



KEMNAKER



International
Labour
Organization

Guidelines for the Implementation of Employment Contracts in the Export-Oriented Garment Sector




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QUOTES

“These guidelines provide clarification on how industrial relations should be implemented – something that is frequently questioned in the field, including in the export-oriented garment industry. I hope that the publication of this book will help labour inspectors in improving guidance and oversight of workplace relations, in line with existing laws and regulations, and will also be useful in upholding the normative industrial rights of workers alongside joint efforts to protect and develop the competitiveness of Indonesia’s export-oriented garment industry.”



Sugeng Priyanto

Director General of Labour Inspection and Occupational Safety and Health, Ministry of Manpower of the Republic of Indonesia

“The Directorate General of Industrial Relations and Social Security welcomes the publication of these guidelines on the use of employment contracts in the export-oriented garment industry. With this book, we hope that stakeholders in the export-oriented garment industry will be able to more easily understand the regulations surrounding employment contracts in Indonesia.”



Direktur Jenderal,
Haiyani Rumondang
NIP. 19640419 198903 2 001

Haiyani Rumondang

Director General of Industrial Relations and Social Security, Ministry of Manpower of the Republic of Indonesia

“It is a great pleasure for me to witness how the ILO through the Better Work Indonesia (BWI) programme has collaborated closely with the Directorate General of Labour Inspection and Occupational Safety and Health (OSH) and the Directorate General of Industrial Relations and Social Protection of the Ministry of Manpower in developing these guidelines on the use of PKWT (non-permanent employment contracts) in export-oriented garment factories. I am also satisfied with the fact that the development of the guidelines involved relevant actors along the way including representatives of APINDO, the Garment and Textile Union (GARTEKS), Serikat Pekerja Nasional (SPN) and the two Tekstil, Sandang dan Kulit (TSK) unions, as well as factories’ management and international buyers that are part of the BWI programme.”

There are many more practical questions on the use of the non-permanent contract or known as PKWT in Indonesia abbreviation that have not been answered by these guidelines. Not all concerns around the use of such contracts are being dealt with by these guidelines either. Nevertheless the guidelines are a strong testament of the goodwill shown by all relevant parties in working together, in order to improve the implementation of Indonesian labour law and regulations, for the interest of both workers and the industry. The ILO hopes that the readers, be them government officials, union leaders and members as well as factories’ managers in the field, will find the guidelines useful and a step forward in the right direction.”



Michiko Miyamoto

Director of ILO Office for Indonesia and Timor-Leste



CHAPTER I

Introduction

BACKGROUND

Business Models and Working Conditions in Indonesia's Garment Sector

The garment export industry covers companies engaged in the production and export of garments/clothing, shoes, leather-based products, textiles, embroidery and washing/laundry products. The garment industry is a highly competitive and fast-moving order-based industry. The type of products, the need to use new or specialized production techniques, and business' expansion plans can determine the need to hire fewer or more workers. In 2016, 35% of BWI factories employed up to 75% of workers on non-permanent contracts (referred to as PWKT in Indonesian).

Employers and trade unions believe that permanent contracts carry less risk and are important for workers' livelihoods and welfare. Despite this, for industries such as the export-oriented garment industry, where there are temporary or seasonal needs to be filled, or new products to be developed, the use of non-permanent contracts is allowed as long as the practice is in line with existing laws and regulations. However, the implementation of non-permanent contracts in this industry is still marred by non-compliance, such as factories ignoring the limited number of times they

are allowed to extend or renew contracts, which is regulated by national law. There are also different interpretations of how non-permanent contracts should be implemented in this sector. This situation means that laws are not uniformly implemented which could lead to violation of workers' rights.

Why Do We Need a "Guideline"?

The phenomenon of non-permanent contracts has attracted a lot of public attention, for example with regard to how long non-permanent contracts run for and the conditions under which they are allowed¹. This is as a result of non-compliance and confusion due to different interpretations as to whether non-permanent contracts can be used in the garment sector. Therefore, a guideline for the implementation of employment contracts is required so that a balance is found between the need to protect workers and the competitiveness of the sector.

OBJECTIVES

The objectives of these guidelines are to:

- Clarify the regulations on non-permanent contracts as stipulated in the Law no. 13 / 2003 on Manpower, and the Decree of the Minister of Manpower and Transmigration No. KEP:100/MEN/VI/2004 on Requirements for Implementation of Fixed Term Employment Contracts;

- Align perceptions and provide a uniform interpretation concerning the implementation of employment contracts in the export-oriented garment sector; and,
- Promote decent work and improve the competitiveness of the export-oriented garment industry in Indonesia.

LEGAL BASIS

The provisions on non-permanent contracts are regulated in:

1. Law no. 13 / 2003 on Manpower

Article 59 and its explanation:

1. *A non-permanent work contract can only be made for a certain job, which, according to type and nature or activity of the job, will be completed in a specified period of time, namely:*
 - a. *Work that is done once or that is temporary in nature;*
 - b. *Work with a completion estimation of a not-too-long period of time and no longer than 3 (three) years;*
 - c. *Seasonal work; or*

- d. Work that is related to a new product, new activity, or an additional product that is still in the experimental or try-out stage.
- 2. A non-permanent work contract cannot be made for jobs which are permanent in nature.
- 3. A non-permanent work contract can be extended or renewed.
- 4. A non-permanent work contract that is based on a specified period of time may be implemented for a period of no longer than 2 (two) years and may only be extended one time for a period of no longer than 1 (one) year.
- 5. An business that intends to extend a non-permanent work contract for a specified period of time shall communicate the intention in writing to the concerned worker/laborer no later than 7 (seven) days before the expiration of the work agreement.
- 6. The renewal of a non-permanent work contract may only be made after a period of 30 (thirty) days of grace period has passed after the expiry of the work agreement;; the renewal of a non-permanent work agreement may only be made one time and for a period of no longer than 2 (two) years.
- 7. A non-permanent work contract which does not meet the provisions as referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6) shall by law become a permanent work agreement.

