EXPLOITATION OF LEGAL LOOPHOLES BY FIXED-TERM EMPLOYMENT WORKERS IN THE CONTEXT OF COMPENSATION PAYMENTS FROM THE PERSPECTIVE OF LEGAL UTILITY

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Abstract

The Fixed-Term Employment Agreement is a form of employment relationship limited by a specific period, as regulated under Law Number 13 of 2003 on Manpower, as amended by Law Number 11 of 2020 on Job Creation, along with its implementing regulation, Government Regulation Number 35 of 2021. One of the regulatory innovations introduced by these instruments is the concept of compensation payment for Fixed-Term Employment Agreement workers, regardless of the reason for the termination of employment. However, in practice, this provision has created a legal loophole that may be exploited by workers to obtain compensation even when, in substance, such entitlement does not meet the criteria of fairness. This study aims to analyze the forms of legal loophole exploitation by Fixed-Term Employment Agreement workers in the implementation of compensation payments and to examine this phenomenon from the perspective of legal utility. The research employs a normative juridical method using both statutory and conceptual approaches. The results indicate that the lack of normative clarity in Government Regulation Number 35 of 2021 particularly concerning the conditions for granting compensation and the mechanisms of its supervision has opened opportunities for misuse of rights by workers. From the perspective of legal utility, this demonstrates that the current regulatory framework has not yet fully achieved a balanced social benefit between workers and employers.

Keywords: Fixed-Term Employment Agreement, Compensation, Legal Utility

INTRODUCTION

The employment relationship between workers and employers constitutes an important part of the national labor system, aimed at promoting social welfare and enhancing workforce productivity. One form of employment relationship regulated under Indonesian positive law is the Fixed-Term Employment Agreement. Fixed-Term Employment Agreement is designed for work that is temporary in nature or has a specific duration.

Since the enactment of Law Number 13 of 2003 concerning Manpower, Fixed-Term Employment Agreements have not been regulated in depth. However, in the context of today's global economic developments, particularly with the influx of trade and investment liberalization, companies increasingly demand flexibility in employment relationships. This led to the enactment of Law Number 11 of 2020 on Job Creation, which was subsequently reinforced by Law Number 6 of 2023, followed by Government Regulation Number 35 of 2021. These regulations specifically address Fixed-Term Employment Agreement, outsourcing, working hours, rest periods, and termination of employment.

One important aspect of Government Regulation No. 35 of 2021 is Articles 15–17, which stipulate the obligation to provide compensation to Fixed-Term Employment Agreement workers. In this context, the regulation establishes the requirement for employers to pay compensation to Fixed-Term Employment Agreement employees at the end of their contract period. This provision aligns with the Constitutional Court's decision reviewing Law No. 6 of 2023 on Job Creation, in which the Court emphasized that contract workers meeting certain criteria are entitled to receive appropriate compensation. Furthermore, the decision also establishes clearer limitations to prevent the practice of repeatedly extending contracts, which tends to benefit only the employer (Sari & Fauzi, 2025).

The regulation regarding the provision of compensation to Fixed-Term Employment Agreement workers is set out in Article 15 paragraph (1) of Government Regulation Number 35 of 2021, which states that "Employers are obliged to provide compensation to workers whose employment relationship under a Fixed-Term Employment Agreement has ended," and Article 17 of the same regulation, which provides that "In the event that either party terminates the employment relationship before the expiration of the period specified in the Fixed-Term Employment Agreement, the employer is obliged to provide compensation as referred to in Article 15 paragraph (1), the amount of which is calculated based on the duration of the Fixed-Term Employment Agreement that has been served by the worker." The provisions regarding the payment of compensation to Fixed-Term Employment Agreement workers aim to provide a social safety net for contract employees who lack job security, as they affirm the employer's obligation to pay compensation when the employment relationship ends. The company has an absolute duty to fulfill this obligation. It is important to note that the basis for this obligation does not merely stem from an agreement between the parties, but is derived from Government Regulations and the applicable legislation (Hidayati & Others, 2024).

Through Articles 15 to 17 of Government Regulation Number 35 of 2021, the Government stipulates the obligation to provide compensation payments to fixed-term employees who have worked for a minimum of one continuous month. This provision constitutes an important reform within the national labor law system, aligned with the spirit of the Job Creation Law, namely to create a more equitable yet competitive employment climate (Priyanto, 2023). In essence, compensation for fixed-term employees is a product of responsive and populist legal policy, as it addresses long-standing demands from labor groups to abolish fixed-term employment while simultaneously providing a social safety net for contract workers who lack employment security (MD, 2011).

