



Implementation of Working Agreement with Probationary Period in Financial Industry According to Labor Law

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Abstract

Introduction: This study looks at how to implement a three-month probationary period for probationary employees.

Purposes of the Research: The purpose of this study is to examine the working interaction between employees and employers in the financial industry during a employment agreement with a probationary period.

Methods of the Research: This study employs a normative legal research approach.

Results of the Research: The findings of this study show that a three-month probationary period is insufficient for evaluating a worker's performance. The extension of a probationary period for a worker is prohibited by law. Companies must look for new ways to appraise employee. Probationary periods are more suited to non-management positions than to managerial positions. For managerial level, the probationary term is more than three months. The level of directors is not regulated under labor laws. Labor law does not need to govern work agreements for workers at the managerial level. The parties' agreement can be regulated by the civil law.

1. INTRODUCTION

A person working as an employee at a company requires an employment agreement. Employment agreements between employees and the company have four types of employment contracts. The two main work agreements are a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT).¹ Based on Law of the Republic of Indonesia Number 13 of 2003, the Indefinite Work Agreement may require a person to run a probationary period of three months. During this probationary period, an employee must be able to demonstrate his abilities, in order to pass the probationary period.² This probationary period is the worker's trial period for his work.³ Both Specific Time Work Agreement and Both Specific Time Work Agreement and PKWTT have a special character based on the type of work.⁴

¹ Bank Sinar Mas, "4 Jenis Kontrak Kerja Yang Wajib Dipahami Fresh Graduate," n.d.

² Siska Amelie F. Deli, "Sedang Masa Percobaan Kerja 3 Bulan Lakukan 5 Hal Ini," 2019.

³ Yanita Petriella, "Bolehkah-Pegawai-Percobaan-Diikat-Sebagai-Pekerja-Kontrak," 2019.

⁴ Mangaraja Manurung, "Pengaturan Perjanjian Kerja Waktu Tertentu Dalam Hubungan Kerja Antara Pekerja/Buruh Dengan Pengusaha," *Jurnal Pionir LPPM Universitas Asahan* 2, no. 3 (2017): 1-6.

A civil servant candidate must run a probationary period of one year if he passes the selection stage.⁵ Each company has a different determination of the type of work that is classified as Specific Time Work Agreement or Indefinite Work Agreement. Therefore, the determination of the trial period is also different. There are companies that use Specific Time Work Agreement with varying contract periods. There are also companies that apply Indefinite Work Agreement with a probation period of three months.⁶ The term probation and employment contract differ under the Labor Law.

This research discusses the implementation of an Indefinite Work Agreement (PKWTT). Many studies focus on Specific Time Work Agreement (PKWT) but not on indefinite work agreements. Employment agreements for an indefinite period based on the Labor Law also encountered several obstacles in implementation. This research focuses on the implementation of Indefinite Work Agreement in accordance with the laws and regulations. The research will contribute to future amendments to Indefinite Work Agreement and implementation of Indefinite Work Agreement.

The government has not carried out optimal monitoring of Specific Time Work Agreement and Indefinite Work Agreement. The employment agreement has violated the human rights of workers.⁷ The implementation of legal protection for workers is not fully in accordance with the law and justice.⁸ Many companies have not fully implemented work agreements, especially those related to worker status.⁹ Employer's violation of the work agreement is still ongoing.¹⁰ One of the causes of the imbalance in the bargaining position between workers and companies is the need for employment.¹¹

The employment agreement must comply with the existing laws and regulations. The company will receive a warning and a warning letter if it violates.¹² Cooperation agreement with other agreements. The employment agreement contains the rights and obligations of workers and the rights and obligations of the company.¹³ The employment agreement is a

⁵ Dita Angga Rusiana, "Tjahjo: Lulus Seleksi CPNS Wajib Lalui Masa Percobaan Setahun Dan PPPK Langsung Kerja," 2021.

⁶ Ibnu Affan, "The Phenomenon of Work Contract and Outsourcing Viewed by Sociological and Law , Indonesia," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 23, no. 5 (2018): 83-88, <https://doi.org/10.9790/0837-2305038388>.

