

CERTAINTY OF EMPLOYMENT RELATIONSHIP FOR PKWT WORKERS WHO RESIGN BEFORE THE END OF THE EMPLOYMENT AGREEMENT

Risna Menda Lovinta Siregar

Universitas Pamulang

Corresponding Email: dosen02989@unpam.ac.id

Received : 21 May 2025

Revised : 30 May 2025

Accepted : 17 June 2025

Published : 14 July 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i4.3268>

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

An employment agreement is defined by Law Number 13 of 2003 concerning employment as an agreement between workers or laborers and employers or employers that contains the terms of employment, rights and obligations of the parties. It is a logical consequence that in an employment agreement, the position of the employer as an employer is always higher than the position of the worker or laborer. There are two reasons behind this, namely economic reasons and psychological reasons. This study aims to determine the certainty of status for PKWT workers who resign before the end of the employment agreement. The research method used in this study is a normative research method that refers to legal principles and laws and regulations. The results of this study indicate that the party that terminates the employment relationship is required to pay compensation in the amount of the worker's/laborer's wages until the end of the employment agreement. This provision regulates the employment agreement for workers who resign before the end of the employment agreement so that workers can be certain regarding their rights and obligations.

Keywords: *Certainty of Employment Relationships for PKWT Workers, PKWT Workers Who Resign, Resignation in PKWT Before the End of the Employment Agreement*

I. INTRODUCTION

A. Background

The employment relationship in a Fixed Term Employment Agreement is not terminated by resignation if someone decides to accept the consequences. In today's era, the growth rate of workers is increasing, many workers are looking for work and there are few jobs in Indonesia, in addition, the rate of termination of employment in Indonesia is also increasing so that more and more people are looking for work, besides that many workers resign because they are not careful in registering for work so they feel uncomfortable with the work they do. The large number of workers who resign causes companies to be a little confused about the rights of these workers because workers have not fully carried out their obligations that have been agreed upon in the employment agreement. The state has an obligation to create welfare for its workers fairly. One manifestation of justice and welfare is the law. According to Article 27 Paragraph 2 of the 1945 Constitution, which states that every citizen has the right to work and a decent living for humanity, and also has the aim of ensuring that everyone who works gets a job that suits their wishes, and everyone who works is able to earn enough income for themselves and for the needs of their families. (Soejono, 1986)

Employers and workers have a binding employment relationship as long as the work is running. The employment relationship between employers and workers is regulated in Article 1 Paragraph 15 of Law Number 13 of 2003 concerning employment which states that "Employment relations are relations between employers and workers/laborers based on an employment agreement that has elements of orders, wages and work". Employment relations cannot be separated from employment agreements. As regulated in Law Number 13 of 2003 concerning Employment, an employment agreement is a requirement that must be met in order for an employment relationship to occur. Therefore, an employment agreement can be said to be one of the most common types of agreements made in Indonesia. The employment agreement itself is defined by Law Number 13 of 2003 concerning employment as an agreement between workers or laborers and employers or employers that contains the terms of employment, rights and obligations of the parties. In general, in order to be considered valid, an employment agreement must meet four requirements, namely: agreement of the parties who bind themselves, the ability or skill of the parties in carrying out legal acts, the existence of the work agreed upon and the work does not conflict with applicable regulations, public order and morality. The four requirements above are cumulative, in other words, failure to fulfill one of the

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requirements can result in the employment agreement being canceled (if the first or second requirement is not met) and null and void (if the third or fourth requirement is not met). (Izzati, 2021) According to FX Djumaldi, an Indonesian labor law expert, one of the things that distinguishes an employment agreement from a general agreement is the element of command. This element of command indirectly ensures that the positions of the parties in an employment agreement are not equal. (Djunialdji, 2006)

