

**FULFILLMENT OF THE RIGHTS AND LEGAL REMEDIES OF FOREIGN WORKERS
WITH CONTRACT STATUS WHICH ARE CARRIED OUT OF TERMINATION OF
EMPLOYMENT JUSTICE PERSPECTIVE**

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Abstract

Foreign workers in Indonesia have skills in the transfer of knowledge or know-how. In practice, foreign workers often have problems, such as layoff disputes. This research is a normative research, with a Law approach and a Case Approach. The legal materials used are primary, secondary, and tertiary, along with the literature data collection. Data analysis is descriptive and analytical with a qualitative approach. The research results are, first, that the legal protection of the rights of foreign workers who are unilaterally laid off has been regulated in Article 62 and Article 156 of Law Number 13 of 2003 concerning Manpower and strengthened by Government Regulation Number 35 of 2021. The rights obtained by the laid-off TKA are in the form of Severance Pay, Service Period Award Money, and Rights Replacement Money. However, not all of these rights can be obtained. Second, legal remedies can be taken by workers who are laid off due to the employer's failure to fulfil their rights through litigation and non-litigation settlement efforts and in the case of TKA, based on decision Number 12/Pdt.Sus-PHI/2021/PNMtr, the rights of TKA granted by the judge are basic salary from March to September 2020, with a calculation: $Rp.21,750,00.00 \times 7 = Rp. 152,000,000.00$. It was not granted regarding severance pay based on legal reasoning; the judge's decision still referred to the positivistic legal aspect.

Keywords : Employment Rights; Foreign-Employment Force; Court-Industrial-Relations Decisions

Abstrak

Tenaga Kerja Asing di Indonesi memiliki *skill* dalam hal *transfer of knowledge* atau *transfer of know how*. Pada praktiknya TKA seringkali memiliki permasalahan misalnya sengketa PHK. Penelitian ini merupakan penelitian normatif, dengan pendekatan Undang-undang dan Pendekatan Kasus. Bahan hukum yang digunakan bahan hukum primer, sekunder dan tersier, dengan pengumpulan data kepustakaan. Analisis data bersifat deskriptif analitis dengan pendekatan kualitatif. Hasil penelitian, **pertama** perlindungan hukum terhadap hak-hak tenaga kerja Asing yang di PHK secara sepihak telah diatur didalam Pasal 62 dan Pasal 156 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan dan diperkuat dengan Peraturan Pemerintah Nomor 35 Tahun 2021. Hak yang diperoleh TKA yang di PHK berupa Uang Pesangon, Uang Penghargaan Masa Kerja, Uang Pengganti Hak. Akan tetapi tidak semua hak tersebut dapat diperoleh. **Kedua**, upaya hukum dapat dilakukan oleh tenaga kerja yang mengalami PHK akibat tidak dipenuhi hak-haknya oleh pengusaha melalui upaya penyelesaian secara litigasi dan nonlitigasi. Pada kasus TKA berdasarkan putusan Nomor 12/Pdt.Sus-PHI/2021/PNMtr, bahwa hak-hak TKA yang dikabulkan hakim yaitu gaji pokok dari bulan Maret sampai dengan September 2020, dengan perhitungan: $Rp.21.750.00,00 \times 7 = Rp.$

152.000.000,00. Tidak dikabulkan terkait uang pesangon berdasarkan *legal reasoning* putusan hakim masih merujuk pada aspek legal positivistik.

Kata Kunci: *Hak-hak Ketengakerjaan; Tenaga-Kerja-Asing; Putusan Pengadilan-Hubungan-Industrial*

I. INTRODUCTION

Globalisation has indirectly forced us to encourage labour movement between countries and each other¹. The Indonesian government has a policy to protect the rights of migrant workers² and Foreign Migrant Workers. Foreign Labor is unavoidable in its use. The Foreign Workers in Indonesia are those who are needed in 2 (two) things; namely, they (Foreign Workers) bring capital (as investors) and/or bring skills in terms of transfer of knowledge or transfer of expertise. Apart from these two things, it is not allowed, and the use of Indonesian labour (Indonesian Workers) must be prioritised³.

