



A Juridical Review of the Limitation on the Duration of Fixed-Term Employment Agreements (PKWT) Following Constitutional Court Decision Number 168/PUU-XXI/2023 in Protecting Workers' Rights in Indonesia

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DOI:

<https://doi.org/10.47134/ijlj.v3i3.5492>

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Received: 03-01-2026

Accepted: 03-02-2026

Published: 03-03-2026



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Abstract: This study aims to analyze the limitation of Fixed-Term Employment Agreements (PKWT) based on Constitutional Court Decision Number 168/PUU-XXI/2023 and to examine the legal consequences for employers and workers if PKWT exceeds the maximum five-year term. This research employs a normative legal method using statutory and conceptual approaches by analyzing labor law regulations and relevant legal doctrines concerning employment agreements. The study focuses on examining the legal interpretation and binding force of the Constitutional Court decision related to PKWT duration limits. The results demonstrate that the five-year maximum duration of PKWT constitutes an imperative legal norm designed to ensure legal certainty, balance of rights and obligations, and protection of workers' job security. The Constitutional Court decision clarifies the ambiguity in previous regulations regarding PKWT duration, thereby preventing potential misuse of fixed-term contracts that may disadvantage workers. If employers implement PKWT exceeding the five-year limit, the employment relationship automatically converts into an Indefinite-Term Employment Agreement (PKWTT) by operation of law. This conversion imposes additional legal responsibilities on employers, including the obligation to provide stronger employment guarantees and fulfillment of normative labor rights. Therefore, the decision reinforces the legal framework governing fixed-term employment arrangements while strengthening worker protection within Indonesia's labor law system.

Keywords: Constitutional Court Decision, Legal Certainty, PKWT, Worker Protection

Introduction

Labour law in Indonesia serves as a fundamental legal instrument for safeguarding workers' welfare, as mandated by Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right to employment and a dignified livelihood (Harahap, 2020). Within this constitutional framework, *Fixed-Term Employment Agreements* (*Perjanjian Kerja Waktu Tertentu*—PKWT) function as a flexible employment mechanism intended to accommodate employers' temporary operational needs without negating workers' basic rights (Asri, 2020). The core objective of labour law is therefore to protect workers from arbitrary employer practices, particularly in temporary contractual arrangements that are often exploited to reduce labour costs (Is & Sobandi, 2020).

However, the regulatory development of PKWT has generated enduring tension between labour market flexibility and the protection of workers from prolonged contractual exploitation. Prior to the enactment of Law Number 11 of 2020 on Job Creation, Law Number 13 of 2003 on Manpower limited PKWT to a maximum of three years, including a one-year extension, to prevent circumvention of permanent employment status (Wulida, 2025). The Job Creation Law subsequently extended the maximum PKWT duration to five years in total, including extensions, as stipulated in Article 81 point 12 of its Appendix. Although aimed at enhancing labour market flexibility, this extension attracted criticism for potentially undermining job security and social protection for contract workers (Pomolango et al, 2025).

The replacement of the Job Creation Law through Law Number 6 of 2023 has intensified debates regarding the regulation of *fixed-term employment agreements (PKWT)*, as the revised framework is widely perceived to prioritise labour market flexibility and investment attractiveness over substantive worker protection. Empirical and normative studies indicate that the expansion of flexible contractual arrangements has strengthened employer control while simultaneously weakening workers' bargaining power, particularly concerning wage certainty and employment continuity (Jakariya et al, 2024) (Rejeki et al, 2024). Furthermore, regulatory reforms that modify severance provisions, wage determination mechanisms, and employment contract duration have generated legal ambiguity and increased vulnerability among contract workers, thereby raising concerns regarding the erosion of social security and labour rights (Widagdo, 2024) (Kamal, 2021). Consequently, the protection of wages and job security for contract workers remains a critical legal and industrial relations issue, as insufficient regulatory safeguards may perpetuate structural inequality within employment systems and undermine the broader objective of equitable labour governance (Wijayanti, 2014).

