



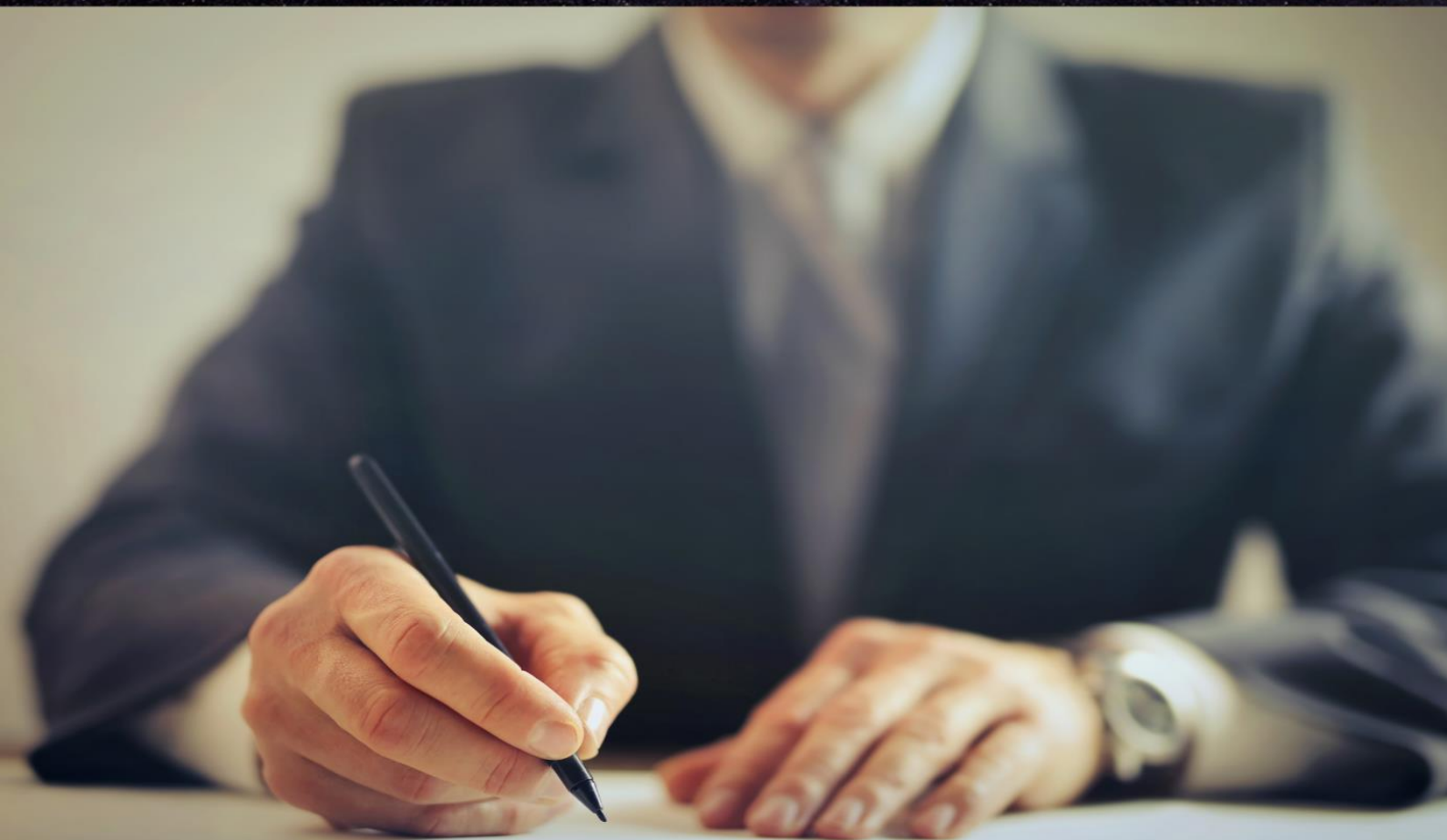
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Series :

Fixed Term Employment Contracts,
Outsourcing, Working Hours,
Employment and Resting Periods,
and Termination of Employment
2021





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CONTACT DETAILS

-  +62 21 29398927
-  info@magnuslaw.co.id
-  www.magnuslaw.co.id
-  [Magnus Law Offices](#)

Analysis on The Implementing Regulation of Job Creation Law on Manpower

Through the enactment of Law No.11 of 2020 on Job Creation (“**Job Creation Law**”), the Indonesian Government have released 44 Government Regulations and 5 Presidential Regulations as implementing regulations of the Job Creation Law.