- 8. Other matters that are yet not regulated under this Article shall be further stipulated by a Ministerial Decree.

Explanation for Article 59 Paragraph (2)

What is meant by a job which is permanent in nature in this paragraph is a continuous, uninterrupted job that is not confined by a timeframe and is part of a production process in a company, or jobs that are not seasonal. A job that is not seasonal is a job that does not depend on the weather or a certain condition. If a job is continuous, uninterrupted one that is not confined by a timeframe and is part of a production process, but depends on the weather or the job is needed because of the existence of a certain condition, then the job is a seasonal job which does not belong to permanent employment, and hence can be subjected to a work agreement for a specified period of time.

2. Decree of the Minister of Manpower and Transmigration Number KEP100/MEN/VI/2004 regarding Implementing regulation on the non-permanent contracts (Kepmen 100/2004)

Article 3

- 1. Non-permanent contracts for work completed once or are temporary in nature are non-permanent contracts based on the completion of the specified

work.

- 2. Non-permanent contracts as referred to in paragraph (1) shall be made for a period of no longer than 3 (three) years.
- 3. In the event that the specified work agreed in a non-permanent contract as referred to in paragraph (1) can be completed sooner than agreed, the non-permanent contract shall be terminated by law upon completion of the work.
- 4. For non-permanent contracts based on the completion of specified work, the limits of work must be documented as when work is declared as completed.
- 5. In the event that non-permanent contracts are made based on the completion of specified work but due to certain conditions the work can not be completed, non-permanent contracts can be renewed.
- 6. A renewal as referred to in paragraph (5) shall be made after exceeding the grace period of 30 (thirty) days after the expiration of the work contract.
- 7. During the grace period of 30 (thirty) days as referred to in paragraph (6) there is no employment relation between the worker and employer.
- 8. The parties may regulate elements other than the provisions of paragraphs (5) and (6) provided for in the contract.

Article 4

1. *Seasonal work is work that depends on seasons or weather.*
2. *Non-permanent work contracts made for work as referred to in paragraph (1) may only be applied for one type of work during a particular season.*

Article 5

1. *Work that should be done to meet specific orders or targets can be done with non-permanent work contracts as seasonal work.*
2. *Non-permanent work contracts made for work as referred to in paragraph (1) shall be applied only to workers/laborers who undertake additional work.*

Article 6

An employer who employs workers/laborers under non-permanent contracts as referred to in Article 5 shall make a list of names of workers/laborers who undertake additional work.

Article 7

Non-permanent work contracts as referred to in Article 4 and Article 5 cannot be renewed.

Article 8

1. *Non-permanent work contracts may be made with workers/laborers to do work related to new products, new activities, or additional products that are still in experiment or try-out.*
2. *Non-permanent work contracts as referred to in paragraph (1) may only be made for a period of no longer than 2 (two) years and may be renewed one time for a period of no longer than one year.*
3. *Non-permanent work contracts as referred to in paragraph (1) shall not be renewed.*

Article 9

Non-permanent work contracts as referred to in Article 8 shall only be applicable for workers/laborers who perform work beyond the ordinary activities or work of the company.





CHAPTER II

Potrait of Current Situation In The Export-Oriented Garment Sector

AN OVERVIEW OF THE GARMENT EXPORT INDUSTRY

The garment and textile industry are important contributors to the Indonesian economy. Indonesia is among the top 10 global garment exporters, with textile exports valued at almost US\$12 billion in 2017. The garment/clothing industry represents 65% of total textile exports.

The garment export sector, like many other export businesses, is dependent on orders from international buyers. The volume of orders from international buyers fluctuates and is linked to market needs. Companies confirm their order schedule three to six months ahead of delivery time. Negotiations with international buyers occur on a continuous basis and prices change depending on the brand and type of product.

In the garment industry, many companies may have a “slack” season (where orders are reduced by 40%) for four to five months each year. However, this varies, and some companies, such as women’s underwear companies, experience fluctuation of only about 10% of capacity.

Some companies are more financially stable than others. These companies will have already garnered sufficient buyer interest and fostered commercial relationships that enable them to predict their production needs in the medium to long term.

The garment production flow chart below shows the different steps in the process, from procurement of raw materials to packaging and storage.



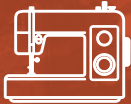
GARMENT PRODUCTION FLOW



FABRIC WAREHOUSE



CUTTING



SEWING



FINISHING/PACKING



FINISHED GOOD WAREHOUSE

- ◆ If needed these would be embroidery/printing, selected panel, e.g pocket
- ◆ If there is no capacity/machinery available in-house, will be subcontracted

- ◆ If laundry/washing/dyeing the process can be done in-house or subcontracted if no such facility available on-site



AN OVERVIEW OF EMPLOYMENT CONTRACTS IN THE INDONESIAN GARMENT SECTOR

About half of the almost 400,000 workers employed in BWI factories are recruited using non-permanent work contracts. In 2017, half of the factories enrolled in BWI did not comply with limits on the use of non-permanent contracts or PKWT. This includes legal limits on contract duration and the number of extensions.