The terms "partner" and "employee" are often used interchangeably in employment. In general, "employee" refers to an individual who works for a company or organisation and receives wages or salaries in return for services

rendered.⁴ Labour is a legal subject with rights and obligations to be protected. The aspect of labour law must be in line with the current employment development, which has been rapid.⁵

Based on Government Regulation of the Republic of Indonesia No. 35 of 2021 concerning fixed-time work agreements, outsourcing, working time and rest time, and termination of employment in article 1 number 10, which reads: "A fixed-time work agreement, hereinafter abbreviated as PKWT, is a work agreement between a worker/labourer and an employer to establish a working relationship within a certain time or for a certain worker"⁶.

The issuance of Article 42 of the Job Creation Law automatically amends Article 42 of the Manpower Law Number 13 of 2003, which requires foreign workers to obtain

¹ Febriana Muryanto Vibriza Juliswara, *Indonesia Dalam Pusaran Globalisasi, Pengembangan Nilai- Nilai Positif Globalisasi Bagi Kemajuan Bangsa*, 2022.

² Nurjannah; Indra Jaya; Rina Rohayu Harun Septyanun, "Memahami Kebijakan Dan Urgensi Penguatan Literasi Keuangan Syariah Bagi Pekerja Migran Indonesia Penempatan Brunei Darussalam," in *Bunga Rampai Mataeri PkM Internasional 2024 Brunei Darussalam*, vol. 1, 2024, 1–338, http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-gene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELES_TARI.

³ EBEN EZER ZALUKHU, "Perlindungan Hukum Terhadap Tenaga Kerja Dalam Perjanjian Kerja Waktu Tertentu (PKWT) Pada Kantor Camat Tugala'oyo Kabupaten Nias Utara," 2022.

⁴ Mukhtar, Nurjannah Septyanun, and Yulias Erwin, "Tanggungjawab Private Karyawan Dan Perusahaan Terhadap Kerugian Konsumen," *Collegium Studiosum Journal* 6, no. 2 (2023): 387–99, <https://doi.org/10.56301/csj.v6i2.1102>.

⁵ Nurjannah Septyanun, "Rancangan Undang-Undang Perlindungan Pekerja Rumah Tangga Ditinjau Dari Aspek Budaya Hukum Masyarakat Lokal NTB," *Ganec Swara* 6, no. 1 (2012): 116–20.

⁶ Muhamad Irayadi, "Perlindungan Hukum Bagi Tenaga Kerja Atas Pemutusan Hubungan Kerja Oleh Perusahaan Karena Force Majeure Pandemi Covid-19," *Jurnal Ilmiah Publika* 11, no. 1 (2023): 255, <https://doi.org/10.33603/publika.v11i1.8227>.

written permission from ministers or other officials appointed in Presidential Regulation Number 20 of 2018⁷, Foreign workers entering Indonesia must have several permits, including a Limited Stay Visa, a Plan for the Use of Foreign Workers and a Permit to Use Foreign Workers⁸.

In Article 59 Paragraph (4) and Paragraph (6) of Law Number 13 of 2003 concerning Manpower, it is stated that PKWT can be held for a maximum of 2 (two) years and can be extended 1 (one) time for a maximum period of 1 (one) year and PKWT renewal can only be done 1 (one) time and a maximum of 2 (two) years. However, many employment agreements between employers and Foreign Workers still do not regulate or exceed the period specified by Law Number 13 of 2003 concerning Manpower. The existence of foreign workers in Indonesia is only for the needs of technologists and experts as long as domestic workers cannot fill these positions. Hence, the period of use of Foreign Workers is limited⁹.

Terminating employment for workers is the beginning of the end of everything; layoffs will end workers' ability to meet the daily needs of children, families, and even themselves. Therefore, termination of employment should be avoided, even if possible, eliminated.¹⁰. As the company's backbone, workers certainly have an essential role in realising national development goals, namely creating a prosperous, just, thriving, and equitable society based on Pancasila and the 1945 Constitution. The critical role of workers must, of course, be followed by fulfilling workers' rights and obligations without being afraid of the threat of company layoffs.¹¹.

