



Between the Job Creation Act and Labor Act: What's Specific Time Employee Agreement (PKWT)?

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ABSTRACT

President Jokowi signed the Law of the Republic of Indonesia No. 11 of 2020 on Job Creation (UU Cipta Kerja), but the Constitutional Court (MK) decided to conduct a judicial review. According to the Constitutional Court, the government must revise the Job Creation Law within two years. Two of the five petitioners for judicial review express concern about the Job Creation Law's inclusion of Specific Time Employee Agreements (PKWT). A Specific Time Employee Agreement is a contract between a business/employer and its employees for a specified period. The purpose of this study is to examine Specific Time Employee Agreements. This study employs a normative judicial methodology. The research is unique in discussing Specific Time Employee Agreements from two perspectives: the worker and the employer. Additionally, this research examines how Specific Time Employee Agreements have been implemented in practice thus far. The research concludes that workers lack understanding of Specific Time Employee Agreements, raising concerns about the Job Creation Law. The absence of a formulation regarding precarious work creates legal uncertainty for workers. Ineffective communication between the employer and employees has raised suspicions regarding the Specific Time Employee Agreement between the two parties. The Job Creation Law's socialization of labor cluster legislation requires improvement. To avoid misinterpretation, the definition of non-permanent work must be clarified.

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1. Introduction

Since the President signed Law No. 11 of 2020 on Job Creation (UU Cipta Kerja), several labor organizations have petitioned the Constitutional Court (*Mahkamah Agung*) to review the Job Creation Law.¹ Numerous times, most notably in the employment cluster, the Job Creation Law has been rejected, pending a judicial review by the Constitutional Court.² According to the Labor Union, workers sued the Job Creation Law over 69 provisions, including the labor cluster. The employees requested a

¹ Intan Umbari Prihatin, (2020). "Setelah-diteken-jokowi-uu-cipta-kerja-digugat-buruh-ke-mk". *Merdeka.Com*. Retrieved from <https://www.merdeka.com/peristiwa/setelah-diteken-jokowi-uu-cipta-kerja-digugat-buruh-ke-mk.html>

² Yosephus Mainake, (2021). "Judicial Review Klaster Ketenagakerjaan Undang-undang Cipta Kerja". *Info Singkat: Kajian Singkat Terhadap Isu Aktual Dan Strategis*, 12(8), 1-6. Retrieved from http://berkas.dpr.go.id/puslit/files/info_singkat/Info_Singkat-XIII-8-II-P3DI-April-2021-2047.pdf

time-limited Agreement for Specific Time Employee Agreement (*Perjanjian Kerja Waktu Tertentu*/PKWT). The Job Creation Law does not refer to the duration of PKWT.³

The Manpower Act regulates the PKWT's validity period. Guarantees are required for the duration of the PKWT. In the absence of a PKWT period limit, workers are concerned about their status. Additionally, the Ministry of Manpower stated that it is willing to be sued and will accept the decision of the Constitutional Court.⁴

The Provisional Job Creation Law has been declared unconstitutional by the Constitutional Court. Within two years, the Constitutional Court ordered the government to revise the Job Creation Law. If the government does not make revisions, the old regulations will resume application. If no improvement occurs after two years, the Job Creation Law is null and void.⁵

Five plaintiffs filed this judicial review, including an employee named Hakiimi Irawan Bangkid Pamungkas, a student named Novita Widiana, and three additional students, Elin Diah Sulistyowati, Alin Septiana, and Ali Sujito. Judge Irawan Bangkid Pamungkas is concerned that the passage of the Job Creation Law will abolish the PKWT provisions. Petitioner II believes he is disadvantaged because, upon graduation, he will have the option of working as a contract worker with no hope of becoming a permanent employee. Petitioners III, IV, and V believe they have been disadvantaged by including education in the Job Creation Law.⁶

This study examines Specific Time Employee Agreements (PKWT) from the perspectives of workers and employers. Additionally, this research discusses the historical context of the emergence of divergent views on workers and employers. This research is unique in that it responds to the Constitutional Court's decision regarding the Job Creation Law, specifically the judicial review of the Specific Time Employee Agreements submitted by Petitioner I and Petitioner II. Additionally, this research examines the implementation of Specific Time Employee Agreements or work agreements between employers or businesses and their employees in the industry.

