labor Law. The Potential work accidents experienced by *remote working* workers is the presence of joint muscle disorders, even eye health caused by facing a laptop or smartphone all day long. Also, it is possible for *remote working* workers to work outside the home such as a café so there is a potential for accidents when going to the café (Hutagalung, 2021).

Based on Article 77 section (1) of the Job Creation Law, employers are obliged to implement working time provisions, this can be applied to *remote working* workers. Although, the concept of *remote working* workers having flexible time will cause problems at work time or overtime, especially wages. Article 79 section (1) of the Job Creation Law employers are required to provide time off and leave., the mechanism for implementing this article can be used for periodic control by companies. Furthermore, Article 88 section (3) letters a, c, and e of the Job Creation Law, the mechanism for remuneration for workers with the *remote working* concept must be in accordance with the article by means of transfers, reporting to workers that there is overtime work, and other things that can be considered with wages. For example, if there is a tool failure.

Laws and regulations that regulate labor have not been said to have provided protection for *remote working* workers. Protection of rights also pays attention to the needs and developments of the world of work (Hetiyasari, 2020). The government must provide legal certainty in comprehensively protecting *remote working* workers used as social protection, remuneration and technical protection (Ilyas, 2018). So that the *remote working* workers have equal and fair rights with workers in general. On the other hand, the presence firmness from companies that provide work with the concept of *remote working*, starting from making work agreements that require clauses for implementing *remote working*, namely working time or hours, wage mechanisms and overtime wage, facilities that must be provided, for example internet quota subsidies, and worker safety and health.

IV. CONCLUSION

The *remote working* concept with the Particular Time Labor Agreement system is basically subject to the Labor Law and the Job Creation Law. Like the existence of work agreements made by employers and workers. The difference is that the *remote working* concept is by online. Specific arrangements for the concept of *remote working* have not been regulated concretely in laws and regulations. In terms of the mechanism for implementing wages, setting working hours and overtime, providing work facilities, as well as worker safety and health can be carried out in accordance with the provisions of the Job Creation Law. The

need for additional clauses on the concept of *remote working* in laws and regulations so that the implementation of legal protection for workers with the concept of *remote working* is the same as for workers working in the workplace. On the other hand, conflicts between companies and *remote working* workers can be carried out in accordance with statutory regulations.

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