This Legal Talks Series shall discuss the general provisions stipulated under Law No.13 of 2003 on the Manpower section of the Job Creation Law (“Manpower Law”).

With respect to fixed term employment contracts, outsourcing, working hours, employment and resting periods, and termination of employment, the Government have enacted implementing regulation, as follow:

Government Regulation No. 35 of 2021 on Fixed Term Employment Contracts, Outsourcing, Working Hours, Employment and Resting Periods, and Termination of Employment (“GR 35/2021”)

1. Fixed Term Employment Contracts (“PKWT”)

PKWT is an employment agreement between the employee and the employer to establish a working relationship for a specific time or works.

PKWT based on time period and completion of works are used for the following employments:

- a. PKWT based on time periods, which categorized into: (i) works with a short completion period; (ii) seasonal works; or (iii) works involving the production of new or additional products that are still in trial or development phase. Time based PKWT may be determined and extended based on the agreement between the employer and employee. However, the PKWT is restricted to no more than 5 (years) as of the starting or effective date of the PKWT.
- b. PKWT based on completion of works, which categorized into: (i) one time completion works, or (ii) temporary works.

The employment contract for PKWT based on the completion of works must include, among others, (i) scope of works and (ii) terms for the completion of works. The time period for the completion of works shall be the time period that such works is completed.

A PKWT is restricted from including a probation period. Further, the PKWT must be registered at the Ministry of Manpower by the employer through online registration.

At the end of the PKWT period, the employer is obligated to provide compensation to the employee. The calculation for compensation are as follows:

- a. PKWT with a time period of 12 consecutive months shall receive 1 month wage;
- b. PKWT with a time period of 1 month or less than 12 months shall be calculated as follows: $\text{Work Period} / 12 \times 1 \text{ month wage}$;
- c. PKWT with a time period of more than 12 months shall be calculated as follows: $\text{Work Period} / 12 \times 1 \text{ month wage}$.

Wages generally consist of basic salary and fixed allowances. If a wage does not include fix allowances, then the compensation shall not include additional allowances. Whereas for a wage consists of basic salary and non-fixed allowance, then the compensation shall only include the basic salary.

The compensation mentioned above shall not apply to PKWT for foreign workers.

2. Outsourcing

Outsourcing is a working relationship between an outsourcing company with employees who are employed based on PKWT or Indefinite employment contract. Matter concerning the protection of employees, wages, welfare, working conditions, and disputes are conducted pursuant to applicable laws and shall be the responsibility of the outsourcing company. The said matters shall be regulated under an employment contract, company regulation or a collective employment contract. An outsourcing company must be in the form of legal entity and is required to obtain all permits issued by the central government.

3. Working Hours and Rest Periods

- a. An employer is obligated to implement working hours pursuant to the employment contract, company regulation, or collective working contract. Working Hours pursuant to applicable laws are as follows:
 - (i) 7 hours each working day or 40 hours per week (6 working days per week) with 1 weekly rest day; or
 - (ii) 8 hours each working day or 40 hours per week (5 working days per week) with 2 weekly rest days.

The above provisions may be exempted for certain business sectors and works, where such time periods may differ in the working hours and shall have certain characteristics based on the following factors:

- (i) Completion of works of less than 7 hours each day and less than 35 days each week;
 - (ii) Flexible working hours; and
 - (iii) Works that can be conducted outside of the working location.
- b. Overtime may only be implemented for a maximum of 4 hours each day or 18 hours each week, excluding works conducted on weekly rest days and/or national holidays.
- The employer is obligated to pay for overtime pursuant to the following calculations:
- (i) For the first overtime hour: 1,5 x 1 hours salary.
 - (ii) For each subsequent hours: 2 x 1 hours salary.

4. Termination of Employment (PHK)

Termination of Employment (PHK) is the termination of a working relationship due to certain matters which resulted in the termination of rights and obligations between workers / labor and the employer.

In the event of termination of employment, the employer shall be obligated to pay severance and/or service pay, and compensation pay to the employee in accordance with GR 35/2021.

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For further information please contact Pascal A. Hutasoit (pascal@magnuslaw.co.id) or Gilang Mursito Aji (aji@magnuslaw.co.id).

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