A form of legal protection for foreign workers who work in Indonesian companies, this legal protection is provided when the company terminates employment before the contract period ends, where the reason for termination of employment before the contract period ends is outside the provisions in Law Number 13 of 2003¹².

⁷ Presiden RI; Kementerian Hukum dan HAM RI, "Peraturan Presiden Nomor 20 Tahun 2018 Tentang Penggunaan Tenaga Kerja Asing," 20 JDIH Kementerian Hukum dan HAM RI § (2018), <https://doi.org/10.55681/seikat.v3i3.1309>.

⁸ R A Aisyah Putri Permatasari, "Perlindungan Hukum Bagi Pekerja Kontrak Yang Di Phk Saat Masa Kontrak Sedang Berlangsung," *Mimbar Keadilan*, 2018, 110–26, <https://doi.org/10.30996/mk.v0i0.1608>.

⁹ Diah Puji Lestari, "Analisis Yuridis Normatif Pemberian Kompensasi Normative Juridical Analysis of Compensation for Certain Time Work Agreements (Pkwt) Based on the Job Creation Act," *Jurnal Hukum Lex Generalis* 3, no. 5 (2022): 339–49, <https://jhlgr.rewangrencang.com/>.

¹⁰ Mira Apriani, "A Review of Islamic Law on the Differences in Social Insurance Services of Pt Asabri" 6469, no. 1 (2023): 49–70.

¹¹ Nur Hidayatul Fithri, "Kesejahteraan Dan Penerapan Keadilan Bagi Pekerja Dalam Undang-Undang Cipta Kerja Klaster Ketenagakerjaan," *Wijaya Putra Law Review* 1, no. 2 (2022): 120–29, <https://doi.org/10.38156/wplr.v1i2.74>.

¹² Nanda Rizky Meifilianti, "Perlindungan Hukum Bagi Tenaga Kerja Asing Dalam Hal Pemutusan Hubungan Kerja Sebelum Masa Kontrak Berakhir," *Jurist-Diction* 2, no. 1 (2019): 221, <https://doi.org/10.20473/jd.v2i1.12109>.

Layoff events still often cause problems that are not easy to solve regarding the layoffs themselves and the legal consequences of layoffs. Some causes of conflicts arising from layoff disputes stem from various things, such as employers not following layoff procedures based on laws and regulations, reasons for layoffs, and both parties, workers/labourers and employers, not carrying out their rights and obligations.

If layoffs occur, including compensation problems that employers often delay their payment time, some employers reduce workers/labourers' severance pay by cutting the amount. Some do not even keep their promise to pay severance pay and are currently laying off because employers or workers do not agree to carry out the set rules.

This causes disputes because just laying off has made workers/labourers feel difficult because they lose their jobs to fulfil their daily lives. Based on Law Number 13 of 2003 concerning Manpower, termination of employment for workers/labourers is regulated with reasonably strict conditions. However, it is different from Law Number 11 of 2020 concerning Job Creation, where employers or companies can lay off for various reasons that are not objective, which makes it easier for

employers to carry out layoffs (Termination of Employment)¹³.

The following is one of the Foreign Workers who was laid off due to a disability due to a work accident and could not do their job after exceeding 12 months. Regarding the termination of the layoff, the Worker concerned will have the following rights:¹⁴:

1. Severance Pay of 2 (two) times from the provisions of Article 81 number 44 Article 156 paragraph (2) of Law No. 11/2020 Jo Article 40 paragraph (2) of Government Regulation No. 35/2021;
2. Service Period Award Money of 1 (one) time from the provisions of Article 81 number 44 Article 156 paragraph (3) of Law No. 11/2020 Jo Article 40 paragraph (3) of Government Regulation No. 35/2021;
3. Reimbursement by the provisions of Article 81 number 44 Article 156 paragraph (4) of Law No. 11/2020 Jo Article 40 paragraph (4) of Government Regulation No. 35/2021;

Companies that carry out layoffs should hold deliberations/negotiations with workers/labourers so there are no unilateral layoffs. In addition, when carrying out layoffs, companies must pay attention to termination procedures so that the processes and steps taken are by the law. The layoff dispute was motivated by the actions of employers to carry out layoffs unilaterally. In addition, the layoff dispute occurred due to differences of opinion regarding the reasons for laying off that affected workers' rights.¹⁵.

