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Constitutional Guarantee of Legal Protection for Freelance Workers from a Social Justice Perspective

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Abstract

This research investigates the absence of constitutional protection for freelance workers, particularly freelance models, within Indonesia's labor law framework. While the Constitution of the Republic of Indonesia guarantees the right to work and to fair and decent remuneration, these protections are primarily structured around formal employment relationships, thereby excluding a growing segment of the labor force that operates within non-standard, flexible arrangements. The study aims to analyze the extent to which the current legal system, particularly Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2023 on Job Creation accommodates or neglects freelance workers in terms of legal recognition, job security, and social protections. Using a normative juridical method with a statute and conceptual approach, this research draws from doctrinal legal analysis to critically evaluate the legal construction of employment relationships. The findings reveal significant normative gaps that leave freelance models vulnerable to exploitation, lacking access to written employment contracts, social security, and fair dispute resolution mechanisms. The study proposes a

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reconfiguration of legal norms to introduce a *Constitutional Employment Contract* model, which accounts for the flexible nature of freelance work while ensuring fundamental labor rights. Additionally, the paper recommends the establishment of an independent regulatory body to provide legal oversight and advocacy for flexible workers. Ultimately, this research concludes that achieving social justice for all workers in the modern labor market necessitates a transformation of Indonesia's labor law regime toward a more inclusive and responsive constitutional framework.

Keywords: *Freelance Workers, Constitutional Protection, Labor Law, Social Justice, Modeling Industry*

I. Introduction

The revolutionary advancement of digital technology has fundamentally reconstructed the structure of the global labor market and generated significant legal implications. Innovations such as automation and artificial intelligence (AI) have not only transformed the execution of work tasks but have also directly disrupted traditional industrial relations that were previously grounded in permanent and subordinative employment system.[1] This transformation is not gradual, but exponential, driving a paradigmatic shift toward more flexible forms of work such as freelance labor, gig-based employment, and platform-dependent work arrangements.[2] These emerging forms of labor signify the evolution of a labor market that is fluid and adaptive to the dynamics of digitalization, while simultaneously challenging the normative and static framework of conventional labor law. As various studies suggest, digitalization not only facilitates job creation but also induces job destruction, encourages job transformation, and reconfigures managerial relationships through non-hierarchical management schemes. In this context, the analysis of Jacques Ellul, as cited by

[1] Sarah De Heusch, "The Blurring of Employment Boundaries: A Social Economy Perspective," in *The Deconstruction of Employment as a Political Question: "Employment" as a Floating Signifier*, 2018. doi: https://doi.org/10.1007/978-3-319-93617-8_8.

[2] Steven Vallas et al., "The Creativity Hoax: Precarious Work and the Gig Economy," *NEW TECHNOLOGY WORK AND EMPLOYMENT* 34, no. 1 (2022).

Juliantika, becomes increasingly relevant, in which technology is not merely a neutral tool but an autonomous force capable of transforming all aspects of human life, [3] including work patterns and the accompanying legal relations.[4]

The growth of freelance labor has seen a significant rise in line with the changing structure of the modern labor market, including in Indonesia. [5] According to data from the Central Statistics Agency (Badan Pusat Statistik/BPS) in 2022, the number of freelancers reached approximately 34 million individuals, accounting for 24% of the national labor force.[6] This surge is a direct consequence of the Covid-19 pandemic, which triggered massive layoffs in the formal sector and accelerated the shift toward flexible employment models.[7] Freelance work has now become a dominant trend, characterized by a wide range of specializations and high demand, particularly in the creative economy sectors such as modeling, fashion, and entertainment, which are typically ad hoc and project-based in nature.[8] However, freelancers in these sectors often operate without written contracts or institutional protections, resulting in disparities in legal guarantees. Data from BPS and the Creative Economy Agency (Bekraf) in 2016 indicates that the contribution of the creative economy subsectors to the Gross Domestic Product (GDP) was still dominated by culinary (41.40%), fashion

[3] Juliantika Juliantika and Syahla Rizkia Putri Nur'insyani, "Telaah Teknologi Dalam Tinjauan Terminologis: Relevansi Teknologi Dalam Konsepsi Jaques Ellul Di Masa Kini," *Education : Jurnal Sosial Humaniora Dan Pendidikan* 4, no. 1 (2023). doi: https://doi.org/10.51903/education.v4i1.446.