A decisive shift occurred with Constitutional Court Decision Number 168/PUU-XXI/2023, pronounced on 31 October 2024, which partially granted a judicial review of Law Number 6 of 2023 and reaffirmed constitutional protection of workers' rights (Republic of Indonesia, 2024). The Court explicitly limited the maximum duration of PKWT to five years in total, including extensions, declaring prior provisions unconstitutional for violating Articles 27 paragraph (2) and 28D paragraph (1) of the 1945 Constitution. This limitation was intended to prevent a "*contractual trap*," whereby workers remain indefinitely bound to temporary status without prospects of permanency, thereby obligating employers to consider conversion to *Indefinite-Term Employment Agreements (Perjanjian Kerja Waktu Tidak Tertentu—PKWTT)*. The ruling further entails legal consequences for non-compliant employers, including mandatory status conversion or compensation, while strengthening workers' access to judicial protection.

This study addresses a significant research gap in post-Decision Number 168/PUU-XXI/2023 labour law scholarship by examining the juridical implications of PKWT duration limits and their legal consequences. Beyond reinterpreting Article 56 paragraph (3) of the Manpower Law in conjunction with Law Number 6 of 2023, the decision integrates the Pancasila principle of social justice to prevent structural discrimination against contract

workers. This issue is increasingly relevant amid Indonesia's legal-political transition, where implementation of the Court's ruling depends on the formulation of a new Manpower Law separating labour regulation from the Job Creation framework.

Compared with prior studies, this research offers a more current and focused analysis. Earlier works primarily examined PKWT regulation under the Job Creation Law without addressing constitutional limitations or post-2023 legal consequences (Puspitaningtyas & Waluyo, 2024) (Wongkaren et al, 2022). By contrast, this study conducts a post-decision juridical analysis that integrates the legal consequences for both employers and workers through a normative-constitutional approach, while proposing restorative recommendations grounded in Pancasila values. Accordingly, this research analyses Constitutional Court Decision Number 168/PUU-XXI/2023 concerning the five-year maximum duration of PKWT and the legal consequences arising when such duration is exceeded.

Methodology

This study employs a normative legal research method as its primary approach to analyze and interpret prevailing legal norms governing the limitation of the duration of Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu / PKWT*) following Constitutional Court Decision No. 168/PUU-XXI/2023. This method is selected because the research focuses on doctrinal analysis of statutory regulations, constitutional court decisions, and constitutional law principles, without relying on empirical field data. The study adopts a descriptive-analytical design, systematically examining the legal framework on PKWT under Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2023 on Job Creation, Government Regulation No. 35 of 2021, and the aforementioned Constitutional Court decision.

The research applies a statute approach and a conceptual approach. The statute approach analyzes the hierarchy and coherence of legal norms, ranging from the 1945 Constitution of the Republic of Indonesia to sectoral labor regulations and constitutional jurisprudence. The conceptual approach explores fundamental legal concepts, including social justice under Pancasila, the constitutional protection of workers' rights, and the principle of legal certainty in employment contracts. Data sources consist of primary legal materials, such as binding legislation and Constitutional Court decisions, and secondary legal materials, including scholarly books, peer-reviewed journal articles, and official government documents, collected through qualitative library research.

Data analysis is conducted through legal interpretation methods, encompassing grammatical, systematic, and teleological interpretation, to elucidate the legal meaning, normative coherence, and legislative intent behind the maximum five-year limitation of PKWT. The analysis proceeds deductively, moving from constitutional norms to specific legal consequences, particularly the obligation to convert PKWT into indefinite-term employment agreements (*PKWTT*) and the imposition of legal sanctions when the statutory time limit is exceeded. Analytical validity is ensured through source triangulation by cross-referencing statutory provisions, judicial reasoning, and academic literature.

Result and Discussion

A. Constitutional Court Decision Number 168/PUU-XXI/2023 on Limiting the Overall Maximum Duration of Fixed-Term Employment Agreements (PKWT) to Five Years

Employment relations within Indonesia's labour law system are constructed upon the principle of balance between employers' interests and the protection of workers. In practice, however, such balance is frequently unattained due to the structurally weaker bargaining position of workers vis-à-vis employers. One manifestation of this imbalance is reflected in the use of Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu*—PKWT) that exceed their original legislative purpose (Amirudin & Asikin, 2012).

PKWT was initially designed as a legal instrument to accommodate employment needs that are temporary, seasonal, or limited in duration. Nonetheless, in practice, PKWT is often repeatedly and continuously applied to work of a permanent nature, thereby blurring the distinction between PKWT and Indefinite-Term Employment Agreements (*Perjanjian Kerja Waktu Tidak Tertentu*—PKWTT) (Agusmidah, 2021).