¹³ Asyhadie Zaenie and Kusuma Rahmawati, *Hukum Ketenagakerjaan Dalam Teori Dan Praktik Di Indonesia*, 2019, <https://books.google.com/books?hl=en&lr=&id=Qb-NDwAAQBAJ&oi=fnd&pg=PA1&dq=penghapusan+mandatory+kesehatan+anggaran+berbasis+kinerja&ots=1I6oQHN7zs&sig=YMKACnDbG3rp3gBYOwK19ZnsSGs>.

¹⁴ Menteri Hukum dan HAM RI Presiden RI, "PP Nomor 35 Tahun 2021 Tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja Dan Waktu Istirahat, Dan Pemutusan Hubungan Kerja," Peraturan Pemerintah Republik Indonesia Nomor 35 Tahun 2021 § (2021).

¹⁵ Vhazherah Dhiffa Kharisna Putri, "Analisis Yuridis Dampak Pandemi Covid-19 Terhadap

Based on the above background, this research must focus on protecting the Rights and Legal Remedies of Foreign Workers with Contract Status Who Are Laid Off. This research aims to answer problems related to "Legal Remedies and Fulfillment of the Rights of Foreign Workers with Certain Time Contract Status Who Are Laid Off from a Justice Perspective".

II. RESEARCH METHODS

This research uses a normative legal research method, namely an approach to laws and regulations, namely Law Number 13 of 2003 concerning Manpower in conjunction with Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements¹⁶. Data collection techniques through literature research are collecting primary, secondary, and tertiary legal materials, collecting legal materials by reading and studying, recording and copying materials in the form of books, laws and regulations, research reports, decrees and other literature related to problems discussed with practices that occur and relevant to legal issues¹⁷. Then, the overall data for this thesis was analysed

qualitatively. So that it can reveal a clear and systematic picture of the facts that occurred and the legal material obtained¹⁸

III. Result and Discussion

3.1 Legal Remedies for Foreign Workers with Fixed-Time Work Agreements Who Are Laid Off from a Justice Perspective

Aristotle, one of the Greek philosophers, stated that justice exists when the law provides equal opportunities for individuals to develop their societal capacity. Laws can only be established if they have something to do with truth.

Critical to his point of view is the opinion that justice must be understood in the sense of equality. Anti-discrimination is also known as equal opportunity and treatment. The same chance and treatment are the rights of every citizen in all fields of life, both economic, socio-cultural, political, and employment.¹⁹

Yet Aristotle made an essential distinction between numerical equality and proportional equality. Numerical similarity equates to each human being as a unit. This is what is now commonly understood about equality and what is meant when it says that all

Hubungan Kerja Di PT . Putera Cipta Kreasi Pratama Berdasarkan Perspektif Hukum Ketenagakerjaan," 2022.

¹⁶ Yuni Annisa, "Tinjauan Terhadap Pelanggaran Bersifat Mendesak Sebagai Alasan Pemutusan Hubungan Kerja" (2022).

¹⁷ Mestika Zed, *Metode Penelitian Kepustakaan*, Yayasan Pusatak Obor Indonesia, vol. 3, 2014, <https://doi.org/10.7454/ai.v0i52.3318>.

¹⁸ Indra Agus Priyanto, "Implementasi Terhadap Pemberian Uang Kompensasi Bagi Karyawan Pkwt,"

Journal Iuris Scientia 1, no. 1 (2023): 1–7, <https://doi.org/10.62263/jis.v1i1.1>.