Employer-employee agreements must be based on applicable laws and regulations. According to company regulations and work agreements, the work agreement can be either a Specific Time Employee Agreement (PKWT) or an Indefinite Employee Agreement (*Perjanjian Kerja Waktu Tidak Tertentu*/PKWTT). This agreement must adhere to all applicable legal requirements for contracts.⁷ For an agreement to be valid, it must satisfy subjective and objective criteria.⁸ This work agreement serves as the foundation for an employment relationship by establishing an engagement or legal relationship

³ CNN Indonesia. (2020). "Buruh-gugat-69-pasal-klaster-ketenagakerjaan-uu-cipta-kerja". *CNN Indonesia*. Retrieved from <https://www.cnnindonesia.com/ekonomi/20201215114836-92-582266/buruh-gugat-69-pasal-klaster-ketenagakerjaan-uu-cipta-kerja>

⁴ BBC News. (2020). "Omnibus Law: Empat organisasi buruh siapkan uji UU Cipta Kerja ke MK, Kemnaker: "Silakan gugat, tapi inilah titik kompromi paling maksimal." *BBC.Com*. Retrieved from <https://www.bbc.com/indonesia/indonesia-54558146>

⁵ Icha Rastika, (2021). "MK-putusan-uu-cipta-kerja-inkonstitusional-bersyarat-apa-dampaknya". *Kompas.Com*. Retrieved from <https://nasional.kompas.com/read/2021/11/26/08002581/mk-putusan-uu-cipta-kerja-inkonstitusional-bersyarat-apa-dampaknya?page=all>

⁶ Adi Wikanto, (2021). "Putusan-mk-omnibus-law-uu-112020-cipta-kerja-inkonstitusional-ini-penyebabnya." *Nasional.Kontan.Co.Id*. Retrieved from <https://nasional.kontan.co.id/news/putusan-mk-omnibus-law-uu-112020-cipta-kerja-inkonstitusional-ini-penyebabnya>

⁷ I Dewa Gde Budiarta, Ida Ayu W. Pratiwi, , & I Dewa Nyoman Gde Nurcana, (2018). Kajian yuridis terhadap perjanjian kerja yang menggunakan sistem kontrak kerja dalam perspektif hukum ketenagakerjaan. *Majalah Ilmiah Untab*, 15(2), 43-48.

⁸ Suwarti, & Faissal Malik, (2018). Syarat Subjektif dan Objektif Sahnya Perjanjian Dalam Kaitannya dengan Perjanjian Kerja. *Khairun Law Journal*, 2(1), 31-39.

between the parties, complete with rights and obligations.⁹ Along with the work agreement, an employee must adhere to company regulations and any other applicable rules within the company.¹⁰

Prior to the passage of the Job Creation Law, industrial relations between employers and employees were governed by the Republic of Indonesia's Law No. 13 of 2003 on Manpower (Manpower Law), and dispute resolution was ruled by the Republic of Indonesia's Law No. 2 of 2004 on industrial relations settlement.¹¹ The PKWT's contents are also based on the Manpower Law.¹² A PKWT is a type of employment contract that is only valid for the duration or completion of a specific job and cannot be extended for permanent employment (Manurung, 2017). The employment contract or Specific Time Employee Agreement must include several mandatory provisions governing the duration and termination of the work agreement, as specified in Article 59 of the Manpower Law.¹³ According to Article 50 of the Manpower Law, a Specific Time Employee Agreement may be renewed if the employer so desires.¹⁴

The implementation of Specific Time Work Agreements per the Manpower Law has run into several roadblocks. The Lim Siang Huat Group's Specific Time Employee Agreement contents contain provisions that violate the Manpower Law. The Office of Manpower is not particularly strict in its oversight of entrepreneurs. The Manpower Law makes no provision for the legal consequences that may result from the failure to record the occurrence of a Specific Time Employee Agreement.¹⁵