⁷ Nin Yasmine Lisasih et al., "Implementation of Working Contract with Degree Certificate as a Collateral Related to the Freedom of Contract Principles and Human Rights," in *1st International Conference on Recent Innovations*, 2018, 2693-2700, <https://doi.org/10.5220/0009950826932700>.

⁸ Muhammad Wildan, "Perlindungan Hukum Tenaga Kerja Kontrak Dalam Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Hukum* 12, no. 4 (2017): 833-41.

⁹ M N P Sari, I M Udiana, and I N Mudana, "Pelaksanaan Perjanjian Kerja Waktu Tertentu (PKWT) Pada Villa The Seminyak Oasis," *Kertha Semaya: Journal Ilmu Hukum*, 2003.

¹⁰ Winshery Tan and Akbar Putra Jako, "Pelaksanaan Perjanjian Kerja Waktu Tertentu Di Lim Siang Huat Group," *Journal of Judicial Review* 20, no. 1 (2018): 4-16.

¹¹ Fithriatus Shalihah, "Perjanjian Kerja Waktu Tertentu (Pkwt) Dalam Hubungan Kerja Menurut Hukum Ketenagakerjaan Indonesia Dalam Perspektif Ham," *UIR Law Review* 1, no. 2 (2017): 149-60, <https://doi.org/10.25299/uirlrev.2017.1.02.955>.

¹² Ni Luh Putu Emi Sukasih Sukasih, Laksmi Anak Agung Dewi, and Desak Gde Dwi Arini, "Perjanjian Kerja Waktu Tertentu (Pkwt) Pada Pt. Angkasa Pura Suport Badung," *Interpretasi Hukum* 2, no. 3 (2021): 624-28.

¹³ Aan Handriani, "Perlindungan Hukum Bagi Debitur Dalam Perjanjian Kredit Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Pamulang Law Review* 2, no. 2 (2019): 141-50.

form of legal protection for workers.¹⁴ Companies and workers must agree on the contents of the work agreement. The agreement must be able to fulfill several principles in the agreement based on article 1320 of the Indonesian Criminal Code.¹⁵ The principles in an agreement, especially the principle of the Freedom of Contract, the Principle of Good Balance, the Principle of Consensually (Agreement/Consensualism), the Principle of Legal Certainty (*Facta Sunt Servanda*), the Principle of Good Faith, and the Principle of Personality.¹⁶

In the signing of an Indefinite Work Agreement which is coercive and not in accordance with the will theory, if the worker is not willing, the worker will be subject to the obligation to provide compensation. Then the Indefinite Work Agreement can be canceled by law in accordance with the principle of the existing agreement.¹⁷ If an employee is terminated based on an Indefinite Work Agreement, the company must pay all employee rights according to the existing laws and regulations.¹⁸

In addition to work agreements, company regulations also play an important role in resolving disputes between workers and the company.¹⁹ Company regulations are regulations set unilaterally by company management. Company regulations need to be approved by trade unions and relevant regulators.

The arrangement regarding the employment contract period is valid for more than five years in accordance with Law of the Republic of Indonesia Number 11 of 2020 on Job Creation. With the enactment of the Job Creation Law, more and more companies will switch workers to Specific Time Work Agreement instead of Indefinite Work Agreement.²⁰ Companies will look for regulations that are more profitable for the company.

The arrangement of employment contracts between companies and private employees is different from the legal status of government employees in the employment agreement. The government employee work agreement is based on Law of the Republic of Indonesia Number 5 of 2014 on State Civil Administration.²¹ Private employment and government employees have different policies based on the existing law.

¹⁴ Purgito, "Perlindungan Hukum Bagi Pekerja Dalam Perjanjian Kerja Waktu Tertentu Telaah Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Surya Kencana Satu* 9, no. 1 (2018): 49-61.

¹⁵ Dina Haryanti Sukardi and Dian Herlambang, "Penerapan Perjanjian Kerja Antara Direktur Dan Karyawan Terkait Dengan Asas Kebebasan Berkontrak Berdasarkan Pasal 1320 Kitab Undang-Undang Hukum Perdata," *Pranata Hukum Jurnal Ilmu Hukum* 15, no. 2 (2021): 212-24.