However, in practice, this provision has opened a legal loophole that may be exploited by certain fixed-term employees to obtain compensation in a disproportionate manner—even when termination of employment occurs due to disciplinary violations or when the employee resigns on their own initiative (Lestari, 2022). The absence of clear norms regarding exceptions to the entitlement of compensation, coupled with weak labor-inspection mechanisms, are the primary triggers for the widespread abuse of this right (Subowo et al., 2025).

This phenomenon becomes particularly compelling to examine through two complementary theoretical frameworks, namely:

1. Jeremy Bentham's utilitarian theory of law—that the purpose of law is to create "the greatest happiness of the greatest number." A good law is one that produces the greatest social benefit for as many parties as possible, rather than protecting one party at the expense of another (Besar, 2016).

2. Gustav Radbruch's three basic values of law (Rechtsidee)—justice (Gerechtigkeit/justitia), legal certainty (Rechtssicherheit/certitudo juris), and utility or the social purpose of law (Zweckmäßigkeit/expedientia). According to Radbruch, a legal norm can only be deemed valid and legitimate if it balances all three values. When one value is sacrificed for another (for example, when legal certainty is compromised solely to benefit one side), the law loses its legitimacy (Rahardjo, 2000).

In the context of fixed-term employees compensation payments, Radbruch's three values serve as an appropriate evaluative instrument:

1. Justice (justitia) → Is compensation still fair when an employee who commits a serious violation is nevertheless entitled to receive it?
2. Legal certainty (certitudo juris) → Do ambiguous norms lacking explicit exceptions provide sufficient certainty for employers in managing labor-related risks?
3. Utility (expedientia) → Does this regulation truly create shared welfare, or does it instead generate moral hazard, reduce corporate competitiveness, and ultimately diminish opportunities for new employment?

If one or two of the above values are undermined—as is presently the case—then, according to Radbruch, the law has lost its moral binding force and must be reformed in order to restore its ideal balance.

By integrating Bentham's utilitarian theory and Radbruch's three fundamental legal values from the outset, this research aims to:

1. Identify the forms of legal-loophole exploitation by fixed-term employees in obtaining compensation payments;
2. Analyze why the existing regulatory framework has failed to achieve a balance between justice, legal certainty, and social utility; and
3. Formulate normative recommendations so that fixed-term employees payments truly function as an instrument of protection that is fair and beneficial for all parties, rather than becoming a tool for abuse by a select few.

Thus, this study is not only normative-dogmatic in nature but also critical-progressive: assessing the extent to which Indonesia's current labor-law regime satisfies Radbruch's standards of legitimacy and delivers maximum social benefit in accordance with Bentham's principles.

RESEARCH METHOD

The research method employed in this study is normative legal research, which is conducted by examining library materials or secondary data. The materials analyzed in normative legal research consist of library sources or secondary data (Soekanto & Mamudji, 2015). Library materials consist of primary and secondary sources. Primary sources include books, journals, dissertations, and theses. Materials derived from secondary sources include abstracts, indexes, government publications, and other reference materials (HS & Nurbani, 2022). This study examines various research objects in the form of legal regulations or norms that relate solely to compensation for Fixed-Term Employment Agreements.

The primary data source in normative legal research is library-based data; therefore, the data sources are referred to as legal materials. The legal materials analyzed in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials comprise sources that possess binding authority and serve as the principal foundation for the research (Wibowo & Matheus, 2023). The legal materials emphasized by the author are statutory regulations related to Fixed-Term Employment Agreement compensation, namely:

1. Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower.
2. Law of the Republic of Indonesia No. 6 of 2023 on the Ratification of the Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law; and
3. Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment.

Secondary legal materials primarily consist of legal textbooks, including theses, legal dissertations, and legal journals. The function of secondary legal materials is to provide researchers with a form of guidance or indication regarding the direction of the research. When the material takes the form of a thesis, dissertation, or an article in a legal journal, it may inspire the researcher and serve as a starting point for initiating the study. (Marzuki, 2016).

Tertiary legal materials are supporting legal sources that provide guidance on primary and secondary legal materials, such as legal dictionaries, encyclopedias, language dictionaries, articles, and internet-based sources relevant to this writing.

RESULT AND DISCUSSION

Forms of Legal Loophole Utilization by Fixed-Term Employment Workers

The regulation on the provision of compensation for Fixed-Term Employment Agreement workers under Article 15 paragraph (1) of Government Regulation Number 35 of 2021 stipulates that “Employers are obligated to provide compensation to workers/laborers whose employment relationship is based on a Fixed-Term Employment Agreement.” However, this provision does not explicitly distinguish between the termination of an employment relationship due to the natural expiration of the contract period and termination resulting from disciplinary violations or the worker’s resignation.