The employment agreement between the company and the employee violates the Manpower Law by removing one of the workers' rights. The Specific Time Employee Agreement's abolition of workers' leave rights violates Article 156 of the Manpower Law.¹⁶

The pandemic of COVID-19 has affected business performance. Numerous businesses have made involuntary layoffs. Companies that terminate an employment relationship are required to compensate other parties in the number of wages earned up to the end of the period covered by the Specific Time Employee Agreement.¹⁷

Additionally, the employment contract between the employer and employee is willful. Individual freedom has been eroded as a result of employment agreements, resulting in contracting inequity. The Indonesian Civil Code protects contract freedom.¹⁸

⁹ Anita Niru Sinaga, (2017). Peranan Perjanjian Kerja Dalam Mewujudkan Terlaksanannya Hak dan Kewajibannya Para Pihak Dalam Hubungan Ketenagakerjaan. *Jurnal Ilmiah Hukum Dirgantara*, 7(2), 30-45.

¹⁰ Suwinto Johan, (2021). Knowing Company Secrets Through Employee Posts On Social Media. *Diponegoro Law Review*, 06(02), 203-216.

¹¹ Destrie Berliana Aisha, (2019). Pemutusan Hubungan Kerja Yang Didasarkan Pada Pelanggaran Perjanjian Kerja Bersama. *Jurist-Diction*, 2(1), 63-76. <https://doi.org/10.20473/jd.v2i1.12098>

¹² Asuan Asuan, (2019). Perlindungan Hukum Terhadap Pekerja Berstatus Perjanjian Kerja Waktu Tertentu (PKWT) Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Solusi*, 17(1), 23-31. <https://doi.org/10.36546/solusi.v17i1.147>

¹³ Apri Amalia, Budiman Ginting, & Agusmidah Yefrizawati, (2017). Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan Dan Hukum Perjanjian. *Usu Law Journal*, 5(1), 66-76.

¹⁴ Ni Putu Nita Erlina Sari, I Nyoman Putu Budiarta, & Dwi Gde Desak Arini, D. G. D. (2020). Perlindungan Hukum terhadap Pekerja dalam Perjanjian Kerja Waktu Tertentu Menurut Undang-Undang no 13 Tahun 2003. *Jurnal Analogi Hukum*, 2(1), 124-128. <https://doi.org/10.22225/ah.2.1.1613.124-128>

¹⁵ Winsheryly Tan, & Putra Akbar Jako, (2018). Pelaksanaan Perjanjian Kerja Waktu Tertentu Di Lim Siang Huat Group. *Journal of Judicial Review*, 20(1), 4-16.

¹⁶ Haris Munandar, (2017). Analisis Yuridis Perjanjian Kerja Waktu Tertentu (PKWT) PT . ATHENA TAGAYA Dengan Pekerjaannya Terhadap Pencantuman Klausula Penghapusan

¹⁷ Taun Taun, & Ananda Nugraha, (2020). Penerapan Hukum dalam Pemutusan Hubungan Kerja dan Kebijakan Bank Terhadap Debitur yang Terdampak Pandemi Covid-19. *Batulis Civil Law Review*, 1(1), 24-32. <https://doi.org/10.47268/ballrev.v1i1.422>

¹⁸ Putri Purbasari, (2018). Kajian Perlindungan Employee Invention terhadap Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) dalam Perjanjian Kerja. *Jurnal Meta Yuridis*, 1(2), 36-48. <https://doi.org/10.26877/m-y.v1i2.2865>

Employment agreements between employers and employees contain polemics, resulting in a strained working relationship. The workers have a misunderstanding of the agreement's terms. Entrepreneurs take advantage of this to their edge.¹⁹ Inadequate comprehension of work agreements and divergent interpretations have resulted in conflict between employers and employees.²⁰

Research that addresses the main problems in PKWT still does not exist. Many studies have investigated PKWT. The following are the research questions:

1. Why is the employment agreement a critical component of employer-employee relations?
2. Why is it that the company is unable to implement the Job Creation Laws?
3. What measures can be taken to ensure the continuation of positive industrial relations between businesses or employers and employees?
4. What is the distinction between the Job Creation Law and the Manpower Law's Specific Time Employee Agreement?

