



Fulfillment of Workers' Rights in Remote Working: The Perspective of Labor Development Principle in Indonesia

Nur Putri Hidayah¹, Isdian Anggraeny^{2*}

¹Faculty of Law, University of Muhammadiyah Malang, Malang, 65144, Indonesia

²Faculty of Law, Universitas Airlangga, Surabaya, 60286, Indonesia.

*Corresponding Author: isdian.anggraeny-2021@fh.unair.ac.id

Article

Abstract

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The popularity of working from home or remote working is on the rise globally. In Indonesia, the existence of the internet underpins the trend to work from home since accessing this technology is effortless. However, existing regulatory provisions mostly govern matters regarding office work, while the rights and responsibilities between employers and employees in the remote working scheme have never been specifically regulated. This situation creates a huge gap between what is stated in a written law and law in action. This research aims to analyze the congruence of agreements with the fulfillment of rights of workers working from home from the perspective of legislation and the principles of labor development. This research employed sociological legal methods. The research results indicate that the fulfillment of labors' rights in both the agreement and in implementation have not met the principles of labor development. The conflict of rights and criminal violations regarding this matter is obvious since workers' rights governed in the legislation are not governed in the work agreement. Moreover, there is still incongruence between the regulations and implementation of the rights of workers regarding the portion of break/leave and overtime wages.



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INTRODUCTION

Growing complexity in the industrial sector these days has shifted conventional working tendency to a new level, especially amidst the growing internet technology that gives access to the universe, opening wider access for all to perform the production process anywhere. This trend is more commonly known as remote working. Some others probably hear this term as teleworking or working from home.

Remote working (Putra, Isrok, & Hidayah, 2023; Schall, 2019) allows people to work anywhere without having to show up in the office, but they can remain in the

production tasks. Remote working allows people to choose their workplace flexibly (Schall, 2019). The implementation of remote working is on the rise amid Covid-19 (Battisti, Alfiero, & Leonidou, 2022; Demerouti, 2023; Li & Zhang, 2020; Xu, Wang, Han, Huang, & Huang, 2022), and it is popular among women since they like the flexibility where they could take care of the household chores and children while staying engaged with their work (Eddleston & Mulki, 2017). Remote working is also believed to increase the productivity and creativity of working (Greenbaum, 2019).

These two modes of working should not set any difference between remote working and conventional working in terms of the rights people get, especially when the amount of time they spend working remotely is not different from those working at the office (Al-Fatih, Ahsany, & Alamsyah, 2020). In Indonesia, workers' rights are governed by Law Number 13 of 2003 concerning Labor (Pangestu, Cahyani, & Al-Fatih, 2022). Generally, Law concerning Labor implies that the rights of workers at the workplace constitute wages (Article 1 Paragraph (30)) and decent salary (Article 88), equal and non-discriminative treatment from employers (Article 6), leave and breaks (Article 79, Article 82 to Article 85), right to worship (Article 80), safety and health, moral and decent treatment to humans' dignity (Article 86), social security for workers (Article 99), congregation (Article 104), and severance pay or other rights following layoffs (Article 156). Following the effectuation of Law Number 11/2020, some amendments took place regarding wages as outlined in Article 88 of Law Number 11/2020 and severance pay following layoffs as governed in Article 156 of Law Number 11/2020.

Work agreement and its implementation should principally refer to labor development based on *Pancasila* (Five Principles) and the 1945 Indonesian Constitution. The objectives of this labor development are governed in Article 4 of Law concerning Labor constituting: a. Optimal and decent empowerment and employment of labor; b. equal distribution of job opportunities and the provision of labor relevant to the need of national and regional development; c. protection of workers for the welfare of the people; and d. improvement of welfare for workers and their families. Labor development is important in the development of the entire human beings in Indonesia. Thus, labor development is intended to bring welfare to all people in a just and equal way (Al-Fatih, Nur, & Nilasari, 2023).