The lack of clear boundaries creates a legal loophole that may be exploited by workers to still obtain compensation even when the reason for the termination of the employment relationship is not aligned with the principles of fairness and proportionality. Based on the normative analysis, there are potentially two forms of legal loophole utilization that may occur, namely:

a. Workers Who Commit Violations of Company Regulations and Receive Warning Letters Leading to Termination of Employment

In the practice of Fixed-Term Employment Agreement employment relationships, workers often commit violations of company rules, such as being absent without a valid reason, breaching workplace ethics, or failing to meet established performance targets. Under Article 62 of Law Number 13 of 2003, if either party terminates the employment relationship before the expiration of the period stipulated in the Fixed-Term Employment Agreement, the party who terminates it is required to pay compensation equal to the worker’s wages up to the end of the contract period.

However, problems arise when the termination of employment is carried out by the employer due to disciplinary violations committed by the worker. In such circumstances, a worker who is dismissed after the accumulation of Warning Letters (SP1, SP2, and SP3) may still claim the right to compensation on the basis that the employment relationship has “ended” as referred to in Government Regulation Number 35 of 2021.

In substance, the termination of an employment relationship due to violations of company regulations cannot be equated with the normal expiration of a contract. In such circumstances, the worker has breached the principle of good faith within the employment relationship. The principle of good faith is a fundamental foundation in every agreement. This principle is regulated under Article 1338 paragraph (3) of the Indonesian Civil Code, which articulates that agreements must be executed with sincerity and honesty. It mandates that the parties bound by an agreement must carry out the essence of the agreement based on mutual trust, strong confidence, and good faith. (Adam et al., 2022).

However, because Government Regulation Number 35 of 2021 does not expressly provide exceptions, workers who are terminated due to misconduct may argue that their contract has been “ended,” and therefore, based on Article 17 of the Regulation which states, “In the event that either party terminates the employment relationship before the expiration of the period stipulated in the Fixed-Term Employment Agreement, the employer shall provide compensation as referred to in Article 15 paragraph (1), the amount of which is calculated based on the duration of the Fixed-Term Employment Agreement that has been performed by the worker/laborer” they are still entitled to compensation. This situation demonstrates the existence of a legal loophole that allows workers to obtain compensation even when the termination results from their own wrongdoing.

This situation genuinely occurs in industrial relations practice, and the author has personally experienced it. At the author’s workplace, there was a Fixed-Term Employment Agreement worker with a one-year contract period. However, upon entering the tenth month of the Fixed-Term Employment Agreement term, the worker was found to have used company funds—intended for the purchase of spare parts necessary to support the company’s business operations—for personal purposes. As a consequence, the employer demanded that the worker reimburse the misused company funds. In response, the worker submitted a resignation and sought to repay the misappropriated funds by requesting that the compensation payment for the ten months of Fixed-Term Employment Agreement employment be calculated and used to offset the amount of money owed to the company.

From the perspective of legal utility, this practice clearly diminishes social benefit because it grants an advantage to the party who committed the violation. The law thereby loses its moral function as an instrument to uphold discipline and fairness within employment relationships.

b. Workers Who Intentionally Reduce Productivity or Act Indisciplinarily to Avoid Paying Compensation for Resignation

Another potential phenomenon is Fixed-Term Employment Agreement workers who wish to resign before the contract period ends but seek to avoid the obligation to pay compensation as stipulated in Article 62 of Law Number 13 of 2003.

To achieve this objective, some workers deliberately reduce their work productivity, violate company regulations, or display indisciplined behavior in order to prompt the employer to take the initiative to terminate the employment relationship first. By doing so, the worker can avoid the obligation to pay compensation, and even, under Article 17 of Government Regulation Number 35 of 2021 concerning the employer's obligation to provide compensation, the worker may still claim compensation on the basis that the employment relationship ended due to the company's decision.

Such practices constitute an abuse of rights that contradicts the principle of good faith in the performance of agreements. Juridically, these actions also violate the principle of responsibility in employment contracts, whereby each party is obligated to carry out the terms of the agreement with sincerity and loyalty to its purpose. From a normative perspective, Government Regulation Number 35 of 2021 does not provide a clear evidentiary mechanism to determine which party is responsible for the termination of the employment relationship. As a result, situations like this often lead to legal uncertainty and increased economic burdens for employers, as workers who actually intend to resign end up receiving compensation.