It is a logical consequence that in an employment agreement, the position of the entrepreneur as an employer is always higher than the position of the worker or laborer. There are two reasons behind this, namely economic reasons and psychological reasons. From an economic perspective, it is certain that the entrepreneur has higher economic power compared to the worker or laborer because the entrepreneur is obliged to pay the wages of the worker or laborer. As for the psychology of the worker or laborer, they tend to be the party that "needs more" because in fact the entrepreneur is the party that provides the work, pays the wages and has the right to give orders to the worker or laborer. (Izzati, 2021). In terms of granting the rights of workers who are laid off and workers who resign, a clear difference can be seen because workers who are laid off by employers will receive much greater compensation compared to workers who resign. This can be interpreted as meaning that workers who have made mistakes or committed violations which are then terminated by the employer will receive much greater compensation compared to workers who resign on good terms. (Yulianto, 2011). With the issuance of the Letter of the Minister of Manpower and Transmigration of the Republic of Indonesia Number B.600/MEN/Sj-Hk/VIII/2005 in point 4 of the letter, it clearly states that because workers/laborers who resign do not receive severance pay and long service award money, the workers/laborers concerned cannot receive housing replacement as well as medical and treatment as stipulated in Article 156 paragraph 4. The existence of the letter raises the thought for workers who want to resign it is better to stay in the company and make mistakes so that the company will terminate the employment relationship and will provide severance pay which initially the worker chose to resign because he saw the small severance pay he received so that the thought arose of choosing to be laid off by the company in order to get more severance pay. The worker's thinking will have a negative impact on the company and also on other workers so that workers will think the same thing.

B. Formulation of the problem

1. What are the Regulations Regarding the Resignation of PKWT Workers Who Resign Before the End of the Employment Agreement?
2. What Efforts Can Be Made by PKWT Workers to Obtain Certainty of Employment Relationships Relating to Resignation Before the End of the Employment Agreement?

II. RESEARCH METHODS

The research method used is normative legal research, namely legal research that places law as a building of normative systems. This research is conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to law. The type of research used is Normative Jurisprudence, namely a type of library legal research conducted by examining library materials or secondary data.

III. DISCUSSION

1. Regulations Regarding the Resignation of PKWT Workers Who Resign Before the End of the Employment Agreement

The employment relationship referred to in the Employment Law is a work agreement that originates from the Law regulated in Article 1 paragraph 15 of Law No. 13 of 2003, namely that the employment relationship is the relationship between employers and workers/laborers based on an employment agreement, which has elements of work, wages, and orders. The provisions of the employment agreement that are related to work or employment are not part of the law of agreements, therefore it can be said that the provisions of the employment agreement are not complementary laws. This means that the provisions of the employment agreement are mandatory, which means that the provisions of the employment agreement in the employment law must be obeyed and complied with. (H, 2004) In the provisions of the Employment Law, employment agreements are divided into two, namely PKWT and PKWTT. Fixed Term Employment Agreement (PKWT) is an employment relationship made based on a certain period of time or the completion of a certain job. Law No. 13 of 2003 concerning Manpower, regulates that PKWT based on a certain period of time can be made for a maximum of 2 years and can only be extended once for a maximum period of 1 year. (Romalida, 2019) This means that the maximum PKWT contract period is 3 years. However, both parties, namely the employer and the employee concerned, can agree to renew the PKWT after a grace period of 30 days

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from the end of the agreement. A new PKWT may only be made once for a maximum period of 2 years. If the employee resigns before the end of the contract period, the employee is required to pay compensation to the employer in accordance with the provisions governing it, namely Article 62 of Law No. 13 of 2003 concerning Manpower, which reads:

"If one party terminates the employment relationship before the end of the period stipulated in the fixed-term employment agreement, or the employment relationship ends not because of the provisions referred to in Article 61 paragraph (1), the party terminating the employment relationship is obliged to pay compensation in the amount of the worker's/laborer's wages up to the end of the employment agreement." (Venia Miranda Dewi Hascaryo, 2020) Based on Law No. 13 of 2003 concerning Employment, the types of reasons for companies to terminate employee employment are regulated as follows:

1. Probational period

An indefinite-term employment agreement (PKWTT) between workers and employers can include a trial period for a maximum of 3 months, unlike workers with a fixed-term employment agreement (PKWT) who cannot require a trial period. The clauses contained in the PKWT are declared null and void by law under Article 58 paragraph (2) of the Employment Law. During the trial period, workers may not be paid wages below the minimum wage. Workers and employers during the trial period have the same rights to terminate the employment relationship as regulated in Article 151 in conjunction with Article 154 letter a of Law No. 13 of 2003 concerning employment.