This paper also provides a case study between company AA and Mrs. ZZ as a worker in the company. Company AA runs its business in information technology with a parent company in Singapore and opened its branch office in Jakarta, Indonesia. On behalf of the company, the Director of the company recruited several workers, one of whom was Mrs. ZZ. Both the director and Mrs. ZZ built a good professional relationship under a Temporary Work Agreement since the 1st of August 2019. Mrs. ZZ worked as a back-end developer. To date, Mrs. ZZ still works in the company (an Interview, 10th of September 2020).

Following the agreement signed by Mrs. ZZ, some issues arose. Principally, a work agreement must be congruent with the current provisions of Law concerning Labor, but this is not what happened to the agreement. The work agreement Number 17/PKWT/PT AA/VIII/2019 involving the two parties contravened the law in terms of the rights Mrs. ZZ deserved as a remote worker, where the rights of the employee were not stated at length, and this situation led to multi-interpretation, and the issue brought could potentially hit industrial relationship the two parties have built and trigger disputes. For example, the Fixed Time Work Agreement between Mrs. YY with Company AA Number 17/PKWT/PT-AA/VIII/2019, obtained provisions regarding the Probation Period contained in Article 3 paragraph 1 which states a maximum period of 3 (three) months from 1 August 2019 to 1 November 2019". This is of course contrary to the provisions of the Labor Law contained in Article 58 which cannot require a probationary period and if this is stated, the required probationary period is null and void by law.

Article 1 Paragraph (2) of Law Number 2 of 2004 concerning Resolution of Disputes in Industrial Relations implies that these disputes arise due to failure to fulfill the rights, leading to various interpretations and implementations in response to the regulatory provisions in the legislation, work agreements, company regulations, and cooperation agreements. The dispute may involve: 1) different implementation of rights and responsibilities at work in the agreement, 2) different implementation of rights and responsibilities due to the disharmony between the work agreement and existing legislation.

Some previous studies discuss the implementation of work agreement in limited liability companies (Yuli, Sulastri, & Aryanti, 2018), analyses of temporary work agreement (Rahman, 2017), analyses of legal relations between employers and freelancers under services agreement but without any professional relationship between the two (Pamady, 2019), assessment on the growing trend of remote working and its consequences regarding measures taken, welfare, and balance between life and work (Anggraeny & Hidayah, 2021)(Anggraeny & Al-Fatih, 2020), protection for workers in the era 4.0 (Purnomosidi & Riyanti, 2019), and binding internal force of work agreements through electronic transactions (Damayanti & Hernawan, 2014).

However, none of those studies discuss the fulfillment of rights for workers working remotely in Indonesia, from either a normative or empirical perspective. This research aims to analyze the relevance between work agreement and the principle of labor development. This research is expected to contribute to the nation in terms of fulfilling the rights of remote workers in Indonesia.

METHOD

This research employed sociological legal methods (Ansari & Negara, 2023). It was applied to study the congruency between the fulfillment of workers' rights by comparing how this fulfillment is performed and the agreement outlined in the work agreement. The research data were obtained from interviews with remote workers working in Company AA. The research data was qualitative and presented in

descriptive analysis. The identity of the informants and the company is confidential, and this confidentiality is intended to comply with ethics and the privacy principles of the informants.

RESULTS AND DISCUSSION

Workers' Rights in Law Number 13 of 2003 concerning Labor in conjunction with Law Number 11 of 2020 concerning Job Creation and the Principle of Labor Development

Workers' rights are governed in several articles of laws and they refer to the rights workers can enjoy for as long as they work and the rights following the termination from work.

Firstly, during their working period, both female and male workers are entitled to the rights to equal and non-discriminative treatment from the company, as outlined in Article 6 of Law concerning Labor. Workers also have the right to improve their skills at work through some training as outlined in Article 11 of Law concerning Labor.