¹⁹ Nurjannah Septyanun, "Prinsip Anti Diskriminasi Dan Perlindungan Hak-Hak Maternal Pekerja Perempuan Dalam Perspektif Keadilan Gender the Principles of Anti-Discrimination and Protection of Maternal Rights of Female Laborers Viewed From," *IUS: Kajian Hukum Dan Keadilan* 1, no. 1 (2013): 32–43.

citizens are equal before the law. Proportional equality gives each person what they have according to their abilities, achievements, etc.

Aristotle distinguishes justice into two types, namely distributive justice and corrective justice.²⁰ The first justice applies in public law, and the second in civil law. Distributive and corrective justice are susceptible to problems of similarity or equality and can only be understood within their framework.

In distributive justice, equal rewards must be given to everyone. In the second justice, the problem is that inequality caused by the stratification of social functions or social status, for example, violations of agreements, is corrected and eliminated. Distributive justice focuses on the distribution of honour, wealth, and other goods that can be obtained equally by workers/labourers.

Leaving aside mathematical proof, it is clear that what Aristotle had in mind was the distribution of wealth and other valuable goods based on the prevailing values among citizens. A fair distribution may be a distribution by the value of performance results, namely the value of its liability, i.e., its value by the employer who gives wages.²¹

Legal protection for Foreign Workers in Indonesia is based on the principles of certainty and justice. The principle of certainty means that every law and regulation that regulates the use of Foreign Workers must be clear, firm, and consistent to provide legal certainty for the parties involved.²² The principle of fairness means that any laws and regulations governing the use of Foreign Workers must be fair, proportionate, and non-discriminatory to provide balanced legal protection for Foreign Workers and local workers.

Legal Protection of Foreign Workers has been regulated in Presidential Decree Number 75 of 1995 concerning the Use of Immigrant Foreign Workers of Color. Foreign citizen workers working in Indonesia are obliged, subject to, and protected by labour law.

The rights of workers with PKWT status based on Law Number 13 of 2003 concerning Manpower and Article 86 Paragraph 1 states that every worker has the right to obtain protection for occupational safety and health, morals and decency, treatment by human dignity and dignity as well as religious values²³.

If it is relevant to Law Number 11 of 2020 concerning Job Creation, which focuses

(PKWT) Pasca Berlakunya Undang-Undang Cipta Kerja (Analisis PKWT PT. Radiant Utama),” *Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 3 (2023): 156–66.

²³ Asri Wijayanti Wulan Afrianti, “Pengaturan Batas Waktu Masa Kerja Perjanjian Kerja Waktu Tertentu (Pkw) Pasca Undang-Undang No 11 Tahun 2020,” *Maleo Law Journal* 5, no. 2 (2021): 57–67.

²⁰ Riza Awaludin et al., “Studi Hukum Berdasarkan Tipe-Tipe Keadilan Perspektif Aristoteles,” *Praxis: Jurnal Filsafat Terapan* 1, no. 1 (2023): 1–15, <https://doi.org/10.11111/praxis.xxxxxxx>.

²¹ Armansyah Waliam, “Upah Berkeadilan Ditinjau Dari Perspektif Islam,” *Jurnal Birsnis Dan Manajemen Islam* 5, no. 2 (2017): 265–92.

²² Fernanda Ryzkiansyah Herman and Nada Intan Soraya, “Perjanjian Kerja Waktu Tertentu

on one of them, it is the employment aspect. There are aspects of Termination of Employment, and one is why "The Employee committed a serious offence" when looking at the Defendant's statement. This is contained in the Article of the Defendant's statement. This is included in Article 154 A. Meanwhile, the right to compensation for Termination of Employment has changed in Law Number 11 of 2020 concerning Job Creation, and there is a reduction. In Article 156, paragraph 4 of Law Number 11 of 2020 concerning Job Creation, there are only two types of compensation money that are required of employers, namely compensation for annual leave that has not been taken and has not yet been lost and the cost or cost of returning for workers/labourers and their families to the place where they are accepted to work²⁴.