[4] David Chandler and Christian Fuchs, *Digital Objects, Digital Subjects: Interdisciplinary Perspectives on Capitalism, Labour and Politics in the Age of Big Data* (University of Westminster Press, 2019).

[5] Penny Williams, Paula McDonald, and Robyn Mayes, "The Impact of Disruptive Innovation on Creative Workers: The Case of Photographers," *Creative Industries Journal* 14, no. 2 (2021). doi: https://doi.org/10.1080/17510694.2020.1858707.

[6] Prakerja.id, "Tren Freelancer, Pilihan Jadi Profesional Tanpa Ikatan," Prakerja 2024, December 14, 2022, https://www.prakerja.go.id/artikel/insight/tren-freelancer-pilihan-jadi-profesional-tanpa-ikatan.

[7] Fathimah Fildzah Izzati et al., *Pekerja Industri Kreatif Indonesia: Flexploitation, Kerentanan, Dan Sulitnya Berserikat*, ed. Farhanah Faridz, 2021.

[8] Samar Al-Kindy, "Labor Disruptions under the Ascendancy of Digital Technologies," *Journal of Human Resource and Leadership*, 2025. doi: https://doi.org/10.47604/jhrl.3245.

(18.01%), and crafts (15.40%). In contrast, subsectors representing cognitive labor and immaterial labor such as design, application development, film, and music contribute only marginally to GDP, reflecting a disparity in the structural recognition of the economic value of digital and intellectual freelance labor.[9]

Source: Creative Economy Agency and BPS, 2016.

The concept of "rights" in law has important theoretical foundations as the basis for the protection of legal subjects, including labor.[10] Etymologically, the term "right" derives from the Dutch and German word "recht," which is divided into objectief recht (objective

[9] Prakerja.id, "Tren Freelancer, Pilihan Jadi Profesional Tanpa Ikatan."

[10] Yahya Abdul Habib and Jacobus Jopie Gilalo, "Social Justice Theory in Indonesia Reviewed from the Philosophy of Law," *International Journal of Business, Law, and Education* 6, no. 1 (January 24, 2025): 238–47. doi: https://doi.org/10.56442/ijble.v6i1.995.

law) and subjectief recht (subjective right). Objectief recht refers to universally applicable legal norms, while subjectief recht denotes individual interests protected by those norms. According to Sudikno Mertokusumo, a right is "an interest protected by law."[11] G.W. Paton states that "the right of contract arises directly from a justice act. Other rights are granted by the law, whether the person bound by duty consents or not."[12] Rights receive legal protection when they are explicitly recognized by positive law. Thus, the guarantee of legal protection for labor must be based on the recognition of rights as part of the objective legal system in a rule-of-law state.

The historical development of labor law shows that the recognition of labor rights is the result of a long struggle rooted in the socio-economic dynamics of industrialization.[13] Its early foundations can be traced to the formation of labor unions in 19th-century England, as a response to exploitation and inequality in industrial relations. This protection effort gained international legitimacy with the establishment of the International Labour Organization (ILO) in 1919 under the auspices of the United Nations. The ILO Constitution's preamble explicitly declares that "universal and lasting peace can be established only if it is based upon social justice," affirming social justice as a prerequisite for sustainable global peace. This declaration was reinforced in the 1944 Philadelphia Declaration, which outlines fundamental principles on labor rights, human dignity in work, and the state's responsibility to ensure decent labor protection standards for all citizens.

Legal protection for labor is not merely aimed at regulating industrial relations but more broadly intended to guarantee worker safety and security in the exercise of their constitutional right to decent work.[14] In the context of labor law, occupational safety protection includes regulations ensuring that all workers are protected from physical, mental, and environmental work-related risks. According to

[11] Sudikno Mertokusumo, "Mengenal Hukum: Suatu Pengantar Edisi Revisi," 2010.