Other rights regulated by the company involve wages, breaks/leave, working hours and overtime work, congregation, and many more. In terms of the right regarding working hours, workers are entitled to work for 40 hours per week. That is, those working more than the hours set forth deserve to receive overtime wages. The amount of these wages should outweigh hourly basis wages in normal working hours. Wages and salary are governed in the Decision of Ministry of Employment and Transmigration Number 102/MEN/VI/2004 in conjunction with Government Regulation Number 35 of 2021.

Wages must be agreed upon by parties involved in work agreement that must follow what both parties agree. This matter is outlined in Article 52 Paragraph (1) letter (a) of Law concerning Labor. Wages paid to employees by a company must not be under the minimum wages, as outlined in Article 90 A paragraph (1) of Law Number 11/2020. Workers have the right to receive their wages on time, or sanctions could be imposed on late payment, as outlined in Article 95 of Law concerning Labor. Unfortunately, this provision was revoked and replaced by the provision implying that wages could be taken as debts that have to be prioritized by bankrupt companies, and the provision is outlined in Article 95 of Law Number 11/2020.

Regarding break and leave, a company must allow its workers to take some break or leave, in compliance with Article 79 Paragraph (1) of Law Number 13/2003 in conjunction with Law Number 11 of 2021. The breaks can be broken down into a short break between working hours, weekly leave, yearly leave, and a long break. According to Article 81 of Law concerning Labor, female workers also have the right to take leave due to period (if it is painful) and maternity as governed in Article 82 of Law concerning Labor. Workers have the right to receive their full salary even when they are on leave or take a break, as outlined in Article 84 of Law concerning Labor.

This is an exemption from the 'no work no pay' principle as outlined in Article 93 Paragraph (1) of Law concerning Labor.

Employees and their families are also entitled to social security for workers as outlined in Article 99 Paragraph (1) of Law concerning Labor, including health insurance, old-age benefits, pension, insurance for work accident, and death security (Mursidah, Handoyo, & Widodo, 2022). Employees also have the right to be members of labor unions as outlined in Article 104 Paragraph (1) of Law concerning Labor.

Secondly, severance pay is given as compensation over layoffs, and this is part of workers' right that employers must fulfill. Money given as a reward at work is paid to give recognition to the workers for their period of service in a company. The replacement of rights refers to Article 156 of Law Number 13/2003 in conjunction with Law Number 11/2020. These include the rights the workers have to get during the yearly leave that has not been taken but remains active, cost coverage for transport back to home country/hometown, cost on housing and medicine, and other matters outlined in work agreements, cooperation agreements, and companies' regulatory provisions. The implementation of industrial relations must be based on Pancasila and the 1945 Indonesian Constitution in manpower development, namely the optimal and appropriate empowerment and absorption of manpower as an integrated program to open wider employment opportunities and opportunities for the people of Indonesia.

Thirdly, fair distribution of job opportunities and vacancies relevant to the need of regional and national development should touch every single corner of the archipelago to facilitate the job market for the people according to their skill and expertise. Placement of workers should be performed to an extent that could accommodate the needs of all sectors at a regional and national level.

Fourthly, labor protection is given based on Law concerning Labor that principally constitutes (Suhartoyo, 2019): 1) the protection over wages, welfare, social security, and labor; 2) Protection over safety and health for workers; 3) legal protection regarding the establishment of labor unions and becoming the members of the unions; 4) protection of fundamental rights for workers/labor to negotiate with employers.

Fifthly, the betterment of the welfare for the workers and their families is performed by ensuring that legal protection is given to the workers through National social security administered by *BPJS Kesehatan* (Widiastuti, 2018) and *BPJS Ketenagakerjaan* (Shihab, 2018). This protection should also embrace not only the workers but also their family members.

Labor development is intended for the entire people and the welfare of the citizens in Indonesia. This development, furthermore, is manifested as part of the 8th Sustainable Development Goals (SGDs) that is aimed to support inclusive and sustainable economic growth and full-time and productive workers for decent jobs for all (Sofianto, 2019).