According to Law number 11 of 2020 Article 61A paragraph (1) concerning Job Creation, employers must compensate workers/labourers if the fixed-time employment agreement ends. The provisions regarding compensation money are regulated in Government Regulation Number 35 of 2021 (Article 15). Employers are obliged to provide compensation money to Workers/Laborers whose employment relationship is based on a Fixed-Time Work Agreement; the provision of

compensation money can also be carried out at the end of the Fixed-Time Work Agreement²⁵.

In the case of a foreign worker who fights for his rights as a plaintiff, the plaintiff postulates that the Plaintiff works for the Defendant based on a Fixed-Time Work Agreement dated August 10, 2019, with the position of Hotel Manager for 1 (one) year from August 10, 2019, to September 01, 2020, with a salary of USD 1,500 in Indonesian rupiah: RP 21,750,000.00 (Twenty-one million seven hundred and fifty thousand rupiahs)²⁶.

Plaintiff postulates that during his work, Plaintiff never received a warning either in the form of a letter of reprimand or a warning from Defendant. Still, on March 31, 2020, Defendant verbally terminated Plaintiff's Employment to leave Defendant's Company no later than April 1, 2020. Analysis of the position of the case that the unilateral termination of employment carried out by the Defendant has violated the Provisions of Law Number 13 of 2003 concerning Employment by the provisions of Article 62 related to the Defendant's obligation to pay compensation, so that the Plaintiff is entitled to get his rights from the defendant in the form of compensation, severance pay, compensation money and remaining wages from March to September 2020 (7 months). This is the finding

²⁴ Wulan Afrianti.

²⁵ Merry Elisabeth Kalalo and Victor D Kasenda, "Perlindungan Hukum Terhadap Pekerja Pada Perjanjian Kerja Waktu Tertentu (PKWT) Yang

Diberhentikan Sebelum Waktunya," *Lex Privatum* 13, no. 3 (2024): 1–10.

²⁶ Mahkamah Agung, "Putusan PHI Nomor 313K/Pdt.Sus-PHI/2022" (2022).

(novelty) of this research, which is essential in seeking justice in the Industrial Relations Court so that there is legal certainty.

Furthermore, in its answer, Defendant admitted that it had employed Plaintiff as a contract employee with a Fixed-Time Work Agreement. Based on the Employment Agreement for a certain period from August 10, 2019 to September 11, 2021 (for 1 year) as a Business Manager. Before Defendant terminated Plaintiff's employment, Defendant had given a stern warning to Plaintiff, a *notebene* as the Manager, regarding implementing Health protocols. Plaintiff violates or does not comply with the applicable rules to prevent the spread of the COVID-19 virus. Anyone who violates will be subject to hefty sanctions so that Defendant can give as a sign of gratitude/love to Plaintiff, which is 1 (one) time of Plaintiff's salary, which is Rp. 21,750,000.00.

3.2 Fulfillment of the Rights of Foreign Workers with Fixed-Time Employment Agreement Status Who Are Laid Off From A Justice Perspective

The provisions in Article 81 number 4, Article 42 paragraph (4) of Law No. 11 of 2020 concerning Job Creation (Law No. 11/2020") stipulate that foreign workers can be employed in Indonesia only for a specific time and have competence by the position to be occupied. Furthermore, the provisions of Article 81 number 4, Article 42 paragraph (5) of Law No.

11/2020 stipulate that Foreign Workers are prohibited from occupying positions that deal with personnel issues.

Foreign Workers can be employed in Indonesia only for a specific time and have competence in the position they will occupy, so the type of employment agreement that applies to Foreign Workers is a Fixed-Time Work Agreement, which in the provisions of Article 81 number 12, Article 56 paragraph (2) of Law No. 11/2020 is interpreted as a work agreement made between a Worker and an Employer to establish a working relationship based on a particular period or completion of a specific job.

And if the Employer terminates the Foreign Worker before the contract ends, then by the provisions of Article 62 of Law No. 13 of 2003 concerning Manpower, which was last updated with Law No. 11 of 202 concerning Job Creation ("Law No. 13/2003"), the Foreign Worker concerned will only get "Compensation equal to the Workers' Wages until the expiration of the employment agreement period".

