

## IMPLEMENTATION OF EMPLOYMENT AGREEMENTS FOR HEALTH WORKERS IN PRIVATE HOSPITALS



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**Abstract.** *The company's activities are essentially a joint effort between employers and workers to grow the company and improve workers' welfare. This research was conducted based on the author's interest in finding out the implementation of the work agreement between midwives and Dera As-Syifa Hospital, where, based on the secondary data that the author obtained, the work agreement form is PKWT. The Manpower Law has stipulated that PKWT is only for jobs that are not permanent or core business. The problem in this study is :P First, we will discuss implementing the work agreement between Dera As-Syifa Hospital and Health Workers. Second, what are the legal consequences if the minimum wage paid is not by the UMP/UMK Brebes? This study uses a normative research method, namely legal research conducted by researching library materials or secondary data. Then, it continued with the collection of primary material data through direct interviews and observations as well as secondary materials obtained from literature studies in the form of law books, legal journals, and other literacy associated with the core of this research. The results of the study showed that PKWT used in the working relationship between midwives and Dera As-Syifa Hospital based on Permenkes 1199 of 2004, which regulates the employment relationship for health workers can be held with PKWT so that it is an exception to the provisions regulated in the Manpower Law along with the Job Creation Law and PP 35/2021. However, the implementation of PKWT at Dera As-Syifa Hospital is still not appropriate because there is still a probationary period of 4 months with salary deductions, so during the probationary period, the salary is not by the provisions of the minimum wage applicable in Brebes Regency. According to relevant regulations, companies that provide salaries below the minimum wage can be subject to sanctions and automatically change PKWT to PKWTT. However, such conditions do not affect the company; workers still receive such treatment.*

**Keywords:** *Midwife, Probationary Period, PKWT, Health Workers, Minimum Wage*

### INTRODUCTION

Human beings have various desires and hopes. One is the desire to earn income to meet their basic needs and survive. This income can be obtained by a business that is carried out continuously, including by working, either working alone by running a company to earn profits or working for other parties (individuals and institutions) to obtain income. Doing business by working for different parties can be called laborers/workers.<sup>1</sup>

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<sup>1</sup> Abdul Khakim, *Introduction to Indonesia Labor Law*, (Bandung: PT. Citra Aditya Bakti), 2003, page 9.

Dera As-Syifa Hospital Banjarharjo Brebes. The hospital is located on Jl. Merdeka No. 191, Longkrang, Banjarharjo, Brebes, Central Java. Development in the field of employment in Indonesia is an integral part of increasing the dignity and dignity and realizing the welfare, justice, and prosperity of the Indonesia people equally, as mandated in Article 27 paragraph (2) of the 1945 Constitution, which states that every citizen has the right to work and a decent livelihood. Development efforts in the field of employment are comprehensive in all sectors, especially the expansion of employment opportunities to open more and more equal job opportunities supported by improving the quality and ability of human resources.<sup>2</sup>

Development in the field of employment must have clear and definite provisions or arrangements because it is not only related to the interests of the workforce both before being accepted as a worker, during the working period, and after the working period ends to fulfill the rights of the workforce. Fulfilling these rights is a form of protection for workers to create conditions conducive to the common good, namely the government, entrepreneurs, and the community.

Justice is the guarantee of fundamental labor rights such as obtaining a decent wage as mentioned in Article 1 number 30 of Law Number 13 of 2003 concerning Manpower (starting now referred to as the Manpower Law), having equal opportunities in obtaining jobs (Article 5 of the Manpower Law) and getting the same treatment without discrimination (Article 6 of the Manpower Law) to realize one of the development goals in the field of employment, namely increasing the number of people who are employed in the field of employment. Workforce welfare. This is in line with what is mandated in Article 28D paragraph (2) of the 1945 Constitution, which states that everyone has the right to work and get fair and proper remuneration and treatment.

A job is essential in human life because it provides a source of income to meet the needs of life for himself and his family. In addition, by working, humans can actualize themselves, which causes their lives to become more valuable for themselves, their families, and their environment. Guaranteeing all these expectations, labor law regulates labor relations between human beings by containing reciprocal rights and obligations in employment agreements. The existence of a bond on a work agreement causes humans to be calmer, more comfortable, and more confident in doing their work.

One of the places where workers get income is hospitals, one of the agencies engaged in health services and are currently becoming a profit-oriented business entity. Hospitals are units of the workplace or work environment that consist of several parts of work units that must be filled with competent and interconnected workers in their operations, such as nurses, midwives, doctors, pharmacists, and others.

Regulation of the Minister of Health Number 3 of 2020 concerning Hospital Classification and Licensing (from now on Permenkes 3/2020) defines a hospital as a service institution in the health sector that provides health services for individuals in a complete manner by providing services in the form of inpatient and outpatient and emergency services. Hospitals can be established by public parties such as the central government or local

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<sup>2</sup> Djumadi, *Employment Agreement Law*, (Jakarta: Raja Grafindo Persada), 2002, page 2.

governments, and private/private parties can also establish the establishment. Specifically, private/private hospitals must be established as legal entities with the scope of business activities engaged in hospitals.