When viewed from the perspective of legal utility, this condition does not provide balanced social benefits. According to Jeremy Bentham, legal utility is achieved when the law creates the greatest happiness and welfare for the greatest number of people. In this case, the imbalance in the norms results in legal benefits being enjoyed only by the workers, while employers experience losses and uncertainty. Consequently, the law loses its effectiveness as an instrument of social equilibrium.

Furthermore, according to Satjipto Rahardjo, the law should be living and function substantively to serve human interests and provide service to humanity. (Rahardjo, 2000). A legal system that allows the abuse of rights without normative correction is not a beneficial law, but rather a law that is socially dead. Therefore, normative reform is required one that is not merely formalistic, but also embodies moral values, justice, and collective welfare.

Analysis from the Perspective of Legal Utility

According to Jeremy Bentham, the essence of all law rests on one principle that is remarkably simple yet profoundly deep: to create the greatest happiness for the greatest number. A good law is not one that merely fills the pages of statute books, but one that is capable of carefully weighing the interests of the individual against the interests of society at large, and then finding the point of equilibrium that benefits all parties the most.

In Bentham's view, every legal rule must be tested against a single fundamental question: does this rule, in the end, increase or actually diminish the total happiness of society? If a court decision leaves the victim of aggravated assault feeling that justice has not been upheld, destroys the perpetrator's family through disproportionate punishment, and makes society fearful because the law appears weak in the face of violence, then that decision has failed to fulfill the utilitarian function that, for Bentham, constitutes the primary purpose of law. Conversely, a punishment that is precisely calibrated—one that succeeds in giving the public a sense of security, the victim a sense of satisfaction, and the perpetrator a valuable lesson without crossing the boundary of humanity—that is the law that is truly useful.

The principle of utility does not mean that law must always side with the majority by sacrificing the minority; rather, it demands that we calculate honestly: how much suffering is prevented, how much fear is eliminated, and how much trust is rebuilt when the law is enforced firmly yet still justly. Amid the surge of street violence, mass brawls, and aggravated assaults that all too often end with lenient sentences, Bentham's perspective reminds us that a law that is excessively lenient is not compassion—it is a betrayal of collective happiness. For when society feels that the law no longer protects them from violence, the greatest happiness of the greatest number becomes nothing more than an empty ideal that will never be attained.

In the context of Fixed-Term Employment Agreement compensation, the primary objective is to provide recognition for the worker's period of service without creating unfairness for employers. However, when workers exploit legal loopholes to obtain compensation inappropriately, the social benefit of the law becomes imbalanced. While the interests of workers are protected, employers simultaneously suffer economic losses and uncertainty, which may ultimately reduce employment opportunities. Therefore, from the perspective of legal utility, the current implementation of Fixed-Term Employment Agreement compensation provisions cannot be said to yield optimal benefits for all parties. A legal norm that is too broadly interpreted may result in a distortion of utility, in which formal protection diminishes substantive justice.

Moreover, according to Satjipto Rahardjo, law must be positioned as an instrument for achieving justice and human well-being, rather than merely a rigid system of rules. (Rahardjo, 2008). In this context, labor law must be oriented toward achieving a balance between worker protection and business sustainability. Therefore, lawmakers should not focus solely on protecting one party, but must also consider the effectiveness and sustainability of the employment system.

Fixed-Term Employment Agreement compensation can be considered effective only if it fulfills three elements of legal utility:

a. Beneficial for workers, in the form of economic security after the termination of the employment contract
b. Beneficial for employers, in the form of legal certainty and stability in employment relations; and
c. Beneficial for the state, in the form of the creation of order and social justice within the national labor system.

If a legal norm benefits only one party while creating unrest for the other, the law loses its utility. In such circumstances, the law no longer functions as an instrument of welfare but instead becomes a source of conflict. Therefore, lawmakers must strike a balance between legal certainty, justice, and utility, as articulated by Gustav Radbruch in his theory of the three fundamental values of law (Rechtsidee).

Based on the analysis above, a reorientation of the policy on compensation for Fixed-Term Employment Agreement workers is necessary by taking into account a more comprehensive application of the principle of legal utility. This can be achieved through:

a. Reaffirming the objective requirements for the granting of compensation (for example, exclusions for workers whose employment is terminated due to misconduct);
b. Strengthening labor supervision to prevent the abuse of rights; and
c. Formulating technical guidelines for the implementation of compensation to avoid multiple interpretations.