Foreign Workers do not receive compensation for Termination of Employment carried out by Employers because the provisions of Article 15 paragraph (5) of Government Regulation No. 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time

and Termination of Employment²⁷ ("Government Regulation Number 35/2021")²⁸, which stipulates that in the provisions of Article 15 paragraph (5) of Government Regulation No. 35/2021: "The provision of compensation money does not apply to foreign workers employed by employers in the Employment Relationship based on a Fixed-Time Employment Agreement".

An example of a case related to the fulfilment of the rights of foreign workers with the status of a Fixed-Time Work Agreement is decision number 12/Pdt.Sus-PHI/2021/PN Mtr In the quo decision, the plaintiff (foreign worker) has obtained part of its rights, namely the accommodation of compensation in the number of unpaid wages, while the contract has been unilaterally decided through the Termination of Employment. This means that the aspect of justice for the plaintiff has been fulfilled through the ruling.

More rigidly, related to the *a-quo case*, the judge's opinion (legal rere actioning) of the judge, after reading the data, carefully examining the evidence, witness statements and the content of the lawsuit, rebuttals and facts at the trial, the panel of judges thinks that in principle the parties agreed to terminate their employment relationship, what is disputed is the Termination of Employment

Relationship carried out by the Defendant unilaterally (vide T-4 and P-3) which is not by the Employment Agreement Certain Time (vide evidence P-1), so that as a consequence of the punishment the Defendant must pay compensation to the Plaintiff in the amount of the Plaintiff's wages until the expiration of the Specific Time Work Agreement, guided by the expiry of the Fixed Time Work Agreement, guided by the wages received every month, namely Rp. 21,750,000.00 for 7 months from March to September 2020, with the following calculations: $Rp.21,750,00.00 \times 7 = Rp. 152,000,000.00$ So that the total amount is Rp.152,250,000.00 (One hundred and fifty million one hundred and fifty thousand rupiahs), and therefore, the Plaintiff's petite numbers 6 and 7 are partially granted.

Analysis of this case with the case's position, which is a case between PT. Selong Selo Lombok was against an employee, Betty Luhong Balan, who officially became a former PT employee after the verdict of this case came out. Selong Selo Lombok: The plaintiff himself is an employee of PT. Selong Selo Lombok. Who has worked at the PT? Selong Selo Lombok dated August 10, 2019. And in contract for 1 (one) year until September 01, 2020. The plaintiff filed a lawsuit with the Industrial Relations Settlement Court. As a result, the Industrial Relations Court declared

²⁷ Public Relations of the Ministry of Foreign Affairs, "Government: Rules for Employment Agreements and Outsourcing in the Job Creation Law to Protect Workers," *Constitutional Court of the Republic of Indonesia*, 2024.

²⁸ Presiden RI, PP Nomor 35 tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

the termination of the employment relationship, exempted the Plaintiff from the debt and punished the Defendant to pay the employment rights or the remainder of the employment contract, starting from March to September (7 months)

However, suddenly, on March 31, 2020, Defendant PT. Selong Selo Lombok terminated the relationship with the Plaintiff no later than April 1, 2020. The plaintiff is contracted with the position of Hotel Manager with a final salary of USD 1,500 when it is paid Rp. 21,750,000 (twenty-one seven hundred and fifty thousand rupiah); The rights of foreign workers granted by the judge, namely the plaintiff, are entitled to basic salary from March to September 2020, by article 62 of Law Number 13 of 2003 with the calculation: $\text{Rp.}21,750,00.00 \times 7 = \text{Rp.} 152,000,000.00$, which was not granted by the judge related to severance pay because it is not regulated in Article 156, paragraph 2 of Law Number 13 of 2003 and Government Regulation.

The normative fundamental basis referred to by the judge is Law Number 13 of 2003 concerning Manpower, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes and Law Number 11 of 2020 concerning Job Creation and other relevant regulations²⁹. Therefore, the researcher argues that the positivistic legal aspect plays an essential role in realising the

element of justice for foreign workers, where the labour law accommodates the rights of foreign workers based on mediation, bipartite, tripartite mechanisms, and through the litigation process at the Industrial Relations Court.