Having a higher percentage of non-permanent workers is in indication that the factory may have issues in other important areas that impact workers. Non-compliance data collected by BWI from 141 factories in 2017 and 2018 demonstrates that factories that do not comply with limits on the use of non-permanent workers are more likely to also be non-compliant in overtime wages/hours.

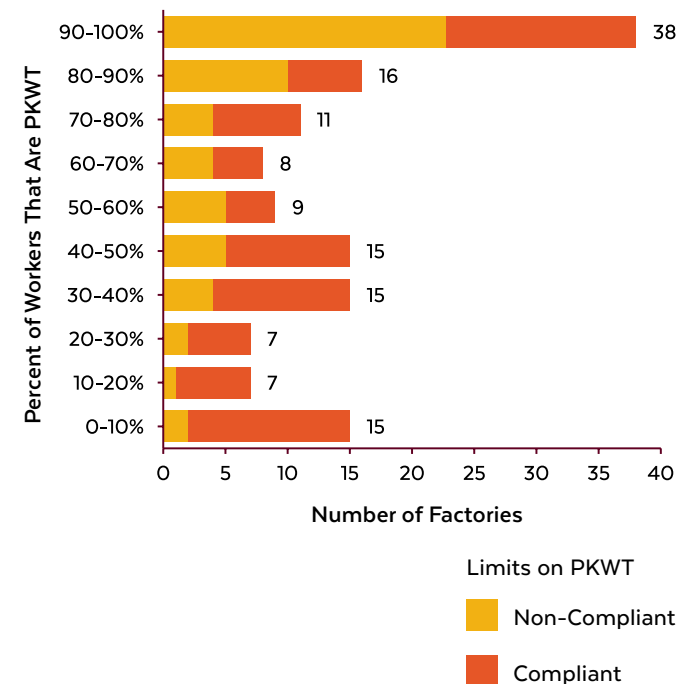
Factories non-compliant with the regulations concerning the use of non-permanent workers are three times more likely to be non-compliant with paying the minimum wage for these workers. Factories non-compliant with employment rules for non-permanent workers are over three times as likely to be non-compliant in overtime hours, and twice as likely to be non-compliant in paying overtime wages when compared to factories that are compliant with rules regarding the employment of non-permanent workers.

Additionally, the risk of non-compliance increases as the percentage of the workforce increasingly comprises of non-permanent workers. The figure below illustrates that there is a significant number of factories (38) of the 141 factory sample where the almost entire workforce is made up of non-permanent workers. In these factories, more non-compliances occurred due to factories' failure to follow regulations on the use of non-permanent workers.

The use of non-permanent contracts can also lead to industrial relations issues in situations where:

- Non-permanent contracts are not extended when female workers fall pregnant;
- Other entitlements, such as paid leave, are not provided in respect to non-permanent contracts;
- Workers refuse to forego their subsidized social security (e.g. the Jamkesmas program, which provides free rice, school, etc), and move to the BPJS Kesehatan program provided by the factories. This happens mainly because factories only offer non-permanent contracts for a short duration;
- Trade unions report that their members' non-permanent contracts are not extended due to their union activities; and,
- Non-permanent contracts ending shortly prior to when the Religious Festival Allowance (Tunjangan Hari Raya) should be paid to all workers.

DISTRIBUTION OF FACTORIES BY PERCENTAGE OF PKWT WORKERS



OTHER ISSUES ARISING

In addition to the above-mentioned effect on compliance and industrial relations, other issues arise from the use or excessive use of non-permanent work contracts. Non-permanent contracts can create challenges on how to manage workers who perform similar tasks but have different employment arrangements. Investment in staff training and innovation may also be lower with respect to non-permanent workers and this can severely impact business growth.

Most companies in Indonesia would prefer to engage workers on a permanent basis. In fact, some international brands require their companies to only hire workers on permanent contracts to avoid risks associated with the use of non-permanent contracts. However, employers are reluctant to use permanent contracts due to the high severance costs in the event of dismissal or termination.





CHAPTER III

How Should Employment Contracts Be Used In The Garment Sector

1. CAN NON-PERMANENT CONTRACTS BE USED IN THE EXPORT-ORIENTED GARMENT SECTOR? BASED ON WHAT CLASSIFICATION AND LEGAL BASIS?

Yes, non-permanent contracts can be used in the export-oriented garment sector. The use of non-permanent contracts in the garment sector should follow Law no. 13/2003, article 59 (1), letter c and d, in cases of:

- a. Work that is “seasonal work” (Law no. 13/2003, Article 59 paragraph (1) point c) or
- b. Work that is related to a new product, new activity or additional product that is still in the experimental or try-out phase (Law no 13/2003, Article 59 paragraph (1) point c).

Non-permanent contracts can be issued only **for a certain type of work, which, due to the type and nature of the work, will be completed in a specific period of time**. This is the opposite of “permanent work”; that is, work that is continuous, not confined by a timeframe, uninterrupted, and part of a regular production process in a company.

2. CAN AN INCREASE IN PRODUCTION OR AN UNEXPECTED DEMAND BE CATEGORIZED AS “SEASONAL WORK”? CAN ADDITIONAL JOBS

ARISING FROM AN UNEXPECTED ORDER OR ORDER FLUCTUATION BE TRANSLATED AS “SEASONAL WORK”?

Yes, an increase in production or an unexpected demand can be categorized as “seasonal work”.

The meaning of seasonal work as stipulated in Article 59, paragraph 1, point c) of Law no 13/2003 and in Ministerial Decree no. 100/2004 are:

1. Work whose performance depends on the season or weather (Article 4, Ministerial Decree no. 100/2004),
2. (2) Work carried out to fulfil a particular order or target (Article 5, Ministerial Decree no. 100/2004)

From the two categories of seasonal work above, work where performance depends on the weather (e.g. agriculture) is not applicable to the export-oriented garment sector.