2. Resign Voluntarily or of One's Own Will (Resign)

Workers in a company always want to get better wages and facilities from their workplace. So, it is not impossible for workers to move jobs from one company to another. If the worker gets a better offer from another company, the worker is allowed to resign from the company where he works to work for a more promising company. (Sembiring, 2016)

For workers who resign of their own free will, whether they have the status of PKWTT (permanent worker) or PKWT, the worker will receive compensation for their rights as regulated in Article 162 paragraph (1) of Law No. 13 of 2003 concerning Manpower. The compensation for rights includes the following:

- a. Annual leave that has not been taken and has not yet expired.
- b. Costs or expenses for workers and their families to return to the place where they are accepted to work.
- c. Housing replacement as well as medical and treatment is set at 15% (fifteen per hundred) of severance pay and/or service bonus money for those who meet the requirements.
- d. Other matters stipulated in the employment agreement, company regulations or collective work agreement.

The calculation is different if the worker who resigns is a worker whose function does not directly represent the company's interests, in addition to receiving compensation for rights, they also receive severance pay, the amount of which is regulated in the employment agreement, company regulations or collective work agreement.

The requirements that must be met for the resignation to be valid are as stipulated in Article 162 paragraph (3) of Law No. 13 of 2003 concerning Employment, as follows:

- a. Submit a written resignation application no later than 30 (thirty) days before the start date of resignation;
- b. Not bound by any official ties and
- c. Continue to carry out his/her obligations until the date of resignation.

Therefore, if a worker/laborer submits a resignation application and then it turns out that the resignation process is in conflict with the provisions as regulated in Article 162 paragraph (3) of Law No. 13 of 2003 concerning Manpower, the resignation becomes invalid. This has an impact on the legal relationship between the worker and the company not being severed. So that the rights and obligations must be fulfilled by each party as regulated in Article 170 of Law No. 13 of 2003 concerning Manpower as follows:

"Termination of employment that does not fulfill the provisions of Article 151 paragraph (3) and Article 168, except Article 158 paragraph (1), Article 160 paragraph (3), Article 162, and Article 169, is null and void by law and the employer is obliged to employ the worker/laborer concerned and pay all wages and rights that should be received."

Referring to the Employment Law and the amendments to its articles through the Job Creation Law, including its derivative regulations in Government Regulation No. 35 of 2021, there are two explanations regarding employees' rights to resign. First, permanent employees (PKWTT) who resign of their own accord are not entitled to severance pay, but are entitled to separation money. Second, contract employees (PKWT) who resign receive "severance pay" in the form of compensation money.

The difference is according to the latest employment law provisions in the Job Creation Law and PP No. 35 of 2021. Resignation and dismissal of employees by the company are both forms of termination of employment (PHK) in

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PKWTT. However, the employee's rights arising from the termination of the employment relationship are not the same.

Employees who are dismissed by the company are entitled to severance pay and long service award money. On the other hand, employees who resign are not entitled to both types of compensation. (Cahyadi, 2022)

Employees who resign are required to fulfill the three conditions stated in the Job Creation Law No. 11 of 2020, Article 81 Number 42 concerning the insertion of Article 154A paragraph (1) letter i of the Manpower Law, namely:

- Submit a written resignation request no later than 30 days before the start date of resignation.
- Not bound by any official ties.
- Continue to carry out his/her obligations until the date of resignation.