The judge's decision was a-quo, and in all its legal considerations, the panel of judges thought that the plaintiff's lawsuit was granted in part because the plaintiff's lawsuit was partially granted. The value of the lawsuit was above Rp.150,000,- (One hundred and fifty million rupiahs), then based on the provisions of article 58 of Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes; the Defendant was sentenced to pay the case fee of Rp.389,500.00 (Three hundred and eighty-nine five hundred rupiahs). With the acquisition of the rights of foreign workers with a fixed-time work agreement, the aspect of justice-based legal protection can be realised. Justice based on proportional equality gives legal force that every person and/or citizen and non-citizen has the same rights regarding rights according to his ability, achievements, and so on. Furthermore, the justice aspect is emphasised based on numerical similarity, which equates each human being to a unit. This is what is now commonly understood about equality and what is meant when it says that all citizens are equal before the law.

²⁹ Oleh : Riki et al., "Tinjauan Yuridis Terhadap Syarat Berakhirnya Perjanjian Kerja Waktu Tertentu Antara Pemberi Kerja," *Lex Crimen* 11, no. 5 (2022): 1–

11,
<http://repository.unissula.ac.id/15720/6/Lampiran.pdf>.

The provision of severance pay and labour rights due to the termination of employment is unfair and detrimental to workers as weak parties. These injustices can be in the form of non-payment of rights that workers should have received due to Termination of Employment, legal uncertainty, and ambiguity in the judge's decision. Therefore, to ensure legal certainty on the balance of rights and obligations for employers and workers, the reconstruction of legal norms in Article 156 Paragraph (1) needs to be emphasised by adding the period of rights granted and the reasons. Dismissing workers' rights³⁰.

Terminating the employment of foreign workers with contract status raises concerns about fulfilling their rights in terms of justice. The research emphasises the importance of protecting the rights of contract workers during termination, highlighting the need for legal certainty and fair treatment.

Cases of Termination of Employment during the contract period underline the need to ensure that workers receive their rights until the end of the contract, with legal remedies available if these rights are not met. An analysis of termination cases, especially in difficult times such as the COVID-19 pandemic, shows a gap in fulfilling workers' rights. This shows the importance of upholding legal norms and providing adequate

compensation to foreign workers facing termination of employment. Efforts to reconstruct legal norms and improve protections for foreign workers with contract status are essential to achieve justice in the termination scenario.

IV. CONCLUSION

Foreign workers in Indonesia are needed in two ways: foreign workers who bring in capital (investors) and skills in knowledge transfer or know-how. In its development, justice before the law for foreign and domestic workers has the same position. Foreign Workers often experience problems, such as disputes over Termination of Employment. Legal protection for the rights of Foreign Workers who are unilaterally dismissed has been regulated in articles 62 and 156 of law number 13 of 2003 concerning Manpower and strengthened by government regulation number 35 of 2021 concerning permanent employment: term Work Agreement, Outsourcing, Working Time, Employment Relationship and Rest Time. The rights obtained by Foreign Workers affected by Termination of Employment are in the form of Severance Pay, Work Period Compensation, and Replacement Money. However, not all of these rights can be obtained and fought for. Second, legal remedies can be taken by workers who experience termination of

³⁰ Gunarto Rahmatsyah, Anis Mashdurohatun, "Reconstruction of Severance Pay and Workers' Rights Due to Termination of Employment (Layoff) Based on

Justice Value," *Journal of Social Science Research* 15, no. 3 (2020): 9–15.

employment due to the employer's non-fulfilment of their rights, namely through litigation through lawsuits to the industrial relations court and non-litigation through bipartite, tripartite, and mediation to the labour office. In the Foreign Worker case based on decision Number 12/Pdt.Sus-PHI/2021/PN Mtr, the judge granted the rights of Foreign Workers related to wages for 7 (seven) months. The legal reason for severance pay was not given, stating that it was not regulated in Article 156, paragraph 2 of Law Number 13 of 2003 and Government Regulations.

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