CONCLUSION

Based on the analysis of the implementation of the provisions on compensation for workers under Fixed-Term Employment Agreements as regulated in Government Regulation Number 35 of 2021, it can be understood that, normatively, these provisions are intended as an instrument of legal protection and recognition of the service period of Fixed-Term Employment Agreement workers. However, in practice, there remains a lack of normative clarity and gaps in regulation that create opportunities for workers to exploit legal loopholes to obtain compensation in a manner that is inconsistent with the principles of fairness and proportionality.

This condition demonstrates that the prevailing positive law has not fully reflected the principle of legal utility as articulated by Jeremy Bentham, whereby the law should create the greatest benefit for the greatest number of people. When legal norms instead allow the abuse of rights, the law's objective of creating a balanced distribution of benefits between workers and employers becomes disrupted. In this context, the law loses its primary function as a social instrument for upholding substantive justice and balancing competing interests.

From the perspective of Satjipto Rahardjo's progressive legal theory, the law must not stop at the level of normative text but must live and serve human needs. Therefore, reforms to the regulation on Fixed-Term Employment Agreement compensation are necessary so that labor law can function in a more adaptive, responsive, and socially beneficial manner. Clarifying the norms regarding the requirements and conditions for granting compensation becomes essential to ensure that the law does not create opportunities for abuse and continues to maintain fairness between the parties. In addition, strengthening labor supervision mechanisms and formulating technical guidelines for the uniform implementation of compensation across regions will help create legal certainty and prevent the emergence of moral hazard within employment relationships.

Thus, the direction of future labor law reform should not focus solely on formal protection for workers but must also emphasize a balanced distribution of social utility between workers and employers. Through normative reforms and strengthened oversight grounded in the principle of legal utility, it is expected that Indonesian labor law can genuinely reflect the objective of social justice in line with the spirit of Pancasila, namely the realization of shared welfare within a harmonious and sustainable industrial relations system.

REFERENCES

Adam, R. C., Sudiro, A., & Farrell, M. (2022). *Anatomi Hukum Perdata* (1st ed.). Rajawali Press.

Besar. (2016). *Utilitarianisme Dan Tujuan Perkembangan Hukum Multimedia di Indonesia*. Binus.

Hidayati, N., & Others. (2024). Pengaturan Pemberian Kompensasi Bagi Pekerja dalam Hubungan Kerja Berdasarkan Perjanjian Kerja Waktu Tertentu (PKWT). *Momentum Jurnal Sosial Dan Keagamaan*, *13*(2), 138.

HS, S., & Nurbani, E. S. (2022). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Rajawali Pers.

Lestari, D. P. (2022). Analisis yuridis normatif pemberian kompensasi perjanjian kerja waktu tertentu (PKWT) berdasarkan Undang-Undang Cipta Kerja. *Jurnal Hukum Lex Generalis*, *3*(5), 339–349.

Marzuki, P. M. (2016). *Penelitian Hukum*. Kencana.

MD, M. M. (2011). *Politik Hukum di Indonesia*. Rajawali Pers.

Priyanto, I. A. (2023). Perlindungan Hukum Terhadap Pekerja PKWT Dalam Pemberian Uang Kompensasi. *Cakrawala -- Repositori IMWI*, *6*(2), 927.

Rahardjo, S. (2000). *Ilmu Hukum* (5th ed.). Citra Aditya Bakti.

Rahardjo, S. (2008). *Membedah Hukum Progresif* (3rd ed.). Kompas.

Sari, A. P. P., & Fauzi, E. (2025). Perlindungan Hukum Terhadap Pekerja Pada Perjanjian Kerja Waktu Tertentu (PKWT) Dalam Hal Pemberian Uang Kompensasi Setelah Berakhirnya Kontrak. *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan*, *1*(4), 428.

Soekanto, S., & Mamudji, S. (2015). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. RajaGrafindo Persada.

Subowo, A., Indradjaja, N., & Chamdani, C. (2025). Perlindungan Hukum Menurut Persepektif Undang-Undang Cipta Kerja Dalam Pemberian Kompensasi Pekerja PKWT di PT Buana Megah Papermills Pasuruan. *Wijaya Putra Law Review*, *4*(1), 50.

Wibowo, S. H., & Matheus, J. (2023). Tinjauan Yuridis Pemberian Uang Pesangon Kepada Karyawan yang Di-PHK Pasca Pengesahan Perppu Cipta Kerja. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, *10*(5), 2560–2565. https://doi.org/http://dx.doi.org/10.31604/jips.v10i5.2023.2560-2565