Hospitals, apart from being a business entity, are also one of the means of health services, so in their operations, it is necessary to be more selective in hiring workers in the health sector to attract public trust where the end is to get profits or profits. The workforce must have specific competency standards according to applicable regulations. Article 1 number 1 of Law Number 36 of 2014 concerning Health Workers (referred to as the UUTK) states that health workers have skills and knowledge in the health sector through education and specific competencies to devote themselves to the health sector.

The legal relationship between the hospital as an employer and the health worker as a worker is based on an employment agreement, some of which are still based on a specific time work agreement or contract employees. This condition attracts the author's attention to study more deeply about the legal relationship because, in the work agreement made by Dera Hospital with health workers there are still inconsistencies in the implementation of the work agreement.

So that the discussion in the thesis is not comprehensive and biased, the author will focus on implementing the employment agreement made by Dera Hospital with health workers. Dera As-syifa Brebes Hospital binds health workers with a 1-year contract work agreement (PKWT).

According to the author, the procurement of health workers in private hospitals does not have special provisions, so it still refers to the work agreement, which contains the work conditions, rights, and obligations of the parties. One of the rights regulated in the Manpower Law is labor wages/salaries that must not be lower than the minimum wage applicable in their regions.

Based on the background of the problems that the author has described above regarding the issues that are growing and developing in the community, i.e., how is the implementation of the employment agreement between Dera As-Syifa Hospital and Health Workers? and What are the legal consequences if the minimum wage paid is not by the UMP/UMK Brebes?

## **LITERATURE**

The employment agreement has several meanings, one of which is contained in the formulation of Article 160 1a of the Civil Code. Listening to the formulation of the article, it can be seen that the characteristic is a magnetic characteristic, namely a statement "under the print," which can be interpreted as a subordinate relationship between the workforce/laborers as subordinates and the employer/employer as superiors. Labor/labor, when viewed from a lower socioeconomic level, is given an order by an employer/employer whose socioeconomic level is higher to provide wages for the implementation of the order, so such an interpretation shows an unbalanced position.<sup>3</sup>

However, making a work agreement is still guided by the conditions for the validity of an agreement specified in Article 1320 of the Civil Code. The fulfillment of these requirements causes the deal to have binding force for the parties who make it (*pacta sunt servanda*) mentioned in the formulation of Article 1338 of the Civil Code. Therefore, the employment

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<sup>3</sup> Lalu Husni, Introduction to Indonesia's Labor Law. (Jakarta: Raja Grafindo Persada), 2008: Page 45.

agreement gives birth to an alliance or legal relationship and becomes a manifestation of legal certainty between the rights and obligations of the worker and the employer on a reciprocal basis.<sup>4</sup> Employment agreements, which contain the rights and obligations of the parties, need to be protected in their implementation. The Government of Indonesia specifically enacts this protection by issuing the Labor Law, which, according to Zaeni Ashade, provides three aspects of legal protection: social protection (freedom of association and obtaining social security) and technical protection (comfort at work).<sup>5</sup>

Some experts put forward the definition and employment agreement, which are explained below:

1. Imam Soeparno put forward the meaning of a work agreement, which is an agreement between the first party as a worker, who binds himself to be able to work and get wages from the other party, namely the employer, which also improves himself to be willing to work for the first party and pay wages.<sup>6</sup>
2. Subekti argues that an employment agreement is an agreement between an individual and an employer to do a job and get paid.<sup>7</sup>
3. Djumadi argued that a labor agreement is an agreement between workers and employers that is characterized by an agreement on wages and the existence of a superior-subordinate relationship (*dieirstverhanding*) where the employer as a superior is authorized to give orders to workers that must be implemented and obeyed.<sup>8</sup>

Looking at some of the definitions above, the legal subject of the employment agreement is the worker/worker as a person/party who works by getting a salary/wage, and the employer (either an individual, an entrepreneur, or a business/legal entity) who pays the worker/worker by providing payment to give a salary/wage.

## B. Research Method

### Research Approach

The research approach used is normative research, which, in essence, examines the law conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. Soerjono, Soekanto, and Sri Mamudji define normative legal research as research carried out by researching literature materials or secondary data.<sup>9</sup> The secondary literature or data that is researched according to the problem in this study is the legal principles of the employment agreement of health workers who work as midwives and their legal protection related to earning a decent income.

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<sup>4</sup> Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory, and Practice)*, PT Rajagrafindo Persada, Depok City, 2020, page 139.

<sup>5</sup> Zaeni Asyhadie, *Employment Law in the Field of Labor Relations*, (Jakarta: Raja Grafindo Persada), 2007, page 85.