The second possible category of seasonal work **is work carried out to fulfil a specific order or target, as long as it is applied to workers who are doing additional work**. This is the form of seasonal work that applies to the export-oriented garment sector, under Article 5, paragraph (1) and (2) of Ministerial Decree no. 100/2004.

It is a fact that all factories rely on orders. However, in the garment sector, the level of order instability or uncertainty is high. Nonetheless, most factories have a certain amount of their production that is considered to be fixed or regular. This explains why half of all work contracts in the sector are of a permanent nature (see BWI statistics above). Therefore, work that is needed to fulfil additional orders or a certain target is understood to refer not to regular orders but rather to **additional orders that factories would not otherwise have the capacity to fulfil with their existing workforce**.

Work cannot be considered as “seasonal work” if that work is permanent or regular in nature; that is, it is work that happens every month of the year, regardless of the product, design, type of task (cutting, sewing, or packing), commissioning buyer, or price paid.

As described above, the only category of “seasonal work” that can be applied in the export-oriented garment sector, is additional work carried out to fulfil additional orders or targets. Therefore, when determining what can be considered seasonal work in the garment sector, local Manpower Offices should assess factories production patterns for the last year/s of operation. They should determine in how many months of the year a factory is active and what are their average workforce needs. Local Manpower Offices should conduct

comparisons for regular orders versus additional orders. If a factory has an average production capacity of 2000 pieces of clothing per year and receives an unexpected order that is beyond the regular factory's capacity, employers should be able to hire non-permanent workers to fulfil that temporary need.

Case Study 1

An export-oriented garment manufacturer employs 1000 workers on permanent contract. The employer wants to increase its capacity because they have a new buyer committed to placing a certain number of garment orders over six months. The employer decides to employ an additional 100 workers to work with the new buyer. These additional workers can be employed on non-permanent contracts, as these are additional orders and require additional work which cannot be done by the existing workforce of 1000 workers.

An employer may employ 100 workers on non-permanent contracts for a period of no longer than two years on the first contract; contracts are extendable once for a period of no longer than 1 year.

3. IS A CHANGE IN THE DESIGN OF CLOTHES OR AN ORDER OF A NEW PRODUCT VALID AS A REASON FOR USING NON-PERMANENT EMPLOYMENT CONTRACTS, EVEN IF THE ORDER IS CONSIDERED REGULAR? WHAT IS CONSIDERED TO BE A "NEW PRODUCT" (LAW NO. 13/2003, ARTICLE 59 PARAGRAPH (1) POINT D)?

Non-permanent contracts for work related to new products can be applied in this sector, as long as:

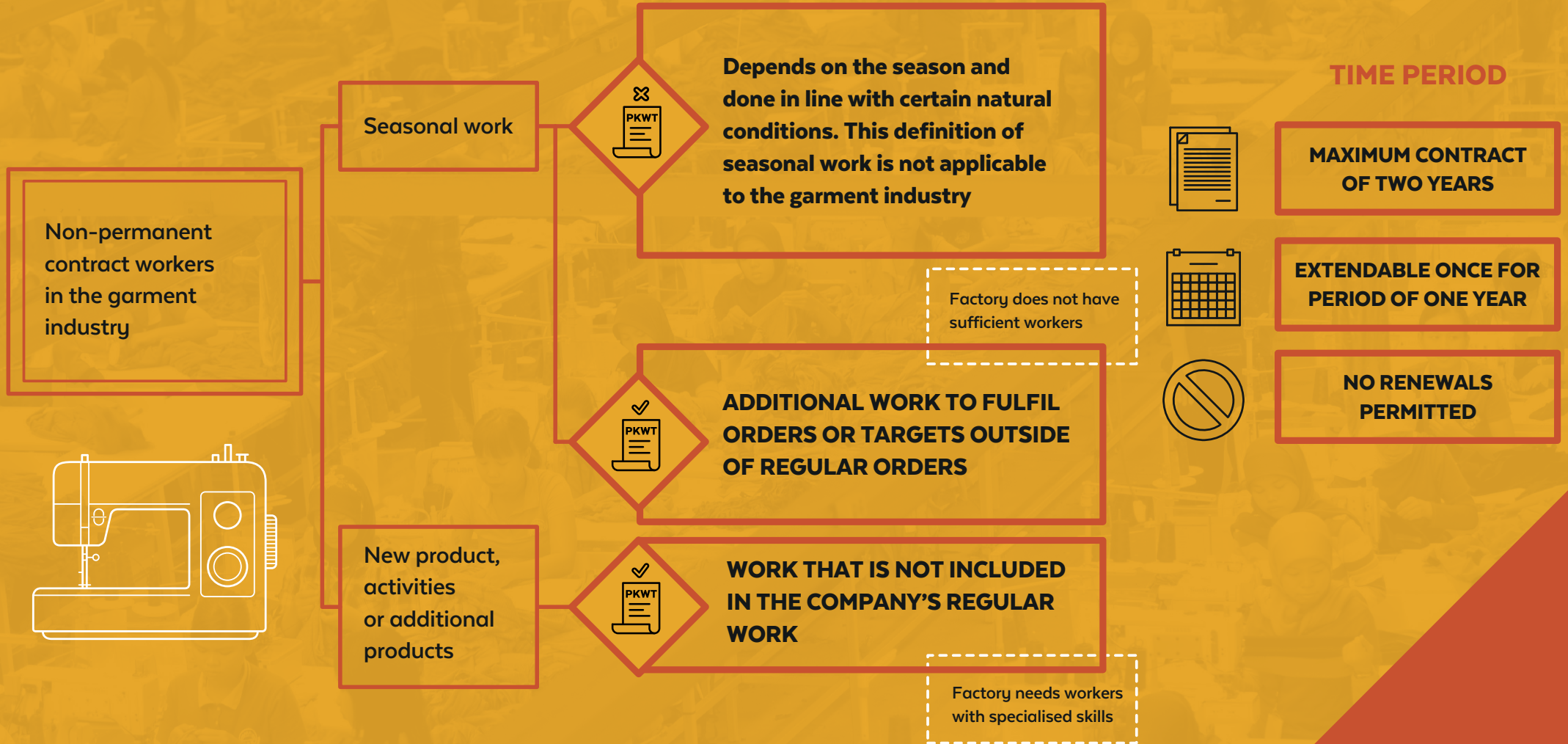
- The work is not part of a permanent or regular work;
- The contracts apply only to workers/laborers performing work other than ordinary activities or work usually performed by the company (Article 9, Ministerial Decree no. 100/2004).