¹⁶ Suwinto Johan and Markoni, "Does Material Adverse Change (MAC) Fullfill the Principles of An Agreement?," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021): 96-111, <https://doi.org/10.29303/ius.v9i1.813>.

¹⁷ Yessi Pramita, "Perlindungan Hukum Bagi Pekerja Yang Tidak Menandatangani Perjanjian Kerja Waktu Tidak Tertentu (Pkwt) Di PT. Bank Rakyat Indonesia," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 16, no. 1 (2018): 95-110.

¹⁸ E E Elbert and Willy Tanjaya, "Perlindungan Hukum Terhadap Karyawan Yang Dirumahkan Dalam Perjanjian Kerja Waktu Tidak Tertentu (Putusan : Nomor 491 K/PID.SUS-PHI/2017)," *Ilmu Hukum Prima* 2, no. 1 (2019): 166-80.

¹⁹ Windi Afdal and Carina Tan, "Hubungan Hukum Pekerja Dan Keberlakuan Peraturan Perusahaan Dalam Perusahaan Konglomerasi," *Journal of Judicial Review* 21, no. 2 (2019): 168-81.

²⁰ Afrianti, W., & Wijayanti, A. (2021). Pengaturan Batas Waktu Masa Kerja Perjanjian Kerja Waktu Tertentu (Pkwt) Pasca Undang-Undang No 11 Tahun 2020. *Maleo Law Review*, 5(2), 57-67.

²¹ Nabila Paramitha, Siti Nurhayati, and Surya Nita, "Status Hukum Pegawai Pemerintah Dengan Perjanjian Kerja (Pppk) Terhadap Perjanjian Kontrak Kerja Ditinjau Dari Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara," *Kumpulan Karya Ilmiah Mahasiswa* 2, no. 2 (2021).

The financial industry is a service industry. Human resources play a very important role in the company's performance. Financial institutions that have superior employees will be able to provide better performance.²²

The research questions are as follows: Why is three months of probation not enough to measure an employee's performance? Does the extension of the probationary period violate the laws and regulations? How should the work agreement between managerial level workers and the company be?.

2. METHOD

This research examines legal principles and norms, the legal system, and the synchronization of laws and regulations, as well as legal comparisons and history, in the context of employee working agreements among middle management in the financial services industry. The research method used is a normative legal research method or literature-based legal analysis, which is based on the background, research problem, and previous research. This study uses a statutory approach to investigate all relevant laws, rules, and market practices in the field of legal normative research.²³ The use of rules and regulations as a research basis underpins the approach to legislation. Using this method, the research analyses the regulations and market practices and connects them to related regulations. The normative legal research materials include primary, secondary, and supporting legal texts. The key legal materials reviewed in this study include the 1945 Constitution, statutes, and other related regulations. Legal journal articles, legal ideas, scientific books about specific study themes, symposium/seminar findings, and scientific papers are examples of secondary legal literature. Tertiary legal materials discuss primary and secondary legal elements.²⁴

3. RESULTS AND DISCUSSION

3.1 Probation Period Is Not Enough to Measure an Employee's Performance

A corporation's new employee must attend a company orientation. Orientation might last anything from a week to a month. The orientation period is a time when new employees are introduced to corporate culture, such as the company's vision, mission, and values, as well as work exchanges within departments. A financial institution runs the same business model, but the vision, mission, company values, and work interactions can be different. Thus, a new employee must go through a work orientation period. Workers will get job orientation following the business orientation phase. This orientation is a period during which the worker is introduced to his or her job. Workers will be aware of the system in use. To be prepared is a reporting system. Policies that must be considered by the company.

Following this orientation, a worker begins working for a probationary period of approximately 7 weeks. Probation lasts three months, or twelve weeks. The workers will labor for seven weeks after completing the four-week orientation phase. Workers will encounter one book closing over the course of the next seven weeks. The monthly book closure is a review of the business's performance. The remaining one week is spent having

²² Suwinto Johan and Claudia Gita Hapsari, "Determinants Of Banking Performance in Indonesia: A Human Capital Perspective," *Jurnal Manajemen* 17, no. 2 (2020): 130–39.