Attention to the regulation of workers' rights, especially to support the existence of remote working, is not only the concern of the Indonesian state. ASEAN

countries also participated in discussions or even made amendments to their labor laws, such as those carried out by Malaysia (Wahab, Razak, & Mahmod, 2022), Singapore (boundlesshq.com, 2020), Thailand (Koty, 2023) and Philippines (Gaduena, Caboverde, & Flaminiano, 2022)(Mores, 2022). The following is a brief description of the remote working provisions in these countries:

Table 1 Comparison of Legal Protection of Remote Working Workers in Several ASEAN Countries

Singapore	Malaysia	Thailand	Philippines
Workplace Safety And Health Act 2006 (2020 Revised Edition)	Labor Act 1955 ('EA 1955')	Amendments to the B.E. Labor Protection Act 2541	Presidential Decree no. 442 OF 1974, as Amended and Renumbered, and Republic Act No. 11165
There is a Tripartite Statement on Flexible Work Arrangements (FWA, one of its forms, namely remote working) which sets out recommendations that are recommended for employers to follow in connection with the implementation of flexible working arrangements. This statement has no legal force, however employers in Singapore observe and comply with it in practice.	Employers can ask workers to work overtime and with the agreement of the worker, the worker must be paid for overtime pay in accordance with the provisions contained in EA 1955	Amendments to the B.E. Labor Protection Act 2541 adds a new Section 23/1 setting out the labor rights of remote workers.	There are special laws and regulations governing remote workers that discuss the rights and obligations between employers and workers
Employees must apply for remote working in writing and discuss the technical implementation of remote working (schedule, location,	The employment contract will be void by law in situations where the employer provides benefits that are lower than	remote work provisions in the labor agreement in a written format, which provides information on the implementation of remote working.	The contract is drawn up individually with provisions not less than the standard provisions of

communication model, and other alternative rules)	those stipulated by the EA 1955		labor legislation
Employees Get safe equipment and information for the benefit of workers, get employee technical coordination with the team during an emergency, get the same training and development for all employees, and get Security information	Remote working employees get full salary; for daily workers who have previously received an agreed salary, while workers with irregular wages are paid the minimum wage as per the 2020 Hiring Regulation (Ministry of Human Resources, 2020).	remote workers have the same rights as workers on the business premises. (Chapter 5)	Remote workers have the same rights as workers on site, whether about workload, career development opportunities, rewards, etc.

Source: Compilation by author of various journal articles, 2023

A. Workers' Rights in Work Agreement of Remote Working between Parties

In terms of the work agreement signed by employers and employees, eleven articles principally regulating the matters regarding the period of the agreement, tasks, and placement, probation, rights and responsibilities of employers and employees, working time and yearly leave, basic salary, allowance and income tax, confidentiality, end of the agreement, dispute, and concluding provisions are outlined.

Workers' rights governed at length in the agreement constitute working time, placement, wages, allowance, break time and leave, and facilities supporting welfare. In terms of working time, workers are only allowed to work for 40 hours or 8 hours per day for five days a week. Workers could decide where they want to work, and this freedom to decide is supposed to be the reasonable consequence of remote working (Zubaidi, Pratamab, & Al-Fatih, 2020).

The monthly amount of wages given should be outlined at length in the work agreement, and the amount should be more than what is received as the minimum wages at the provincial level of Malang. Article 7 of the law implies that workers deserve allowance as governed by regulatory provisions of a company. The allowance involves that given for Ied, health insurance paid to the *BPJS Kesehatan*. The income tax deducted from the wages should be under the responsibility of companies.

In terms of breaks and leave, workers are allowed to have only one break time each day and this break time is not included in working hours. However, tasks performed outside working time are governed in a provision, but, surprisingly, not the wages for overtime work that should be the workers' right. The right to congregate, however, is not governed in a work agreement, but Article 104 of Law concerning

Labor. The existence of labor unions serves as the forum where workers could express their grievances and aspiration when they expect that their rights deserve protection and to strengthen their bargaining position before employers.