<sup>6</sup> <sup>10</sup>Iman Soepomo, *Labor Law Part One of Employment Relations*, (Jakarta: PPAKRI Bhayangkara, 1968), page 9

<sup>7</sup> Subekti, *Miscellaneous Agreements*, Bandung: Alumni, 1977, page 63

<sup>8</sup> Djumadi: *Op.cit.*, page 30.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Normative Law Research A Brief Review*, (Jakarta: Raja Grafindo Persada), 2010, pp. 13-14.

### **Type of Research**

The type of research used in this study is qualitative, which aims to obtain descriptive data to describe or analyze phenomena or events, attitudes, and perceptions of the community, both individual brochures that are related or in groups.<sup>10</sup> In particular, it describes the parties involved in the work agreement at Dera As-syifa Brebes Hospital.

In this study, the researcher will analyze the events or facts in the field in connection with appropriate sources.

### **Source of Legal Materials**

According to Suteki, in normative (doctrinal) research, the term data is actually not known but legal material.<sup>11</sup> This is because normative research only uses secondary data (literature studies). The research on legal materials used in this literature includes primary, secondary, and tertiary legal materials.

### **Legal Materials Collection Technique**

The above legal materials are obtained through literature study (documenters) by studying literature books and laws.

## **D. Discussion**

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<sup>10</sup> Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory, and Practice)*, PT Rajagrafindo Persada, Depok City, 2020, page 139.

<sup>11</sup> Subekti, *Miscellaneous Agreements*, Bandung: Alumni, 1977, page 63.

## Implementation of Employment Agreement Between Dera Hospital and Health Workers

In line with "Law No. 13 of 2003 concerning Manpower, other regulations that regulate in general, namely Law No. 39 of 1999 concerning Human Rights, in detail regulate the right to life and the right not to be forcibly deprived and not deprived of life, the right to family and continue regulations, the right to self-development, the right to obtain justice, the right to personal freedom, the right to security, the right to welfare, the right to participate in the government, women's rights, children's rights, and the right to freedom of religion. In addition to regulating human rights, it is also regulated regarding the government's essential obligations in upholding human rights).<sup>12</sup>

In general, about the prevailing employment. Protection for workers/laborers has been regulated in Law Number 13 of 2003 concerning Manpower. Lately, however, there has been a lot of unrest in the community, especially among workers/laborers who work with a contract system. This unrest from the community arises because, in reality, there is a very striking difference in welfare received by workers with the contract system when compared to permanent workers.

The results of the interview with Mr. Rio Budiyanto, S.E as the HRD of Dera Hospital, that in the procurement of employment agreements for health workers refer to the Regulation of the Minister of Health No. 1199/MENKES/PER/X2004 concerning Guidelines for the Procurement of Health Workers with Work Agreements in Government-Owned Health Facilities.<sup>13</sup>

According to the hemi at inulins, PKWT is exempt from what is stipulated in the rigid regulation. Labour Law Number 11/2020, Article 5 paragraph (1) of PP 35/2021 states that PKWT is made based on the period of validity for specific work, such as the estimated completion of work is not for a long time, the nature of the work is not for a long time, the nature of the work is unfaithful, the work is related to new products and activities as well as additional products in the exploration or trial period. Then, Article 5 paragraph (2) of PP 35/2021 stipulates that PKWT based on the completion of specific work applies to work that is once completed or temporary.

In the explanation of Article 59 paragraph (2) of the Naker Law, permanent work is uninterrupted, continuous, not limited by time, and is part of the production process in one company or a job that is not seasonal. Thus, as long as the work carried out is not a core part of the production process and its nature is not continuous, it can become the object of PKWT.<sup>14</sup>

According to the author, the work of a midwife as a health worker is a permanent job and is the core spark plug-is (core job) of Dera As-syifa Brebes Hospital. Thus, it is appropriate if Dera Hospital in procuring health workers refers to Permenkes 1199/2004 in terms of procurement of health workers as stipulated in the fifth point explaining that privately owned

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<sup>12</sup> Thamrin S, Enforcement of Human Rights of Indonesia Workers, Pekanbaru: Alaf Riau, 2018. p. 89.

<sup>13</sup> Results of an interview with Dera As-Syifa Hospital, Mr. Rio Budiyanto, S.E as HRD, on May 15, 2023.

<sup>14</sup> Dewa Gede Giri Santosa: *Fixed-Time Work Agreements After the Job Creation Law: Implementation and Problems*, Journal of Law Volume 17 Number 2, August 2021, pages 178-190.

health facilities or hospitals in terms of procurement of health workers can be recorded in a work agreement by referring to the provisions in this Permenkes.