A new product is a product that has never previously been produced by the company.

The use of non-permanent contracts for work related to new products or changes in design may only be used for new jobs/activities which have not existed before and constitute work beyond the company's usual activities or work (Articles 8 and 9 of Ministerial Decree no. 100/2004).

For example, certain designs or production techniques are popular in certain periods, designs may change and require workers with special skills, such as smocking work or embroidery work. Workers who have been assigned to work on

WHEN CAN GARMENT SECTOR EMPLOY PKWT?



a product on a regular basis may not have the skills to work on that new product. In this situation, the employment of workers with the required skills on non-permanent contracts is justified.

If the new product does not result in a new type of work, or is not additional work and is categorized as regular or routine work, then employment should be done under a permanent contract.

4. DOES SEWING BELONG TO THE “PERMANENT WORK” CATEGORY (OR CUTTING, FINISHING, ADMINISTRATION WORK)?

To answer to this question, we must remember that permanent work is continuous, uninterrupted work that is not confined by a timeframe and is a part of a production process in a company.

Sewing itself can be seen as an either permanent or non-permanent activity. Sewing or any other production processes in the garment sector can be divided into:

1. Processes that are a routine activity or a permanent job (Explanation of Article 59 paragraph (2) of Law no. 13/2003)
2. Processes associated with new products, new activities, or additional products that are still in the experiment or try-out (Article 8 of Ministerial Decree

no. 100/2004);

3. Processes that constitute additional work (Article 5 of Ministerial Decree no. 100/2004).

If the process belongs to category 1, employees must be recruited on permanent contracts. For categories 2 and 3, factories may employ workers on non-permanent contracts. The same is valid for any other activity and task such as cutting, finishing or administration work.

5. WHAT IS THE MAXIMUM CONTRACT DURATION A NON-PERMANENT WORKER CAN HAVE IN THE EXPORT-ORIENTED GARMENT SECTOR? HOW MANY TIMES CAN THE CONTRACT BE EXTENDED AND WHAT ARE THE CONDITIONS FOR AN EXTENSION TO BE ALLOWED?

The implementation of non-permanent work contracts in the export-oriented garment sector is as follows:

- a. “Seasonal work” in the context of meeting a particular order or target;
 - In this circumstance, the duration for a contract can be until the additional work is completed. For example, a job to complete an order in relation to a particular event.
 - This contract is categorized as non-permanent because it is based on period of time (Article 59 paragraph (4) of Law no. 13/2003). Therefore, the

duration can only be no longer than two years.

- This type of non-permanent contract **cannot be renewed**, but extension can be made in certain conditions:
 - If within the planned period, the agreed order or target cannot be fulfilled, the contract may be extended 1 (one) time for a period of no longer than 1 (one) year (Article 59 paragraph (1) of Law no. 13/2003).
 - If a contract extension agreement is made and recorded at the local Manpower Office.
- b. Work related to new products, new activities or additional products that are still in experimental or try out phases can only be made for a period of no longer than two years and may be extended for a period of no longer than one year and **no renewal is allowed**. Conditions are as follows:
 - If within the planned period, the agreed order or target cannot be fulfilled, the contract may be extended 1 (one) time for a period of no longer than 1 (one) year (article 59 paragraph(1)).
 - If a contract extension agreement is made and recorded at the local Manpower Office.

When determining which type of contract is allowed, garment businesses must:

- Opt for one of the two options above available to

them in terms of non-permanent contracts;

- The selected type/category of non-permanent contract should be clearly mentioned on the working agreement;
- Determine the terms of the extension (including the duration of the first contract and eventual extension)
- Register all non-permanent workers with the local Manpower Office.

Case Study 2: Multiple non-permanent contracts in the garment export industry

A worker had a non-permanent work contract for six months. The contract has been extended for another six months on multiple occasions over a period of two years:

1st non-permanent contract: six months

1st extension: another six months

2nd extension: another six months

Total extension with a pattern of extension for every six months: one year and six months

Is this practice allowed?

No. The continuous use of multiple non-permanent contracts as per the above example is not allowed. If the first non-permanent contract is for six months, then the permitted extension is a one time extension for a maximum period of one year.





6. CAN NON-PERMANENT WORK CONTRACTS BE REVISED IF THE REVISIONS ARE ACCEPTED BY ALL PARTIES?

Yes, contracts can be revised as long as all parties agree to the revisions. However, any revisions relating to the duration of the contract and the type of work required, must be in line with the relevant laws and regulations (see the case in point 5 above).