If the resignation meets the three requirements, according to Article 50 of PP No. 35 of 2021, resigned employees are entitled to compensation and severance pay. Compensation is money paid by the company to employees as a replacement for:

- Annual leave that has not been taken and has not yet expired;
- Costs or expenses for workers and their families to return to the place where the worker was accepted to work; and
- Other matters stipulated in the employment agreement, company regulations, or collective work agreement.

Meanwhile, severance pay is regulated in the employment agreement, company regulations, or collective labor agreement. The provisions on the amount of severance pay are part of each company's policy. The problem is, many companies do not apply rules on severance pay and tend to ignore the rights of resigned employees. Based on a number of Industrial Relations Court (PHI) decisions in employee lawsuit cases over severance pay, the absence of company rules on severance pay does not eliminate the company's obligation to pay the employee's rights.

In short, whether regulated or not by the company, severance pay remains an employee's right that must be paid when resigning. For companies that do not regulate severance pay in the employment agreement or company regulations, the amount of severance pay is calculated the same as the amount of service award money (UPMK) in Article 40 of PP No. 35 of 2021.

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Masa kerja	UPMK/Uang pisah
3 tahun ≤ masa kerja < 6 tahun	2 bulan upah
6 tahun ≤ masa kerja < 9 tahun	3 bulan upah
9 tahun ≤ masa kerja < 12 tahun	4 bulan upah
12 tahun ≤ masa kerja < 15 tahun	5 bulan upah
15 tahun ≤ masa kerja < 18 tahun	6 bulan upah
18 tahun ≤ masa kerja < 21 tahun	7 bulan upah
21 tahun ≤ masa kerja < 24 tahun	8 bulan upah
masa kerja ≥ 24 tahun	10 bulan upah

Source: Gadjan.com

The right of contract employees to resign The new provision brought by the Job Creation Law into the Manpower Law is compensation money for PKWT workers. This provision was inserted into Article 61 A, and then lowered again to PP No. 35 of 2021. Compensation money must be given to employees when the PKWT contract period ends and also when the PKWT extension ends. The amount is calculated according to their length of service at the company concerned. Based on Article 17, it states that compensation money must also be given to employees if there is a termination of employment before the contract ends. So, PKWT employees who resign are also entitled to resignation compensation money.

2. Efforts That Can Be Made By PKWT Workers To Obtain Certainty of Employment Relationships Relating to Resignation Before the End of the Employment Agreement

A company, before carrying out activities involving workers and employers, requires a work agreement between the employer as the first party and the worker as the second party. In this work agreement, workers or

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laborers must work in accordance with the provisions set by the first party and under their control and authority, then the employer must provide the worker/laborer with appropriate wages.

Before deciding to resign, workers must first understand, study and know the contents of the employment agreement letter in the company. Is the employment agreement a Fixed Term Employment Agreement (PKWT) or an Indefinite Term Employment Agreement (PKWTT). If the type of agreement is a PKWT, it must not require a trial period, so that if a PKWT contains such a condition, then the required trial period is null and void by law, if one party terminates the employment relationship before the end of the period stipulated in the PKWT, the party terminating the employment relationship is required to pay compensation to the other party in the amount of the worker's wages until the end of the term of the employment agreement and the agreement with the PKWT model also does not recognize severance pay. (Venia Miranda Dewi Hascaryo, 2020)

Unlike the PKWTT agreement, it can require a probationary period of up to three months. During the probationary period, employers may not pay workers below the applicable minimum wage and the party terminating the agreement has the right to receive severance pay. Likewise, the company is not required to provide compensation. It must be ensured in the employment agreement whether there are provisions regarding the imposition of sanctions if there is a resignation within a certain period of time or not.