Based on the results of the interview with Mr. Rio Budiyanto, S.E as the HRD of Dera Hospital, the reason why Dera Hospital takes a midwife as a PKWT is that the hospital will see how the expertise and responsibility of a midwife for work at a specific time for one year and will be extended if the midwife is considered able to meet work performance according to the company's expectations and obey all the rules and regulations that apply in the company properly and responsibly.<sup>15</sup>

The results of the interview with Mrs. Ratna Dewi, Amd.Keb, as a midwife at Dera Hospital, regarding the training agreement letter, did not exist; the hospital only asked me directly to do a probationary period first after signing the contract.<sup>18</sup>

According to the author, the employment agreement agreed upon by the employer and the worker is binding and legally valid; the type of PKWT agreement cannot require a probationary period if it is still carried out, then the probationary period is null and void. The application of the employment agreement made by Dera Hospital with health workers is still contrary to Article 58 of Law 13/2003 jo. Article 58 of Law 11/2020 emphasizes that implementing the type of work agreement at a particular time/PKWT cannot require a probationary period. The employment agreement is null and void if the probationary period remains.

The probationary period of the working period only applies to the type of indefinite-time work agreement/PKWTT according to article 60 of Law 13/2003, which states that an indefinite-time work agreement/PKWTT can require a probationary period of a maximum of 3 months. During the probationary period, employers are prohibited from paying the applicable minimum wage. Furthermore, each region in Indonesia has a different Regional Minimum Wage level. Because in its determination, the government does not necessarily generalize all regions, the minimum wage that has been set based on the Decree of the Governor of Central Java Number 561/54 of 2022 concerning the Minimum Wage in 35 Regencies/Cities in Central Java Province in 2023, which is addressed to the regents/mayors throughout Central Java, including Brebes Regency itself, the minimum wage is set at Rp. 2,018,836. The determination of UMP/UMK is based on the regulation of the Minister of Manpower of the Republic of Indonesia No.18 of 2022 concerning the determination of the minimum wage in 2023.<sup>16</sup> This means that every business behavior in the Brebes Regency area must pay its employees' wages by those set by the local government.

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<sup>15</sup> Results of an interview with Dera As-Syifa Hospital, Mr. Rio Budiyanto, S.E as HRD, on May 15, 2023.

<sup>16</sup> Results of an interview with Dera As-Syifa Hospital, Mr. Rio Budiyanto, S.E as HRD, on May 15, 2023.

Based on the results of an interview with Mr. Rio Budiyanto, S.E the HRD of Dera Hospital, the HRD of Dera Hospital, that in its implementation, the minimum wage at Dera Hospital refers to the provisions of the Decree of the Governor of Central Java No/561/54/2021 concerning the Minimum Wage in 35 (Thirty-Five) Regencies/Cities in Central Java Province in 2023<sup>17</sup>A minimum wage is a standard that entrepreneurs or industry players use to pay workers in their line of business or for work support.<sup>18</sup> The issue of wages is critical and has a far-reaching impact. When hiring others, a worker must be appropriate and fair to receive wages, so first, the type of work must be explained, as well as the period and salary the worker will receive. This is intended so that workers are not exploited by being told to do work that does not agree with them or is beyond their capabilities.<sup>19</sup>The role of the government is indispensable in overcoming problems related to wages. In Indonesia, government policies related to wages are commonly known as the Regional Minimum Wage policy. Stakeholders should appropriately implement policies related to wage problems.<sup>20</sup>

The wage occurs because of the employment relationship. The employment relationship is based on a work agreement containing elements of orders, work, and wages. The definition of wages according to the provisions of Article 1 number 30 of Law Number 13 of 2003 concerning Manpower states that: "Wages are the rights of workers/laborers that are received and expressed in the form of money as a reward from employers or employers to workers/laborers determined and paid according to a work agreement, agreement, or laws and regulations, including allowances for workers/laborers and their families for a job and service that has been or will be carried out."

Every worker/laborer has the right to earn an income that meets humanity's decent livelihood. To realize an income that meets a decent livelihood for humanity, the government establishes a wage policy that protects workers/laborers. One of the wage policies that protect workers/laborers is a minimum wage. The minimum wage may include: a. Minimum wage based on provincial or city district; b. The minimum wage is based on the province or district/city sector.

The government sets the minimum wage based on the needs of a decent living and by paying attention to productivity and economic growth. The minimum wage is directed to the achievement of decent living needs. The Governor sets the minimum wage by considering the recommendations of the Provincial Wage Council and the Regent/Mayor. The governor has the authority to attribute the minimum wage determination (Article 89 paragraph (3) of Law 13/2003). The Governor sets the minimum wage as a safety net (Article 41 (1) PP 78/2015). The Governor is obliged to set the provincial minimum wage (Article 45 (1) GR 78/2015). The Governor can set the minimum wage of the district/city (Article 46 (1) PP 78/2015). The Governor can set the provincial and district/city sectoral minimum wage. The minimum wage is determined using the minimum wage calculation formula (Article 44 GR 78/2015). The

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<sup>17</sup> Results of an interview with Dera As-Syifa Hospital, Mr. Rio Budiyanto, S.E as HRD, on May 15, 2023.