7. WHAT ARE THE LEGAL REQUIREMENTS FOR REGISTERING NON-PERMANENT WORK CONTRACTS WITH THE LOCAL MANPOWER OFFICE?

The requirements for registering non-permanent work contracts, along with contract extensions or revisions, are:

1. Submission of the application letter for registration, attaching the employment contract for each worker needing to be registered. According to article 54.1 of Law no. 13/2003, the contract should, at a minimum, contain:
 - a. Name and address of company and type of business;
 - b. Name, gender, age and address of worker;
 - c. Position or type of work;
 - d. Place of work;
 - e. Wages and method of payment;
 - f. Conditions of work, including the rights and obligations of employers and workers;
 - g. Starting date and period of employment contract;

- h. Place and date when the employment contract is signed;
- i. Signatures of the parties noted in the employment contract.

Employment contracts cannot be contrary to laws and regulations, nor to company regulations or collective bargaining agreements. For example, in respect to the starting date and period of employment contract, employers have to follow Article 54, paragraph 1, point g of Law no. 13/2003. It requires that **employers must ensure the starting date and period of employment is clearly stated in the contract and is defined in accordance with the type, nature and activities of the work.**

2. Non-permanent contracts must be made in duplicate with one copy for the employer and another copy for the worker.
3. In case any correction is made by the Manpower Office, the company shall revise the employment contract.
4. The employment contract must be made in writing in Latin alphabet and in Bahasa Indonesia.
5. Registration shall be carried out no later than seven working days after the contract is signed.
6. Referring to the decision of the Indonesian Constitutional Court Number 6/PUU-XVI/2018, May 31 2018, it is declared that “[...] the existing norm, Article 59 of Law 13/2003 including its explanation, has been a sufficient legal basis that non-permanent contracts

have to be registered; **failure to register the non-permanent contracts within the required limit of time for registration, by operation of law, means the contract shall be transformed into a permanent contract [...]**”

8. WHAT ARE THE CURRENT MONITORING SYSTEMS AND SANCTIONS FOR VIOLATING THE LEGAL REQUIREMENTS FOR NON-PERMANENT WORK CONTRACTS IN THE GARMENT SECTOR?

- a. Monitoring the use of contracts is done through labor inspection mechanisms.
- b. Sanctions for violating requirements around non-permanent contracts are:
 1. A non-permanent contract turns into a permanent contract with retroactive effect² if:
 - It is not made in Bahasa Indonesia and not written in Latin alphabet (Article 15 paragraph (1) of Ministerial Decree No. 100/2004)
 - A non-permanent contract made for work to meet specified orders or targets is not actually for additional work (Article 5 paragraph (2) of Ministerial Decree No. 100/2004).
 - A probation period is applied.
 2. A non-permanent contract related to new products turns into a permanent contract if:
 - It exceeds a period of two years and its extension exceeds one year.

- A renewal is made.
3. A non-permanent contract turns into a permanent contract from the point when the non-permanent contract terms are not fulfilled if the renewal of the non-permanent contract does not go through a 30-day grace period since the previous contract's expiration and is not agreed in other agreement. It should be noted, referring back to an earlier explanation, that renewal of a non-permanent contract in the export-oriented garment industry is not allowed. Kindly see again the answer to question number 5.

Based on the Constitutional Court Decision Number 7/PUU-XII/2014, together with Minister of Manpower Regulation no. 33/2016, there is now further protection for workers in cases such as the ones depicted. In accordance with the court decision, **workers may request the validation of the labour inspector inspection note determining the correct type of contract to be used. The labour inspector will then monitor the implementation of the labour inspector inspection note on non-permanent contracts that has been validated by the court.**

9. WHAT KIND OF LABOUR PROTECTION DO NON-PERMANENT WORKERS HAVE?

Non-permanent contract workers have the same labour rights as permanent workers. These include, among others, right

to maternity and other types of leave, the right to unionise, and the right not to be discriminated against. However, non-permanent workers are not entitled to severance pay, long service awards, and compensation pay upon termination of contract unless otherwise promised by the employment agreement, company regulation, or collective bargaining agreement.

10. HOW MANY NON-PERMANENT EMPLOYMENT CONTRACTS ARE ACCEPTABLE IN ONE COMPANY? IS IT ACCEPTABLE THAT A GARMENT FACTORY HAS 80% TO 100% OF ITS WORKFORCE UNDER NON-PERMANENT CONTRACTS? WHAT SHOULD THE EMPLOYER DO?

Labour laws and regulations do not regulate about number of accepted non-permanent contract workers in a single company. Non-permanent contracts can be issued as long as they comply with the established provisions in existing laws and regulations.

11. SHOULD THERE BE DIFFERENT TREATMENT FOR A NEWLY ESTABLISHED COMPANY OR A COMPANY IN ITS FIRST YEAR OF OPERATION?

Labour laws and regulations do not distinguish between newly established companies or companies in their first year of operation from long-established companies. All companies are required to enforce the provisions of labour regulations.

12. WHAT IS THE ROLE OF TRADE UNIONS IN ENSURING THE RIGHTS OF NON-PERMANENT WORKERS ARE FULFILLED?

The purpose of the establishment of trade unions is to provide protection, conduct advocacy for the rights and interest of workers, and to improve the welfare of workers and their families. The role of unions is, among others, to make sure workers' rights are fulfilled, including non-permanent workers. For implementing the role, unions must follow laws and regulations, in particular Article 4 paragraph (2) points a, b, c, d of Law no. 21/2000 regarding Trade Unions.