Regulatory changes in labour law through Law Number 11 of 2020 on Job Creation, subsequently enacted as Law Number 6 of 2023, generated new juridical issues, particularly due to the removal of an explicit statutory limitation on the duration of PKWT. This condition was widely regarded as inconsistent with the principles of legal certainty and the protection of workers' rights as guaranteed by the 1945 Constitution of the Republic of Indonesia. Consequently, Constitutional Court Decision Number 168/PUU-XXI/2023 assumes critical importance as a form of constitutional correction to labour legislation policies that potentially undermine workers' rights.

1. Regulation of PKWT within the Indonesian Labour Law System

Under Law Number 13 of 2003 on Manpower, PKWT was regulated in a restrictive manner, both in terms of the types of work permitted and the duration of the contract. Article 59 of the Manpower Law stipulated that PKWT could only be concluded for certain types of work, for a maximum period of two years, with a single extension of up to one additional year (Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003).

These limitations were intended to prevent the prolonged use of contractual employment relationships and to ensure certainty regarding workers' employment status. Philosophically, such regulation reflects the principle of labour protection, recognizing workers as the socio-economically weaker party in employment relations.

The Job Creation Law introduced a paradigm shift by repealing Article 59 of the Manpower Law and replacing it with new provisions under Law Number 6 of 2023. The new norm no longer explicitly stipulates a maximum duration for PKWT, instead leaving its determination to the agreement of the parties. While this change reflects an orientation toward labour market flexibility, it simultaneously raises serious concerns regarding the erosion of legal protection for workers. In the absence of clear limitations, PKWT risks becoming a disguised form of permanent employment.

2. Constitutional Court Decision Number 168/PUU-XXI/2023

Constitutional Court Decision Number 168/PUU-XXI/2023 resulted from a judicial review of Law Number 6 of 2023 concerning the enactment of the Job Creation Government

Regulation in Lieu of Law. From a constitutional law perspective, this decision possesses general binding force (*erga omnes*) and is final and binding from the moment it is pronounced (Asshiddiqie, 2019). The decision is classified as conditionally unconstitutional, meaning that the statutory norm remains valid insofar as it is interpreted in accordance with the Constitutional Court's construction. This model of adjudication demonstrates the Court's role as a negative legislator while simultaneously functioning as a constitutional interpreter (Siahaan, 2020).

In its legal reasoning, the Constitutional Court emphasized that regulating PKWT without a maximum duration potentially violates:

- a. Article 28D paragraph (1) of the 1945 Constitution concerning the guarantee of fair legal certainty) (and
- b. Article 27 paragraph (2) of the 1945 Constitution concerning the right to work and to a decent livelihood.

The Court reasoned that employment relationships that remain indefinitely within a fixed-term contractual status generate legal uncertainty and structural inequality between workers and employers. Such conditions are incompatible with the principle of the rule of law, which positions law as an instrument for the protection of human rights.

3. Juridical Analysis of the Limitation of PKWT Duration to a Maximum of Five Years

a. Limitation of PKWT from the Perspective of Legal Certainty

The principle of legal certainty constitutes a fundamental pillar of the *rechtsstaat*, requiring that legal norms be formulated clearly, definitively, and free from multiple interpretations (Mertokusumo, 2019). In the context of employment relations, legal certainty is directly linked to workers' legal status, the duration of employment, and the rights and obligations attached during and after the employment relationship.

The absence of a maximum time limit for PKWT under Law Number 6 of 2023 prior to Constitutional Court Decision Number 168/PUU-XXI/2023 resulted in legal uncertainty. Workers lacked clarity regarding the permissible duration of contractual employment and the point at which the right to permanent employment status could be obtained. This condition contradicted the principle of legal certainty guaranteed by Article 28D paragraph (1) of the 1945 Constitution.

By establishing a maximum duration of five years, the Constitutional Court introduced an objective legal parameter applicable to workers, employers, and law enforcement authorities alike. This time limit functions as a legal safeguard to prevent endless contractual employment practices and to clarify the legal consequences when employment relations continue beyond the stipulated period. Accordingly, the five-year limitation on PKWT is not merely administrative in nature, but constitutes a normative instrument to ensure legal certainty within industrial relations.

b. Limitation of PKWT from the Perspective of Social Justice and Balance in Employment Relations

Employment relations are theoretically characterized by inherent imbalance due to unequal bargaining positions. Employers possess greater economic and structural power than workers. Consequently, the principle of social justice necessitates state intervention to

achieve substantive rather than merely formal balance (Asikin, 2010). The use of PKWT without time limitations creates opportunities for labour exploitation, whereby workers remain continuously in precarious employment conditions without job security, career advancement, or adequate social protection. Such practices contravene the objectives of labour law, which place workers' welfare at the core of social justice.