<sup>18</sup> Indra Riko Rosandi., et. al., "Implementation of Government Regulation of the Republic of Indonesia Number 78 of 2015 concerning Wages (Case Study of the Implementation of Minimum Wage in Samarinda City)", eJournal of Government Science Volume 5, 3 (2017), 1119- 1130.22 Muhammad, *Islamic Business Ethics*, (Yogyakarta: Publishing and Printing Unit of the YKPN Academy of Corporate Management, 2004), 166.

<sup>19</sup> Kasmir, *Human Resource Management* (Theory and Practice), (Jakarta: Rajawali Pers, 2016), 232.

<sup>20</sup> Kasmir, *Human Resource Management* (Theory and Practice), (Jakarta: Rajawali Pers, 2016), 232.



minimum wage is set based on the results of an agreement between the employer's association and the trade union/labor union in the sector concerned.

Employers are prohibited from paying wages lower than the minimum wage. A suspension can be made for entrepreneurs who cannot afford to pay the minimum wage. A Ministerial Decree regulates the procedure for suspension. The district/city minimum wage must be higher than the provincial minimum. Thus, there is a UMP/UMK rule, so companies must pay salaries and allowances under the minimum wage determined based on the province or district/city.

Based on the results of an interview with Mrs. Rostinah Amd.Keb, as a midwife at Dera Hospital, the wages/salaries we received were not by the employment contract agreement because, at the time of receiving wages, the wages I received were only Rp 1,200,000 because the hospital said that the work probation period was required for four months first, after passing the 4-month probationary period the wages that will be received are by the content of the work contract by looking at the quality, performance, and responsibilities of the safety personnel. Based on the results of an interview with Mr. Rio Budiyanto, S.E stipulations made by Dera As-Syifa Hospital, workers who will be employed permanently or continuously must sign a work agreement contract No: 032/PKWT/RSDA/X/2023. The content contained in a contract or agreement is divided into an introduction, content, and closing parts. The content contained in the collective bargaining agreement between prospective workers and the Dera As-Syifa Hospital consists of several articles: 1. The identity of the parties in the employment agreement for a specific time/PKWT in As-Syifa is an employment contract valid for one year. 2. Wage Component of Basic Salary: Rp. 1,466,826,- Employee Allowance: Rp. 552,010,- Total Salary: Rp. 2,018,836,- 3. Period of Service 4. Termination of employment 5. Health insurance 6. Obligations of workers 7. Detention of diplomas during the working period 8. Extension of employment contract. 9. Closing and TTD of the parties.

The results of the recommendation during the Brebes Regency Wage Council meeting, which the Brebes Regency Government attended, represented by the Head of the Industry and Manpower Office (KADINPERINAKER) as the chairman of the Brebes Wage Council and elements of Academics (UMUS Rector) and UPS Tegal Academics. At the same time, representatives of Employers (APINDO Brebes and Kadin Brebes) together with representatives of Trade Unions/Labor Unions, which have been signed by the Government represented by Kadinperinaker as Chairman of the Brebes Wage Board and elements of Academics (UMUS Rector) and UPS Tegal Academics, the circular letter of the Brebes Regional Secretary was submitted to the Governor of Central Java with a proposal to increase MSEs by 13% to Rp 2,113,483 using reference to Government Regulation No.36 of 2021 concerning wages.<sup>21</sup>

### **Table 1 Proposed Minimum Wage of the Brebes Regency Wage Council in 2022**

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<sup>21</sup> <https://brebesnews.co/2022/11/miriskenaikan-umk-di-brebes-abaikan-etikailmiah-dan-aturan-main-pengupahan/>, 26 access on July 18, 2023, at 19.54 WIB.

<b>Regency</b>	<b>Information</b>			
<b>Brebes</b>	<b>2022</b>	<b>2023</b>	<b>Percentage Increase (%)</b>	<b>Reference</b>
	IDR 1,885,019	IDR 2,113. 483 13	13 / Rp. 228.4 64	Government Regulation No. 36 of 2021 concerning Wages

The Governor of Central Java finally set the minimum wage for 35 districts/cities in Central Java through the Decree of the Governor of Central Java No.561/54 of 2022 concerning the Minimum Wage in 35 districts/cities in Central Java Province in 2023. From this decision, the governor set the Minimum Wage of the Brebes Regency itself to increase by 7.10% to Rp 2,018,836 from last year.

From the comparison of the table above regarding the minimum wage between the Governor's Decree and the Employment Contract (PKWT) of Dera Hospital regarding the wage component has been under the applicable minimum wage in the Brebes Regency area, but in its application, the salaries received by health workers are lower.