2. Method

This study examines the current laws and regulations in Indonesia, including the Job Creation Law. This study makes use of both primary and secondary sources of data. Primary data is information gathered directly from the research site. Primary data are data from Specific Time Employee Agreements or information exchanged between employers and employees. The secondary data source is the applicable laws and regulations. This research employs a normative juridical methodology.

It begins with collecting materials about legal matters, then identifying materials pertinent to research topics and the inventorying of materials about industrial relations, particularly in the private company sector. Primary, secondary, and tertiary legal materials comprise the research material. Primary legal materials are those about Indonesian laws and regulations. The term "secondary legal materials" refers to documents that explain the primary legal materials. Tertiary legal materials serve as secondary sources of information, such as information on the internet that provides additional information and data on research topics.²¹

3. Analysis and Results

3.1. Employee Agreement

Following graduation from high school, an individual has two options: start a business or look for work. The vast majority of people will be job hunting. Our country has a low entrepreneurial spirit. Nine students will be looking for work, according to a survey of ten students. This also corresponds to the academic world's internship process. A student's primary objective is to obtain employment as quickly as possible. Additionally, our culture teaches us that we can devote ourselves to our parents through work.

With this background, an individual will seek employment as soon as possible. By obtaining employment, a person is classified as successful. The individual is considered "sold" because he got a job. Indeed, the work accomplished is not always per his desires and capabilities. The company will

¹⁹ Nanda Purnama, (2021). Perlindungan Hukum Tenaga Kerja Dan Pengusaha Dalam Pelaksanaan Perjanjian Kerja Pasal 59 Berdasarkan Undang- Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Pajoul*, 02(01), 74-86.

²⁰ Alexander Cristoforus Valentiono Putra, (2017). Urgensi Klausula Definisi Dalam Perjanjian Kerja. *Kertha Patrika*, 39(01), 61-77. <https://doi.org/10.24843/kp.2017.v39.i01.p05>

²¹ Suwinto Johan, & Ariawan Ariawan, (2021). Keterbukaan Informasi Uu Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form. *Masalah-Masalah Hukum*, 50(1), 106-118. <https://doi.org/10.14710/mmh.50.1.2021.106-118>

provide an employment agreement that details the employee's and the company's rights and obligations. This employment contract does not always include information about the desired position. Additionally, this agreement does not address the relationship between workers and businesses/employers.

Accepting someone as an employee is a lengthy process, from application acceptance to the selection process to the competency test, finally to the work agreement's signing. The individual then begins working until his or her employment is terminated. The relationship between the company and its employees starts with signing the employment agreement and ends with the termination of the employment relationship. Termination of employment is not only termination of work in the productive period. Termination of employment also includes employee retirement. Figure 1 illustrates this.

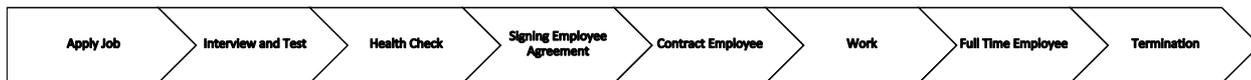


Figure 1 Employee Recruitment Process

Source: Research Result

Acceptance as a worker is a watershed moment in an individual's life. Individuals who find work will feel valued. Acceptance of a job is more significant if it is a first job for the worker. The first job will bring joy to the entire family. As a result, workers are in a weak negotiating position. Workers require this position.

From the moment the employee signs this employment agreement, he or she is bound by it. The worker will be bound by the terms of this agreement even if he is unable to work for several weeks. This employment contract establishes the groundwork for the company's relationship with its employees. The employment agreement details the employer-employee relationship from the employee's first day of work to retirement. Employees must also adhere to company regulations, a code of conduct, and other management policies.