Trade unions, federations, and confederations of trade unions have the following functions:

- a. As a party in the making of a collective bargaining agreement and the settlement of an industrial dispute
- b. As workers'/laborers' representatives in a cooperation institution in accordance with the hierarchy in place
- c. As a structure to create industrial relations that are harmonious, dynamic, and uphold justice according to valid national statutory rules and regulations
- d. As a structure to channel aspirations to defend the rights and interests of its members.

13. CAN WE EXTEND THE NON-PERMANENT CONTRACT OF AN EMPLOYEE WHO IS ALSO A REPRESENTATIVE OF TRADE UNION WHEN HIS/HER CONTRACT EXPIRES?

A workers' status as a union representative does not affect whether or not his/her non-permanent work contract can be extended.

14. IN CASE OF CLOSURE OR RELOCATION OF A COMPANY AND THE TERMINATION OF EMPLOYMENT, WHAT ARE RIGHTS OF NON-PERMANENT AND PERMANENT WORKERS?

a. Closure:

In the case of a company closing down permanently due to continual losses suffered for two years consecutively or force majeure, the workers are entitled the following rights:

1. Permanent workers, pursuant to Article 164 paragraph 1, shall be entitled to severance pay amounting to one payment of the provisions in article 156 paragraph 2, one payment of the long service award of the provisions in article 156 paragraph 3, and compensation pay pursuant to the provisions in article 156 paragraph 4.
2. For non-permanent workers whose employment is terminated because the company suffers from a continuous loss for two years or because of force majeure, and whose contract period has not expired, the worker shall be entitled to the remuneration of the remainder of his/her contractual and other rights agreed to, including other normative rights that have been incurred but not yet received, such as annual leave incurred

but not yet taken, overtime pay, and/or holiday allowances that have not yet been paid.

b. Relocation:

What is meant by a company relocating is when a company moves its operations from one location to another and the company remains the same legal entity or obtains a new one.

b. 1. If the legal entity remains the same:

In the case of a company relocating and terminating the employment for reasons of change of ownership, workers have the following rights:

1. For permanent workers :
 - a. Based on Article 163 paragraph 1, if the worker is not willing to continue employment, the worker shall be entitled to severance pay amounting to one payment of the provisions in article 156, paragraph 2, long service leave award of the provisions in article 156 paragraph 3, and compensation pay pursuant to the provisions in article 156 paragraph 4.
 - b. Based on Article 163 paragraph 2, if the employer is not willing to continue employment, the worker shall be entitled to severance pay amounting to a double payment of the provisions in article 156, paragraph 2, long service leave award of the provisions in article 156 paragraph 3, and

compensation pay pursuant to the provisions in article 156 paragraph 4.

2. For a non-permanent contract worker whose employment is terminated and whose contract period has not been expired, the worker shall be entitled to the remuneration of the remainder of his/her contractual and other rights agreed to, including other normative rights that have been incurred but not yet received, such as annual leave incurred but not yet taken, overtime pay, and/or holiday allowances that have not yet been paid.

b. 2. If the company's legal entity is different:

If a company relocates and in the new location the company registers as a different legal entity, prior to relocating, the company must settle its workers' rights first.

Reasons for layoffs due to relocation:

1. In the event that a company closes permanently due to **the company suffering a continuous loss for two years or because of a force majeure**, workers have the following rights:
 - a. Based on Article 164 paragraph (1), permanent workers shall be entitled to severance pay amounting to one payment of the provisions of article 156 paragraph (2), long service leave award of the provisions in article 156 paragraph (3), and compensation pay pursuant to the

provisions in article 156 (4).

- b. For a non-permanent worker whose employment is terminated because the company suffers from a continuous loss for two years or because of the force majeure, and whose contract period has not expired, the worker shall be entitled to the remuneration of the remainder of his/her contractual and other rights agreed to, including other normative rights that have been incurred but not yet received , such as annual leave incurred but not yet taken, overtime pay, and/or holiday allowances that have not yet been paid.
2. In the event that the company closes permanently due to **the company undertaking a restructuring process**, workers have the following rights:
 - a. Based on Article 164 verse (3), permanent workers shall be entitled to severance pay amounting to double payment of the provisions in article 156 paragraph (2), long service leave award of the provisions in article 156 paragraph (3), and compensation pay pursuant to the provisions in article 156 paragraph (4).
 - b. For a non-permanent worker whose employment is terminated because the company suffers from a continuous loss for two years or because of the force majeure, and whose contract period has not expired, the worker shall be entitled to the remuneration of the remainder of his/her contractual and other rights agreed to, including

other normative rights that have been incurred but not yet received , such as annual leave incurred but not yet taken, overtime pay, and/or holiday allowances that have not yet been paid.

3. In the event that **a company undergoes a merger**, workers have the following rights:
 - a. For permanent workers:
 1. Based on Article 163 paragraph (1), if workers are not willing to continue the employment, workers shall be entitled to severance pay amounting to one payment of the provisions in article 156 (2), long service leave award of the provisions in article 156 paragraph (3), and compensation pay pursuant to the provisions in article 156 paragraph (4).
 2. Based on Article 163 paragraph (1), if the employer is not willing to continue employment, workers shall be entitled to severance pay amounting to a double payment of the provisions in article 156 paragraph (2), long service leave award of the provisions in article 156 paragraph (3), and compensation pay pursuant to the provisions in article 156 paragraph (4).
 - b. For a non-permanent worker whose employment is terminated because the company suffers from a continuous loss for two years or because of the force majeure, and whose contract period

has not expired, the worker shall be entitled to the remuneration of the remainder of his/her contractual and other rights agreed to, including other normative rights that have been incurred but not yet received , such as annual leave incurred but not yet taken, overtime pay, and/or holiday allowances that have not yet been paid.