The limitation aligns with the fundamental objectives of labour law, namely:

1. protecting workers;
2. ensuring welfare) (and
3. fostering harmonious and equitable industrial relations (Sinaga & Zaluchu, 2017).

The five-year limitation affirmed by the Constitutional Court reflects the state's effort to balance business flexibility with worker protection. Rather than abolishing PKWT as an employment instrument, the state restricts its use to prevent deviation from its original purpose. In this regard, the limitation constitutes a form of distributive justice, ensuring a proportional allocation of rights and obligations between workers and employers. Thus, the restriction on PKWT represents a concrete manifestation of the principle of social justice as mandated by Article 27 paragraph (2) of the 1945 Constitution.

c. Limitation on Freedom of Contract in Employment Relations

Freedom of contract is a fundamental principle of civil law, as reflected in Article 1338 of the Indonesian Civil Code. However, within the context of labour law, this principle cannot be applied absolutely. Employment relations are not ordinary private law relationships) (they encompass social and public dimensions. PKWT concluded on the basis of "mutual agreement" is often illusory, as workers generally lack the capacity to refuse contractual terms imposed by employers. Accordingly, labour law establishes mandatory norms (*dwingend recht*) to protect workers (Subekti, 2017).

Constitutional Court Decision Number 168/PUU-XXI/2023 affirms that freedom of contract in employment relations must be subordinated to the protection of workers' constitutional rights. Agreements that allow PKWT to continue indefinitely cannot be constitutionally justified, even if formally consented to by both parties. Therefore, the limitation on the duration of PKWT constitutes a legitimate restriction on contractual freedom, justified by law and the Constitution in pursuit of a higher interest namely, the protection of workers' fundamental rights and human dignity.

B. Legal Consequences for Employers and Workers When Fixed-Term Employment Agreements (PKWT) Exceed the Five-Year Limit under the Constitutional Court Decision

Constitutional Court Decision Number 168/PUU-XXI/2023 affirms that the duration of Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu* – PKWT) must not exceed five years in total, including any extensions or renewals. This decision is final and binding (*final and binding*) and has general applicability (*erga omnes*), thereby obligating compliance by all subjects of labour law. As a conditionally unconstitutional ruling, Article 56 of Law Number 6 of 2023 remains valid only insofar as it is interpreted to impose a

maximum five-year limit on PKWT. Accordingly, this time limit constitutes not merely an administrative guideline but a binding legal norm with statutory force. The juridical consequences of exceeding this limit arise directly by operation of law and are not contingent upon any agreement or consent of the parties.

1. Legal Consequences for Employers

Constitutional Court Decision Number 168/PUU-XXI/2023 establishes that the five-year maximum duration of PKWT constitutes an imperative (mandatory) norm. Consequently, where an employer continues to employ a worker under a PKWT that exceeds this temporal limit, the employment relationship is automatically converted *by operation of law* into an Indefinite-Term Employment Agreement (*Perjanjian Kerja Waktu Tidak Tertentu*—PKWTT). Such conversion does not require the employer's consent or a prior judicial determination, as it arises directly from the violation of a mandatory legal norm (*dwingend recht*). In labour law doctrine, provisions governing PKWT represent minimum protective standards that cannot be derogated by private agreement (Husni, 2019). Thus, even where the contract is formally labelled as a PKWT, its substantive character as temporary employment is lost, and the employer can no longer rely on contractual clauses to evade obligations owed to permanent employees.

Following the conversion of PKWT into PKWTT, employers are legally obliged to fulfil all normative rights attached to permanent employment status. These obligations include job security, protection of the continuity of the employment relationship, and the fulfilment of rights arising upon termination of employment. In this context, employers may no longer terminate employment solely on the ground of the expiration of a contractual term, as is typically permissible under PKWT (Kelvianto & Rasji, 2025). Any termination must be based on lawful grounds and must comply with the substantive and procedural requirements stipulated by labour legislation. Failure to observe these obligations may constitute a violation of workers' fundamental rights. Moreover, non-compliance may give rise to legal liability, including the obligation to pay severance pay, long-service awards, and compensation of rights in accordance with statutory provisions (Hananto & Lie, 2024).