In a company, workers resigning is something that is not expected by the company because it will cause losses to the company itself. Many workers resign because they are uncomfortable with their jobs and work environment. However, workers who resign experience legal uncertainty because many companies do not fulfill workers' rights on the grounds that the work agreement has not ended so that workers are confused whether to continue their work or resign. Regarding legal certainty According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate the law in legislation made by authorized and authoritative parties, so that these regulations have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed. (Asikin, 2012) Employers must implement legal certainty regarding workers who resign before the end of the employment agreement so that workers do not experience confusion and do not cause losses to the company.

In fixed-term employment agreements, companies often respond to the problem of the end of a fixed-term employment agreement by making a continuous employment agreement. This means that when the employment agreement ends, the company does not employ the employee concerned for a certain period of time, but binds the employee with a fixed-term employment agreement, so that the status of the employee is a contract employee. However, companies often have good intentions by continuing to provide salaries to the employees concerned, even though the employee's contract has ended. This can certainly cause losses for the company if the employee files a lawsuit with the industrial relations court (PHI). (Sembiring, 2016)

Dissatisfaction often manifests itself as poor attitudes, increased absenteeism, turnover intentions and actual employee turnover. There is a strong relationship between the quality of workplace relationships, employee job satisfaction, stress and employee resignation. High turnover rates can also be detrimental to the efficient running of an organization when knowledgeable and experienced employees leave and replacements must be found to take up positions of responsibility. Turnover rates vary widely by country and partly reflect the economy of that country. Turnover includes voluntary terminations by employees (resignations), involuntary terminations by employers without cause (layoffs and discharges) and other separations including involuntary terminations with cause. Job dissatisfaction can lead to employee resignation.

High employee turnover rates can be detrimental to an organization because they can affect the quality of products and services and can lead to dysfunctional behavior among remaining employees. Employee turnover can affect employee morale and can have a negative impact on productivity levels. Employee turnover refers to the movement of employees outside the boundaries of an organization. (Rian Andriani, 2021)

Several factors determining employee resignation, (Arnold & Feldman, 1982) namely:

1. Age.
2. Job satisfaction.
3. Organizational commitment.
4. Years of service.
5. The desire to find another job.
6. Perceived worker safety.

Organizations with low levels of employee satisfaction tend to have higher employee turnover rates than those with high levels of satisfaction. Both high and low employee turnover rates are useful indicators of organizational success for any company. Employee turnover can have a detrimental effect on employee morale,

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motivation and job satisfaction. Another definition of employee turnover can be simply stated as employees leaving an organization for any reason.

If an employee starts looking for a new job, this behavior reflects his/her intention to leave the company, which is called employee turnover. In other words, employee turnover can be considered as “avoidable” turnover in some cases. Employee turnover affects the effectiveness of the organization in achieving its goals. Some of the reasons for employee turnover are low salary, job dissatisfaction for those with high expectation level, bad relationship with superior and co-workers, lack of job security, educational purpose for students, family purpose especially for women, purpose of better job opportunities, experiencing new jobs and alternative job offers especially for skilled employees etc. With all the perspectives for employee turnover.

Broadly speaking, there are two types of employees in a company, namely contract employees and permanent employees. Contract employees are based on article 59 of the Employment Law No. 13 of 2003 and the Decree of the Minister of Manpower No. Kep.100/MEN/VI/2004. In the explanation of article 59 paragraph (1) and (2) it is stated that a job that is categorized as a permanent job can be included in the category of seasonal work if it depends on the weather or the job is needed because of a certain condition, so that it can be the object of a Fixed-Term Employment Agreement (PKWT).

Employee resignation is the departure of an employee from a company due to employee decision. Employee resignation results in termination of employment with the company, thus ending the rights and obligations of both the employee and the company. (Pangkey, 2012) According to Mathis and Jackson the reasons employees resign:

- a. Organizational components, values and culture, strategies and opportunities, are well managed, oriented towards results, continuity and job security;
- b. Career opportunities, continuity of training, development and guidance, career planning;
- c. Employee relations, fair/non-discriminatory treatment, support from supervisors/management, co-worker relations;
- d. Competitive salaries and benefits, performance award differentials, recognition, special allowances and bonuses;
- e. Job and task design; job responsibility and autonomy, work flexibility, working conditions, work/life balance.