The comparison of the table above regarding the minimum wage between the Governor's Decree and the Employment Contract (PKWT) of Dera Hospital regarding the wage component is the minimum wage applicable in the Brebes Regency area. Still, in its application, the salaries received by health workers are lower than the minimum wage in Brebes Regency due to the probationary period according to Article 90 of Law 13/2003 jo Article 88A paragraph (3) of Law 11/2020 jo Article 23 paragraph (3) and Article 55 Paragraph (1) of PP 36/2021 emphasizes that employers are obliged to pay wages at the agreed time and by the agreement between employers and workers and employers are prohibited from paying wages lower than the minimum wage applicable in their area.

**Table 2. Proposed Minimum Wage of the Brebes Regency Wage Council in 2022**

<b>Regency</b>	<b>Information</b>			
<b>Brebes</b>	<b>2022</b>	<b>2023</b>	<b>Percentage Increase (%)</b>	<b>Reference</b>
	IDR 1,885,019	IDR 2,018,836	7.10 / Rp. 133.81 7	Central Java Governor's Decree No.561/54 of 2022 concerning Minimum Wages in 35 districts/cities in Central Java Province in 2023

**Table 3. Wages Based on Fixed-Time Work Agreements/PKWT No. 032/PKWT/RSDA/X/2023**

It	Wage Components	Sum	Persent (%)
1	Principle Salary	IDR 1,466,826	75%
2	Employee Benefits	IDR 552,010	25%
<b>Total Salary</b>		<b>IDR 2,018,836</b>	

Based on the theory presented by several experts regarding justice, the following is related to the problem of implementing employment agreements that are not by the employment contract agreement; according to Thomas Hobbes, justice is an act that can achieve justice when it is based on a deal that has been agreed.<sup>22</sup> From the statement, it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between the two promising parties.

This is the same as the PKWT work contract between employers and health workers, there is still a discrepancy regarding the implementation of the work agreement made by Dera Hospital with workers where in the content of the work agreement has been by the applicable provisions and the wages are given by the minimum wage that applies in Brebes Regency and the work agreement there is no application of the work probationary period, but in its application for health workers after signing the employment contract and at the time of starting work, these health workers are asked to carry out a work probation period as a result of the work probationary period their wages are deducted lower than the applicable minimum wage—the results of the interview with Mrs. Rostinah, Amd.Keb, as a midwife at Dera Hospital, for the probationary agreement letter, I did not receive it; I only signed the work contract; at the time of starting work, I was asked to do a probationary period first for four months.<sup>23</sup>

The results of the interview with Mrs. Rostinah Amd.Keb, as the Midwife of Dera Hospital, that the working hours system for health workers at Dera Hospital is the same, both workers who are still training, contract workers and permanent workers, and is divided into three shifts: morning shift from 07.00-14.00, afternoon shift from 14.00-21.00 and night shift from 21.00-07.00.<sup>24</sup>

Furthermore, it is related to Registration at the Manpower and Transmigration Office, as explained in Article 13 of the Decree of the Minister of Manpower and Transmigration Number 100/MEN/VI/2004, which states that employers must record PKWT with the agency responsible for the employment of the local district/city no later than 7 (seven) working days from the signing of the employment agreement.

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<sup>22</sup> Muhammad Syukri Albani Nasution, *Law in a Philosophical Approach*, Ctk.Second, Kencana, Jakarta, 2017, pp. 217-218.

<sup>23</sup> Results of an interview with Mrs. Rostinah Amd.Keb as a midwife at Dera Hospital, dated 01 July 2023

<sup>24</sup> Results of an interview with Mrs. Rostinah Amd.Keb as a midwife at Dera Hospital, dated 01 July 2023

This recording aims to provide legal protection for workers who work with a certain time work agreement. In the results of interviews conducted by researchers at Rumah Sakiit Dera As-Syifa, information was obtained through Mr. Rio Budiyanto, S.E HRD Dera As-Syifa Hospital, that a PKWT should have been made in line with the existing Kepmenakertrans policy and PKWT in the hospital, of course, for workers in Dera Hospital, it was recorded to the relevant agency, namely the Directorate of Transmigration in Brebes Regency after the signing of the employment contract.<sup>25</sup>

### **Legal Consequences If the Minimum Wage Paid Is Not by UMP/UMK Brebes**

The work agreement made between Dera Asy-syifa Hospital and health workers has been by the applicable provisions both where the work agreement is made referring to Permenkes 1199 of 2004 from the minimum wage and does not include the probationary period in this PKWT work contract. Still, in its application when starting to work, health workers are asked to take part in the probationary period and their wages are deducted for 4 months of Rp. 1,200,000. The existence of a probationary period followed by a salary cut during the probationary period at Dera Asy-syifa Hospital is intended to determine the performance and competence of the newly recruited health workers to be suitable for placement in their respective fields.