Employers who persist in applying PKWT beyond the five-year limit are also exposed to legal sanctions, both in the form of administrative penalties and liability arising from industrial relations disputes. Labour inspectors are vested with the authority to conduct inspections and to impose administrative sanctions for violations of labour norms. In addition, aggrieved workers are entitled to file claims before the Industrial Relations Court (*Pengadilan Hubungan Industrial*—PHI) seeking recognition of permanent employment status and the fulfilment of associated rights. In practice, Constitutional Court Decision Number 168/PUU-XXI/2023 may serve as the principal legal basis in such claims, given its final and binding nature (Gunawan et al, 2024). This legal risk underscores that violations of the PKWT time limit are not merely administrative infractions but may escalate into serious legal disputes with significant implications for business continuity and corporate reputation.

2. Legal Consequences for Workers

Constitutional Court Decision Number 168/PUU-XXI/2023 provides a robust legal foundation for workers to seek recognition as permanent employees where PKWT has

exceeded the five-year threshold. This right does not depend on the presence or absence of contractual clauses, as it derives directly from constitutional norms as interpreted by the Constitutional Court. As a result, the legal position of workers is substantially strengthened) (workers are no longer regarded merely as parties bound by contractual terms, but as legal subjects protected by mandatory labour norms. This development aligns with the principle of protecting parties who are structurally disadvantaged in employment relations.

The conversion of the employment relationship into PKWTT has immediate implications for workers' protection against unilateral termination of employment. Employers may no longer terminate employment on the pretext of contract expiration, but must instead comply with the substantive and procedural requirements governing termination as prescribed by labour legislation. In this regard, workers obtain enhanced job security, which constitutes a core element of labour protection (Cherieshta et al, 2024). The Constitutional Court's decision reinforces the principle that labour market flexibility must not undermine the essence of legal protection for workers as an integral component of human rights in the field of employment.

Conclusion

Constitutional Court Decision Number 168/PUU-XXI/2023 reaffirms the function of labour law as an instrument for protecting workers within employment relationships that are structurally unequal. The imposition of a maximum overall duration of five years for Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu* – PKWT) constitutes a constitutional correction to the regulatory framework under Law Number 6 of 2023, which had previously created legal uncertainty and opened the possibility of exploitation through prolonged contractual arrangements. This temporal limitation not only ensures legal certainty as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, but also reflects the principle of social justice and the protection of the right to work and to a decent livelihood as guaranteed by Article 27 paragraph (2) of the Constitution. Accordingly, the five-year limitation on PKWT must be understood as an imperative norm that restricts contractual freedom in order to preserve the balance of employment relations and to prevent deviations from the original purpose of PKWT.

Pursuant to Constitutional Court Decision Number 168/PUU-XXI/2023, the legal consequences of a PKWT exceeding the five-year limit are automatic and binding, namely the conversion of the employment relationship from PKWT to an Indefinite-Term Employment Agreement (*Perjanjian Kerja Waktu Tidak Tertentu* – PKWTT) by operation of law, without requiring the consent of the parties or a prior judicial determination. For employers, non-compliance with this temporal limit gives rise to legal obligations to fulfil all normative rights attached to permanent employment status and exposes them to potential administrative sanctions and industrial relations disputes. For workers, the decision provides a strong legal basis to claim recognition as permanent employees, to obtain job security, and to receive protection against unilateral termination of employment. Thus, the five-year limitation on PKWT constitutes an imperative norm that functions as a core instrument of labour protection and cannot be derogated by contractual agreement.

The government and legislative authorities should follow up on Constitutional Court Decision Number 168/PUU-XXI/2023 by harmonizing and explicitly reaffirming the limitation on the duration of PKWT within labour legislation, particularly at the level of statutes and their implementing regulations, in order to ensure normative clarity and legal certainty. Employers are advised to proactively align their employment practices with Constitutional Court Decision Number 168/PUU-XXI/2023, particularly by conducting internal audits of employment contracts and ensuring that the use of PKWT does not exceed the five-year limit, thereby mitigating legal risks and preventing industrial relations disputes.

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