When employees experience dissatisfaction, employees will tend to take a stance to resign or quit the company.

On the other hand, if conditions improve, employees will stay longer in the company. Harvard Business Essentials puts forward several reasons for employee resignation, namely:

1. The company's leadership shift;
2. Conflict with immediate supervisor;
3. Close friends leave;
4. A favorable change of responsibilities.

Employee resignation requires the company to find new workers so that the company's work program continues to run even though the continuity and productivity of employee and company work will experience slight disruption. Excessive employee turnover will harm the company due to decreased productivity, increased training time and costs, increased recruitment and selection time, decreased work efficiency, and other indirect losses such as customer service and commitment. The Employment Law is designed to protect employees and ensure that employees are not treated badly by the company. Therefore, termination of employment is highly avoided and if it does occur, the termination of employment is carried out through negotiations between the company and the employee. However, sometimes there are disputes between the company and the employee because an agreement cannot be reached through the negotiations. If there is a dispute because of this, the company can terminate the employment relationship after obtaining a determination from the Industrial Relations Dispute Resolution Agency (LPPHI), as regulated in Article 151 paragraph (3) of the Employment Law.

Sanctions or penalties when workers resign are one of the things that workers fear and are also the choice of many workers, especially contract workers. Workers often experience confusion between staying but not being in harmony with the company or choosing to resign but fearing sanctions or penalties given by the company. The sanctions given are punishments for workers who end their employment relationship before the end of the agreement or work period that has been set in the employment agreement. The punishment given is to pay a fine to the company where the worker works.

The amount of the fine paid by the worker is the amount of wages until the end of the work agreement. There are exceptions related to the end of the work relationship as regulated in Article 61 paragraph 1 of Law Number 13 of 2003 which reads:

The employment agreement ends if:

- a. Worker died;
- b. Expiration of the term of the employment agreement;

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- c. The existence of a court decision and/or decision or determination of an industrial relations dispute resolution institution that has permanent legal force; or
- d. The existence of certain circumstances or events stated in the employment agreement, company regulations, or collective work agreement that can cause the employment relationship to end.

Workers who resign need legal efforts to obtain certainty of employment relations. The legal efforts that can be taken through the settlement of industrial relations disputes are the first stage that can be carried out through bipartite negotiations, namely negotiations between workers or trade unions/labor unions with employers to resolve industrial relations disputes. If bipartite negotiations fail, both parties can conduct tripartite negotiations, which are a negotiation process between both parties involving a third party. The tripartite process includes mediation and conciliation. If the tripartite stage also does not produce peace, the next stage can be submitted to the Industrial Relations Court. With legal efforts through the Industrial Relations Court, it is hoped that it can help workers to obtain certainty of employment relations and obtain workers' rights.

IV. CONCLUSION

1. Regulations related to employee resignation are inconsistently regulated. Based on Article 62 of Law No. 13 of 2003 concerning Manpower, the party terminating the employment relationship is required to pay compensation in the amount of the worker/laborer's wages until the expiration of the employment agreement. Meanwhile, if referring to the Manpower Law or amendments to its articles through the Job Creation Law, including its derivative regulations in Government Regulation No. 35 of 2021, contract employees (PKWT) who resign receive "severance pay" in the form of compensation money. The difference is according to the latest employment law provisions in the Job Creation Law and PP No. 35 of 2021. Employees who resign due to resignation are not entitled to both types of compensation. These inconsistent provisions make workers uncertain regarding their rights and employment relationships if they resign before the end of the employment agreement.
2. Workers who resign need legal efforts to obtain certainty of employment relations. Efforts that can be made by workers to obtain certainty of employment relations and their rights are through deliberation between employers and workers by providing reasons for the worker's resignation so that employers can provide solutions if these efforts are unsuccessful workers can go through industrial relations dispute resolution.

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