²³ Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi - Prof, Revisi* (Jakarta: Kencana Prenada Media Grup, 2017).

²⁴ Suwinto Johan, "Knowing Company Secrets Through Employee Posts On Social Media," *Diponegoro Law Review* 06, no. 02 (2021): 203–16, <https://doi.org/10.14710/dilrev.6.2.2021.203-216>.

superiors and human resources evaluate employees. As a result, a total of 12 weeks were used. Workers' performance cannot be measured for three months because they only work for seven weeks. The results for the seven-week period do not indicate short-term performance, but rather medium-term minimum performance for jobs in the finance business. Figure 1 shows how this works.

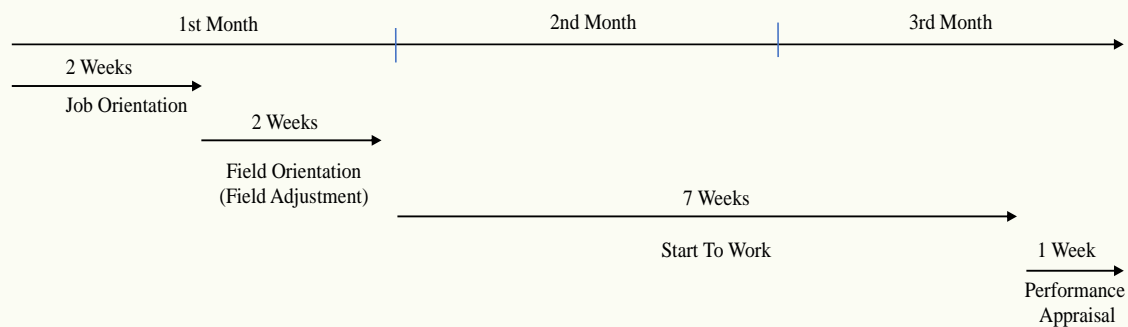


Figure 1 Content of Probation Period

Source: research results

3.2 Extending the Probation Period Violates the Laws and Regulations

Because of the short probationary period, the organization will look into measures to improve employee performance reviews. According to the law, the probationary term cannot be prolonged or substituted with a labor agreement for a specific amount of time. The company will face consequences if this regulation is broken. Companies can perform a more stringent first hiring process. Companies can ask employees for references. Companies can put some of their employees' skills to the test before hiring them. Companies can assign staff to short-term special projects to measure their capacity to execute their tasks. For managerial level personnel, a three-month probationary period is insufficient for the assessment period. Probationary evaluations are more appropriate for employees who are not in management positions

3.3 Work Agreements Between Managerial Level Workers and Companies

Workers who perform specific types of labor and are in management positions can be excluded from the Indefinite Work Agreement and Specific Time Work Agreement types of agreements. Managerial level workers can be assigned to duties for an infinite amount of time, however a three-month probationary period is insufficient to evaluate a person's work outcomes or quality. In certain areas, such as the banking industry, employment agreements for managerial level roles might be based on the parties' agreement. This form of labor agreement does not require a specific statutory requirement to be in place

3.4 Managerial Implication

Companies must be able to evaluate a new employee's performance after a three-month probationary term. According to the employee's position, the firm, both superiors and human resources, must evaluate managerial level personnel, particularly in terms of managerial abilities or soft skills, rather than hard capabilities. Law and regulation prohibit the extension of the probationary term for work that is permanent or uncertain. As part of the employee's performance appraisal, the employer can conduct a more stringent selection.

4. CONCLUSION

A three-month probationary period in an indefinite-term employment agreement is insufficient for evaluating a worker. It takes longer to evaluate an employee's performance. The legislation forbids extending the probationary period. The corporation can only concentrate on analyzing general capabilities rather than the workers' results and technical abilities. The probationary period of the Indefinite Work Agreement is better for evaluating employees than for evaluating managers. At the administrative level, evaluating employee performance takes more than three months. Workers at the managerial level can be excluded from deciding on the sort of work agreement. The financial industry is not discussed in this study, which instead concentrates on the managerial level. Further research into the relationship between probationary period evaluation scores and post-probationary period performance is possible. Other studies could be conducted by contrasting the performance of probationary employees with those who are promoted from inside the organization.

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