As defined in Article 1 of the Manpower Law, a work agreement is an agreement between a worker/laborer and an entrepreneur or employer outlining the parties' employment terms, rights, and obligations. Employment relationship refers to the relationship between an entrepreneur and a worker/laborer established through a work agreement that includes work, wages, and orders. Industrial relations are a system of connections formed between entities engaged in producing goods and/or services, including entrepreneurs, workers/laborers, and the government, based on Pancasila values and the Republic of Indonesia's 1945 Constitution. Industrial relations is defined as the interaction of employees, employers, and the government. The government is the party that mediates all work-related conflicts between employees and employers.

The employment contract must be either oral or written. Employment contracts must adhere to all applicable laws and regulations. The employment agreement must include the parties' names, addresses, positions, places of employment, and years of service and must be signed by both parties.

The work agreement is classified as either a fixed-term or an indefinite-term deal. A Specific Time Employee Agreement (PKWT) is based on the length of time required to complete a specific job. Certain part-time jobs are exempt from probationary periods. A Special Time Employee Agreement (PKWT) cannot be used to secure permanent employment. Permanent employment is not defined clearly in the Manpower Law. Permanent work is continuous work.

If one of the parties terminates the work, the terminating party is obligated to compensate the other party in the number of wages earned up to the termination period. If the employer terminates the employment relationship, the employer is responsible for paying the employee for the remainder of the employment contract's wages. On the other hand, if the worker commits the act, he or she must be replaced.

A Specific Time Employee Agreement is a contract between an employer/business and an employee. The Specific Time Employee Agreement details the company's/obligations entrepreneur's rights regarding wage payment and worker protection. Employers have the right to gain an advantage in terms of performance or productivity over employees.

Additionally, the Specific Time Employee Agreement details the workers' rights and responsibilities. Workers are entitled to wages, which the company/employer is obligated to pay. Workers also should perform their job duties. Workers are expected to perform production activities and adhere to agreed-upon work hours and processes.

Work agreements may be the source of conflict between employees and employers/companies. They must adhere to the Specific Time Employee Agreement for certain jobs. A work agreement serves as the foundation for dispute resolution.

Additionally, the employment contract must adhere to the principle of balance. Workers are in a more vulnerable position than the employer/company. A worker requires employment. Workers require compensation. Businesses are in a better position to select employees. The number of applicants for a single job position is substantial. Businesses/entrepreneurs enjoy a stronger bargaining position than employees.

3.2. The reason a company cannot implement a Specific Time Employee Agreement according to the law and regulation.

According to the Manpower Law, the company or entrepreneur may extend the Specific Time Employee Agreement only once and for a maximum of one year. The Specific Time Employee Agreement will be extended for a total of three years. Following the Specific Time Employee Agreement extension, the business or employer must determine the worker's status. No probationary period may be added to the work agreement with the Specific Time Work Agreement. Generally, the probationary period is three months. Figure 2 illustrates this process.

In practice, the company will extend the duration of the Specific Time Employee Agreement scheme for employees as long as possible. The company makes no distinction between the types of work. The Specific Time Employee Agreements scheme includes administrative work, on-site work, and office staff work. The company only offers probationary periods to employees at the managerial level. Whereas the Manpower Law defines work that can be performed under a Specific Time Employee Agreement as work that is not fixed or for a specified period. The company will hire employees in the most cost-effective manner possible. The company will save money on several costs due to the Specific Time Work Agreement, including benefits between permanent employees, leave rights based on length of service, and other benefits. Additionally, the company will avoid layoff costs if the employee remains non-permanent. Figure 3 illustrates this.

The company initially hires employees under Specific Time Employee Agreement I and then moves to Specific Time Employee Agreement II. Three years is the maximum duration of the Specific Time Work Agreement. Companies occasionally take steps to terminate Specific Time Work Agreements following the conclusion of Specific Time Employee Agreement II. After the Specific Time Employee Agreement II period expires, the company will rehire the employee. At times, the company will skip a month to record employee status. Additionally, the company will provide employees with new employee identification numbers.