In terms of the temporary work agreement agreed by the parties concerned, the employer of the company has not accommodated several rights of the workers, such as the absence of wages for overtime work, contrary to what is outlined in the work agreement. This indicates that the employer violates the provision of Article 78 Paragraph (2) of Law concerning Labor. Wages of overtime work are part of the right of the workers and part of the responsibility of the company to pay. Failure to fulfill this right could potentially trigger disputes over this injustice in the time to come (Sunaryo, 2021). More seriously, this negligence could even lead further to not only civil law but also criminal issues. This negligence, specifically, is subject to at least one month imprisonment and the maximum of 12-months imprisonment or a fine ranging from IDR. 10,000,000 (ten million rupiahs) to IDR 100,000,000 (one hundred million rupiahs).

Secondly, the work agreement only regulates one-hour break time at work and yearly leave, but not maternity and religious worship-related leave. The interview results indicate that workers are not exposed to the information on other rights to work leave and their understanding of leave and other rights is only restricted to what is outlined in the agreement. This is one of the drawbacks of remote working, where interaction among colleagues is reduced or, if any, the real interaction is only facilitated in face-to-face meetings.

From the perspective of the principle of labor development, the absence of the regulatory provisions concerning overtime wages and leave other than yearly leave outlined in the agreement indicates that the work agreement does not fully accommodate the objectives of labor development. The first objective of labor development is to empower and employ workers optimally and in a decent way. Failure to pay workers their overtime wages violate humanity, and this is contrary to the essence of overtime wages: to optimize workers and, on the other hand, to respect them by improving the welfare of the workers. Failure to give the right to leave to the workers also indicates another form of disrespect to workers. It is essential to understand that leave is aimed to give a break to the workers from work (Hastuti, 2015). This leave could also give more time for workers to mingle with their families on special days like religious holidays or to have more time to extend their social circle.

The *second* objective of labor development is to help open job opportunities and availability that are relevant to overtime wages and the right to leave. Thus, the absence of overtime wages and leave other than yearly leave does not violate the second objective of labor development.

The *third* objective of labor development is to give protection and bring welfare. Overtime wages are not governed in work agreements, and this loophole has left the rights of the workers unprotected. When this specific matter is governed in Law

concerning Labor but not in the work agreement, an employer could certainly assert that the absence of the overtime wages is agreed by both parties, or the employer could even hold on to *pacta sunservanda* principle.

The *fourth* objective of labor development is to improve the welfare of workers and their families, and the absence of overtime wages and leave other than yearly leave indicates no betterment of the welfare for both workers and their families.

A work agreement marks the relationship between an employer and an employee, and it plays an essential role to bring welfare and the improvement of the quality of life as relevant to the objective of labor development. A work agreement made with good faith between an employer and an employee is expected to serve as a firm legal basis for employees to get their rights. Well fulfilled rights could radiate positivity to the company.

Fulfillment of Rights of Workers Working Remotely According to the Work Agreement

The interviews have revealed several facts regarding the implementation of the rights of workers working remotely: regarding working time as outlined in the work agreement that does not regulate overtime wages but the obligation to work outside the working hours when needed, no wages for overtime work are given when workers are needed outside the working hours. The interview reveals that workers are required to attend unannounced meetings outside the working hours although these meetings are not often deemed overtime work, and, thus, no overtime wages are given. This is as stated in Article 6 paragraph (2) of the Work Agreement Number 17/PKWT/PT-AA/VIII/2019 which states that the Second Party can work outside the stipulated working days and hours in the event that there is work that must be completed immediately or is urgent.

Workers should have their right to wages as outlined in the work agreement, and they should also be entitled to severance pay for their religious holidays. Other severance pays may involve money for housing, families, and many more. Workers fully have the right to work remotely since they do not have to sit in their office, especially when distance is an issue. Most workers choose to work from a café, home, or other places other than the office. Documents that need signing still do not require workers to meet since the documents could be scanned and sent through email for signatures.