If it is considered that the health worker is by the work and with his colleagues, it will be extended one more time before finally being made a permanent employee. This means that if health workers cannot adapt to the work environment of Dera As-Syifa Hospital, it will not be extended after the period in the agreement ends.<sup>26</sup>

The author argues that there is a discrepancy in the employment agreement made between Dera Asy-syifa Hospital and health workers. By the provisions of Article 12 of Government Regulation Number 35/2021, the type of work agreement with a specific time is not required to have a probationary period.

Likewise, the Minister of Health Regulation 1199 of 2004 does not regulate the probationary period in the work agreement. However, the two regulations regulate the extension of the employment agreement if the term has expired. Therefore, the discrepancy that occurred in the employment relationship at Dera Asy-Syifa Hospital was the enactment of a probationary period, which, according to the author of the probationary period, was carried out if the workforce would be appointed as permanent employees. Thus, for 4 months, the wages received by health workers do not get a decent income to meet their lives and their families. Of course, the agreement agreed upon by the parties has been legally binding, and the parties must fulfill their achievements. The deduction of wages due to PKWT during the probationary period is null and void under Article 58 paragraph (2) of Law 13/2003 that if the work probation in PKWT is still carried out, the work probationary period is null and void. Employers are obliged to pay wages using the applicable UMP/UMK. The next provision, namely Article 185 paragraphs (1) and (2), mentions that deviations from Article 90 of Law 13/2003 jo Article 88A paragraph (3) of Law 11/2020 are criminal acts and entrepreneurs can be sentenced to

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<sup>25</sup> Results of an interview with Mr. Rio Budiyanto, S.E as HRD of Dera As-Syifa Hospital, on May 15, 2023.

<sup>26</sup> Results of an interview with Mr. Rio Budiyanto, S.E as HRD of Dera As-Syifa Hospital, on May 15, 2023.

imprisonment for a minimum of 1 year and a maximum of 4 years or a fine of at least Rp. 100,000,000 and a maximum of Rp. 400,000,000.

The conception of law put forward by Satjipto Rahardjo as the initiator of the progressive legal school is the law that must serve the interests of humans, not humans who become slaves to the law so that the law does not lose its spirit, namely justice. Therefore, a person's interests must be protected as hard as possible in the form of the application of legal regulations related to the fulfillment of these interests. In this case, the payment of wages by a company that is under the minimum wage provisions according to the author's budget is included in the violation of human rights. The agreement that has been outlined in the employment agreement, especially the amount of wages received by the workers, is not suitable to be implemented. This means that the fulfillment of inappropriate or partial achievements can be considered an act of default. The Job Creation Law regulates new provisions in Article 88 regarding the imposition of fines for employers/companies that deliberately or negligently pay wages. According to Hans Kelsen, justice is a certain social order under its protection; the effort to seek the truth can develop and flourish.<sup>27</sup> Of course, this must be clarity for workers/health workers to get justice because it is not in accordance with the employment agreement made by Dera Hospital with health workers in its implementation. Furthermore, related to business actors who do not or have not implemented the City Minimum Wage (MSE) requirement, action is given by the government. Actions taken by the government for companies that do not implement the City Minimum Wage (MSE) include:

1. Monitoring (Visit) is a coaching activity by the government to companies as mandatory MSEs in the future of the company concerned
2. Letter Namely coaching activities by the government to companies as mandatory MSEs on how to send a letter regarding the company's obligation to pay MSEs.
3. Sanction, namely sanctioning companies as mandatory MSEs based on Article 185 of Law 13/2003 jo article 185 of 11/2020 states that anyone who violates the provisions of paying wages lower than the minimum wage is subject to sanctions in the form of imprisonment for a minimum of one year and a maximum of four years and/or a fine of at least Rp. 100,000,000 and a maximum of Rp. 400,000,000.<sup>28</sup> Regarding the dispute of interest between the workers/health workers and Dera Hospital, it is stated in the PH Law on the Settlement of Industrial Relations Disputes that this industrial relations dispute is possible to be resolved through PHI. The following is a further explanation of the mechanism for resolving industrial relations disputes that can be carried out:
4. Settlement through bipartite negotiations, Article 1 number 10 of the PHI Law states that "bipartite negotiations are negotiations between workers/laborers or workers/labor unions and employers to resolve industrial relations disputes." If in the bipartite negotiations reach an agreement, the agreement is stated as a mutual agreement, but if in the negotiations no agreement is reached, then one of the parties registers with the local Disnaker official and

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<sup>27</sup> Satjipto Rahardjo, *Law Sciences, Ctk. Eighth*, Citra Aditya Bakti, Bandung, 2014, p. 174.