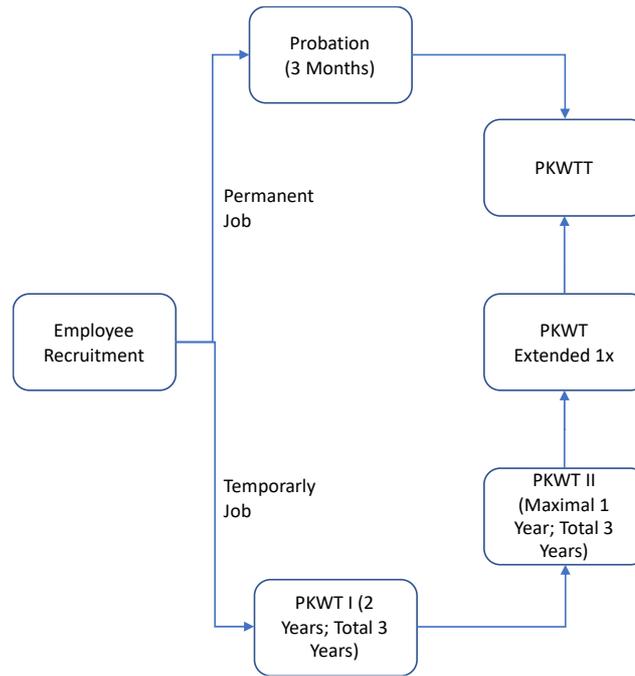


Figure 2 Employment Agreement per the Law and Regulation

Source: Research Result

This demonstrates that workers' bargaining power is less than employers'/companies' bargaining power. Workers will be vulnerable in the current economic climate, where the number of workers exceeds the number of jobs. The government should expand employment opportunities to provide workers with a strong bargaining position. At this point, the company is in a stronger negotiating position with employees.

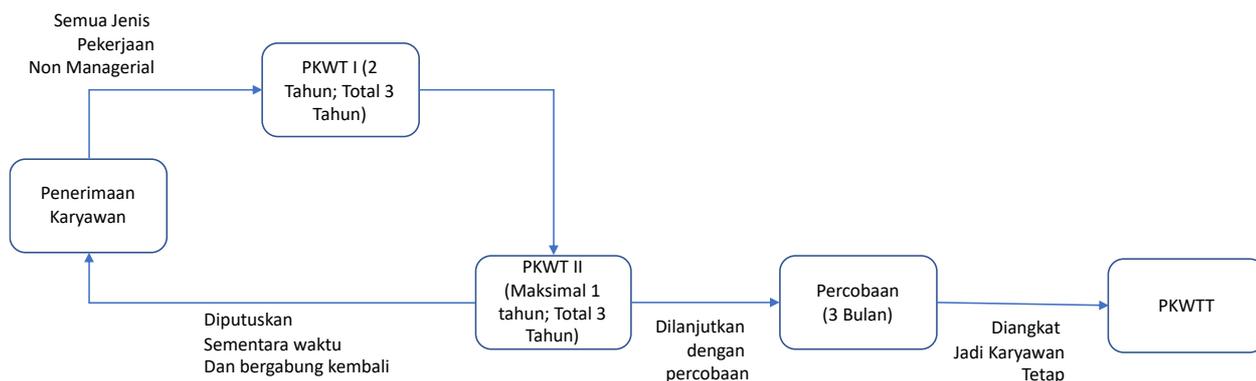


Figure 3 Employment Agreements in Industry

Source: Research Result

3.3. Solutions to maintain positive industrial relations between businesses or employers and employees

The relationship between employees and their employers/companies has always been fraught with suspicion. The Agency Theory explains that employers/companies and employees have divergent interests. Employers/companies want more productive employees at the lowest possible cost. This is consistent with Agency Theory.