Workers have the right to one hour break not counted as a working hour. Workers also have their yearly leave for fourteen days. However, from the interviews, most workers knew nothing about the leave other than yearly leave and they decided to find out by asking their employer. They admitted that the company did not explain further about matters regarding break time and leave other than yearly leave when they signed the contract, and their knowledge about their rights is only restricted to what is outlined in the work agreement (the agreement governs break time and yearly leave). The HR

section of the company reported that break time and leave for workers are governed under company regulation. Leave given for religious activities including worship is governed in Article 28 of the company regulation as follows:

- a. Workers working for three consecutive years could temporarily leave their work on the grounds of religious activities according to the schedule for Hajj pilgrimage as set by the government.
- b. This provision is given only once if they work in the company.
- c. Workers planning to temporarily leave their work on the grounds of religious activities should propose a permit at least thirty days before their departure.
- d. The permit given on the grounds of religious activities refers to the current legislation.

Maternity leave, however, will be fully given for 1.5 months before parturition and 1.5 after birth as long as the workers have worked for the office for at least three years. The leave will only be given after birth for those working less than three years. No more leave like a long break is given to remote workers.

Workers are also entitled to social security registered to *BPJS Kesehatan* and *BPJS Ketenagakerjaan*. Workers are registered to first-class health facilities in *BPJS Kesehatan*, but they are registered for old-age benefits in *BPJS Ketenagakerjaan*.

Other rights such as the right to congregate, the workers said that they did not join any labor unions since the company they work for does not facilitate labor unions. Moreover, the workers also admitted that they did not have enough opportunity to improve their skills since they have never been involved in training in the company or have never been sent to other training programs outside the company.

In conclusion, there was a default in the implementation of the work agreement between Mrs. YY with Company AA Number 17/PKWT/PT-AA/VIII/2019. This is based on the results of interviews with remote working workers which state that the fulfillment of workers' rights is not in accordance with what is stated in Article 5 of the work agreement Number 17/PKWT/PT-AA/VIII/2019. Unfulfilled rights such as overtime pay, rest other than one hour work break, leave other than annual leave, rights to assemble and self-development that are not provided by the company.

Overtime work wages as elaborated previously in the discussion are not given, and it violates the provision of Article 78 Paragraph (2) of Law concerning Labor. This issue could potentially lead to disputes. However, there has not been any conflict of rights between the company and its employees over the overtime wages not because this violation is acceptable, but because workers do not fully understand their rights. Most of the workers think that working remotely will not leave them with overtime wages since they do not have to come to the office. When this is the case, it is essential for workers to fully understand the law regarding the right and obligations of workers.

CONCLUSION

Remote working is not at all a new concept, but its implementation is getting more common amidst the 4.0 industrial revolution in line with the advanced technology where it is easier to access the internet than ever before, and there has been a massively increasing need to work with technology since the outbreak of Covid-19. Unfortunately, matters regarding remote working have not been governed by the legislation concerning labor in Indonesia. The research results reveal that the work agreement agreed by the parties involved has not fully fulfilled the provisions of the rights as outlined in Law concerning Labor; overtime wages are not given despite the regulatory provision concerning overtime wages. Long breaks and leave for religious activities are also restricted only once if the workers work in a company. This work agreement, thus, does not help manifest the objectives of labor development. Working overtime is common at the office, but the wages given to this activity are not as common as the trend of working overtime. Similarly, maternity leave will only be fully given to female workers having worked for at least three years, but this policy does not apply to those working less than three years. All these inconsistencies are a violation that could potentially spark disputes, and it could be even more serious when it touches criminal scope. Most workers do not specifically know about their rights at work since their perspective is only restricted to work agreements, not extended to company regulations and specific information on their rights and obligations from the company.

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