CHAPTER IV

Best Practice On Employment Contracts In The Garment Sector

PT PINNACLE APPARELS SEMARANG

PT PINNACLE APPARELS, a company in Semarang, has a total workforce of 1,955 workers. The company recognizes the importance of worker sustainability and loyalty, and therefore provides permanent work contracts to all its employees.

In order to maintain the continuity of orders from international buyers, the company coordinates closely with its marketing divisions which are located in various countries, as well as with its the head office in India.

“The stability of order availability is key to our business. There was a time when even our owner passed orders received by their overseas factories to us to ensure we could continue producing with our existing workforce. Furthermore, our marketing division is great in terms of looking for orders and in coordinating these with HR and the production line. By doing so, we can still survive for many years in this industry,” said a manager at PT PINNACLE APPARELS.

The factory management also implements a unique guidance system for their production workers. Some workers who exhibit above-average potential will be trained on other specific skills necessary in the garment industry. Workers undergoing additional specific skills training become a “group of workers with special qualifications” and can work on garment product orders that require special tailoring skills. *“Each worker with this qualification, also known as multi-skill operators, usually holds four to five specialized sewing technical skills, which they continue to develop because they are encouraged and trained by the company. In production streams, it is management who regulates when they will be requested to produce specific orders which are temporary in nature, in accordance with trends, and when they will re-enter the regular production line to work on long-term orders with standard expertise. With that arrangement, PT Pinnacle does not have to hire new workers for a temporary period when an order with a particular model comes in that will only be*



needed for a short period of time. So the marketing division, human resources division, and production division must regularly communicate and coordinate to maintain production flow and production line settings to continue using the existing workers.,” explained a manager at PT PINNACLE APPARELS.

The availability of severance pay in anticipation of the event that the factory terminates employment as stipulated in the Manpower Act, is something the company and its owner pays attention to. The management acknowledges that the company’s finance division is indeed assigned to prepare this fund as a form of anticipation. *“We are trying to maintain conducive working relationships for as long as we are able. But the fund for the anticipation of worst events was indeed prepared from the beginning,”* he added.

PT UNGARAN SARI GARMENT (USG)

As of April 2018, the factory has a total of 13,150 workers, of which less than 145 are employed on non-permanent contracts. These 145 non-permanent workers are employed for pleating, smocking, and producing garments that require special sewing skills unable to be performed by machines, or when there are products made to order for only a short period of time in accordance with clothing trends.

According to PT USG Congol, the provision of permanent employment contracts to the majority of workers in their factory is based on the long-term orientation of their business which views the importance of training workers. They also consider permanent contracts better at providing job security to their workers, meaning that they are able to concentrate better on their current job, improving discipline, production output, and timely fulfilment of orders. This has a positive effect on meeting the production targets requested by buyers, as the satisfaction of buyers will in turn affect the

company’s management and workers.

Since 2016, PT USG Congol has also been implementing the HER Project, which aims to promote the protection of women workers in factories that are part of the global production supply chain, including the garment industry. The program is part of PT USG Congol’s management commitment to its workers. In this program, activities such as ante-natal health checks, child health checks, seminars or discussions on maternal and child health, supplementary food provision, immunization programs, group sports and similar activities, are provided for all pregnant workers of PT USG Congol, without any distinction on the basis of their employment contract status. *“They are all our workers. We provide health services for pregnant workers and workers’ children, without any discrimination on the basis of the form of employment contract,”* explained the management of PT USG Congol.





CHAPTER V

Closing

The Manpower Act and its accompanying regulations are designed to encourage employers to use non-permanent contracts only when absolutely necessary, and to gradually provide permanent employment. The need to provide flexibility to business has been included in the spirit of the Act but at the same time, there was a deliberate attempt by legislators to protect workers from fragile employment relations.

Current laws and regulations aim to achieve a balance between labour forces and labour markets. They seek to ensure that workers are not excluded from the possibility of more stable and more protected employment, and at the same time avoid the excessive or inappropriate use of non-permanent contracts.

Both employers and trade unions agree that permanent employment contracts carry less risk and are critical to the livelihood and welfare of workers. Both parties are concerned with the unclear interpretation of the requirements behind the use of non-permanent contracts in law and in practice, the high rates of non-compliance, and the need to find solutions that protect workers and the competitiveness of the garment sector. Part of these solutions perhaps require changes in how business in this particular sector is conducted; for example, some companies are asking international buyers to provide

long-term orders and/or a better price for the production which takes into account severance payment and other rights of workers, such as social security entitlements. Another possible long-term solution is the revision of laws and regulations concerning notably severance pay and employment contracts and a related review of the role of the national social security system.



END NOTES

- 1 The BWI 2016 Synthesis report indicates that 70% of the factories do not comply with the limitation on the use of PKWT. The 2017 Synthesis Report shows that 50% of the factories are still non-compliance in this area. This is especially so because factories use PKWT for more than a total of 3 years, or with multiple extensions.
- 2 This means that all non-permanent worker rights, benefits and obligations will date back to the moment when that contractual relationship was established.



BetterWork
Indonesia

Better Work is a partnership between the International Labour Organization (ILO) and the International Finance Corporation (IFC) and other key local and international stakeholders including international brands sourcing from Indonesia. The programme was launched in 2011 at the request and with the support of the Government of Indonesia and social partners. The programme aims to improve the competitiveness of export oriented garment industry by ensuring compliance with Indonesian Labour Law and the ILO's Core Labour Standards and by enhancing economic performance at the enterprise level.



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