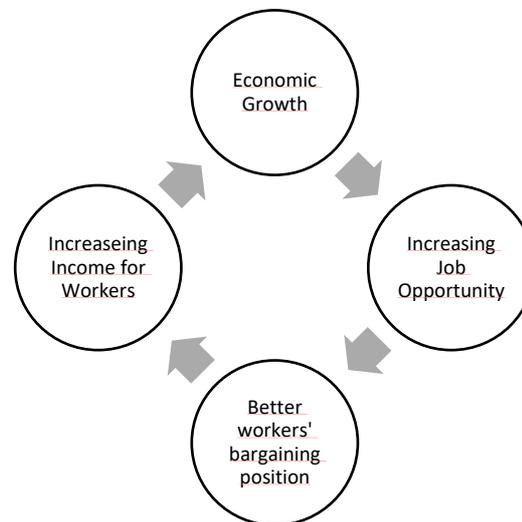


Figure 4 Economic Cycle

Source: Research Result

Workers and employers/companies have a reciprocal relationship. It is a relationship based on mutual needs. This is a mutualistic relationship. In this relationship, one party holds a more significant number of roles, namely the government. Government is a component of labor relations.

The government should play a significant role in labor relations. The government's ability to reconcile the interests of entrepreneurs/companies and those of workers is critical. A growing economy will benefit from positive labor relations. The government can enact sound regulations. However, this regulation applies only in theory and cannot be implemented in practice.

All regulations that will be enforced, including the workforce, must be socialized by the government. Economic growth is the goal of the Job Creation Law. With a growing economy, job opportunities will become more plentiful. Workers will have a choice of workers with open job opportunities. Workers' bargaining position will improve. This strategy for long-term economic growth must be socialized to workers. Figure 4 illustrates this.

3.4. Specific Time Employee Agreement in the Job Creation Law

The Job Creation Law emphasizes that Specific Time Work Agreements must be used in conjunction with non-permanent work. The agreement does not specify a duration for this non-permanent work. The absence of this time limit concerns workers. Businesses or employers must keep in mind that the types of work performed under a Specific Time Employee Agreement are temporary; not all jobs are classified as permanent.

If all jobs are classified as permanent, all workers have concerns about this Specific Time Work Agreement. All workers will become temporary workers. Companies must adhere to the definition of

non-permanent work. At this time, all jobs are classified as non-permanent work. The main issue in the Job Creation Law is compliance in its implementation, not the content of the Job Creation Law. The definition of non-permanent work also still has misinterpretations in the Manpower Law. The company should choose and determine which jobs are permanent and non-permanent.

Work that is not permanent must be clearly defined. The government must define what constitutes non-permanent work. The Agreement on Specific Time Employment does not apply to all types of work. Specific Time Employee Agreements are only applicable to non-permanent work. Thus, the issue with the Specific Time Employee Agreement is that it lacks an explicable time limit for the employees. Without exception, a Specific Time Employee Agreement does not apply to all types of work. This explanation will provide workers with clarity.

In general, non-permanent work is defined as work that is not continuous or continuous. This non-permanent job should be associated with a specific project. Non-permanent jobs include developing a new technology system, managing building construction, responding to a special event such as a natural disaster, or addressing a particular condition for a specified period.

Jobs that are available continuously include marketing, finance, administration, and production. This work should not be considered temporary. This is a permanent position.

4. Conclusion

Industrial relations are critical in the economy. The employment contract between the employee and the employer/company is unambiguous and complies with all legal requirements for a contract. Employment agreements are binding agreements between employees and employers/companies. This work agreement may serve as the basis for resolving disputes. Employers will seek to avoid incurring additional costs by exploiting loopholes in applicable regulations, including the Manpower Law. Employers/companies do not employ workers in the Manpower Law's definition of permanent and non-permanent work. Continuous socialization regarding labor laws is necessary. Understanding labor laws is critical. The term "temporary work" should be clearly defined. This explanation is intended to avert misinterpretation. Misunderstandings in interpreting the agreement's contents become a source of contention between employees and companies/employers. The limitation of this research is that it does not address a specific case in a particular industry. Additional research could be conducted by debating the definitions of permanent and non-permanent work in specific sectors.

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