<sup>28</sup> <https://money.kompas.com/read/2021/11/18/170428326/> This is a Sanction for Employers Who Pay Cheap Wages to Workers (kompas.com). Accessed on May 6, 2023, at 10.48.

then the disputing parties will be offered to resolve the dispute through mediation, conciliation or arbitration;

5. Settlement through mediation, Article 1 number 11 of the PHI Law states that: "Industrial Relations Mediation, here in after referred to as mediation, is the settlement of rights disputes, conflicts of interest, disputes over termination of employment, and disputes between labor unions/health workers in only one company through deliberation mediated by one or more neutral mediators." In mediation, if the parties agree, a collective agreement will be made which will then be registered in the Industrial Relations Court, but if no agreement is found, the mediator will issue a recommendation in writing, if the recommendation is accepted, the parties register the recommendation to the Industrial Relations Court, and if the parties or one of the parties reject the recommendation, the party who refuses can file a claim against the other party through the court the same;
6. Settlement through conciliation, Article 1 number 13 of the PHI Law states that "Conciliation of Industrial Relations, hereinafter referred to as conciliation, is the settlement of disputes of interest, disputes over termination of employment or disputes between labor unions/Health Workers in only one company through deliberations mediated by one or more neutral conciliators." The relationship is a settlement through deliberation mediated by a conciliator (which, in the provisions of the Industrial Relations Dispute Law is a private intermediary employee not from the Directorate of Labor as mediated) in resolving disputes of interest, Termination of Employment, and disputes between trade unions in one company. In the event of an agreement, it will be included in a collective agreement and will be registered with the relevant court, but if there is no agreement, it will be given recommendations that can be accepted or rejected, and for the refusal of the parties or one of the parties, a claim can be filed against the other party through the industrial relations court;
7. Settlement through arbitration: Article 1 number 15 of the PHI Law states that "Industrial Relations Arbitration, in the future referred to as arbitration, is the settlement of a dispute of interest, and a dispute between trade unions/health workers within only one company, outside the Industrial Relations Court through a written agreement of the disputing parties to submit the dispute to an arbitrator whose decision is binding on the parties and is final." Settlement Disputes outside the Industrial Relations Court over disputes of interest and between trade unions in a company can be reached through a written agreement that the parties agree to submit the dispute to the arbitrators. The arbitral award is final and binding on the disputing parties, and the disputing parties themselves select the arbitrators from the list set by the minister As for the efforts that can be taken on the arbitral award if there is a legal defect in the award by Article 52 Paragraph (1) of the PHI Law, namely: Regarding the arbitral award, one of the parties may submit an application for annulment to the Supreme Court no later than 30 (thirty) working days from the date of the arbitrator's award, if the prize is suspected to contain the following elements:
  - a. Letters or documents submitted in the examination, after the judgment has been handed down, admitted or declared false;
  - b. After the verdict is taken, a decisive document is found, which is hidden by the opposing party;

- c. The decision is taken from a trick committed by one of the parties in the examination of the dispute;
  - d. The award goes beyond the power of the industrial relations arbitrator; or e. The decision is contrary to laws and regulations;
8. Settlement through the industrial relations court, Article 1 number 17 of the PHI Law states, "The Industrial Relations Court is a special court established within the district court that has the authority to examine, adjudicate and give a verdict on industrial relations disputes." The Industrial Relations Court is the first and last court related to disputes of interests and conflicts between workers/health workers but does not deal with disputes of rights and termination of employment because legal remedies at the cassation level are still allowed for parties who are dissatisfied with the decision of PHI, as well as a review to the Supreme Court if there is new evidence found by one of the parties to the dispute.

### **E. Conclusion**

1. The 1-year Employment Contract Agreement (PKWT) No: 032/PKWT/RSDA/X2023 between Dera Hospital and Health Workers refers to Permenkes 1199 of 2004. The work agreement that was made was under the applicable provisions. However, in terms of its implementation, there was still a discrepancy with the agreement where the health worker, after signing the contract and at the time of starting work, was asked to carry out a work probationary period for four months. As a result of the probationary period, the wage/salary was deducted by Rp. 1,200,000, lower than the minimum wage provisions applicable in the Brebes district.
2. The work agreement made by the hospital with Tenaga. Health is legally binding, like a law, which, of course, requires the parties to carry out the deal that has been made. Still, in reality, the hospital enforces its health workers to follow the work probation period according to articles 58 and 60 of Law 13/2003, emphasizing that PKWT cannot require a work probation period and the work probationary period only applies to the type of indefinite time work agreement / PKWTT. As a result of the probationary period, the wage was deducted lower than the minimum wage in Brebes Regency according to Article 90 of Law 13/2003 jo Article 88A paragraph (3) of Law 11/2020 jo Article 23 paragraph (3) and Article 55 paragraph (1) of PP 36/2021 affirming that employers are obliged to pay wages at the agreed time and under the agreement between employers and workers and employers are prohibited from paying wages lower than the applicable minimum wage in their area.

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