[12] George Whitecross Paton, "A Textbook of Jurisprudence," 1972.

[13] "Political Law of The State of Indonesia as the State of Pancasila Law in the Framework of the Establishment National Law on the Establishment of Copyright Law," *Journal of Contemporary Issues in Business and Government* 27, no. 02 (2021). doi: https://doi.org/10.47750/cibg.2021.27.02.175.

[14] Ravi Danendra et al., "Legal Protection of Non Wage Workers Legal Protection of Non Wage Workers Rights After Omnibus Law," *Jurisprudentie* 8, no. 1 (2021).

Tim Visi Yustisia (2014), workplace accidents are defined as incidents occurring in the course of work, including travel to and from the workplace, and illnesses caused by work environments. Work-related accidents are an inherent risk of productive activities performed by labor, thereby imposing a legal obligation on the state to provide legal and institutional instruments that ensure compensation or redress in every such incident. In this framework, safety protection is a concrete manifestation of the state's responsibility to uphold workers' fundamental rights as part of the principle of social justice.

The philosophical foundation of Indonesian labor law cannot be separated from Pancasila and the 1945 Constitution, which explicitly places social justice as the normative basis for constructing the national legal system. The fourth paragraph of the Preamble to the Constitution affirms the state's commitment to "realizing social justice for all the people of Indonesia," where the phrase "realizing" implies that social justice is not merely an abstract ideal but a concrete objective requiring active and sustained implementation across various sectors, including labor law. Asshiddiqie asserted that social justice "is not only a final and static legal subject but a goal that must be dynamically realized," implying that the state must take an active role in designing a legal system that reaches all segments of the labor force, including those not formally bound by permanent employment.[15] Within this framework, the principle of social justice is also aligned with the economic justice theory developed by Louis Kelso and Mortimer Adler, which emphasizes that justice can only be upheld through three interdependent principles: participation, distribution, and harmony. These three principles are mutually reinforcing and inseparable. Kelso and Adler's idea of participation demands equal opportunity for every individual to be involved in the production process, both as owners of capital and as workers, and rejects monopolies and other exclusive barriers that create inequality.[16]

The fulfillment of the participation principle must be accompanied by fair distribution, that is, the distribution of production outcomes based on the actual contribution of each subject in the economic process. Kelso and Adler stated that "to each according to

[15] Jimly Asshiddiqie, "Konstitusi Dan Konstitusionalisme Indonesia, Edisi Revisi," Konstitusi Dan Konstitusionalisme Indonesia Sekretariat Jenderal dan Kepanitraan Mahkamah Konstitusi, 2005.

[16] Harlan M. Blake, Louis O. Kelso, and Mortimer J. Adler, "The Capitalist Manifesto," *The University of Chicago Law Review* 26, no. 4 (1959). doi: https://doi.org/10.2307/1598202.

his contribution," meaning that economic output should be distributed proportionally to one's productive participation. This perspective aligns with Aristotle's theory of distributive and commutative justice but must be contextualized within Indonesia's non-liberal state ideology. Joseph Stiglitz's argument about asymmetric information in free market systems reinforces the notion that markets are inherently unjust, as information inequality consistently disadvantages the weaker party.[17] Therefore, the state must intervene through legal instruments grounded in the principle of substantive social justice to protect vulnerable groups, including those who are structurally disadvantaged due to physical, economic, or social limitations.[18] Within the framework of Pancasila's legal philosophy, Notonagoro emphasized that: "Justice in Pancasila not only entails giving each person what is legally theirs but also ensures the balance of rights and obligations among individuals in society for the sake of collective welfare."[19] Hence, justice in Indonesia's labor law system must not be interpreted as uniform treatment for all, but as proportional, contextual, and collective, placing the state as the guarantor of rights, especially for labor groups not formally covered by conventional labor regulations.

Employment relationships in the labor law system are essentially contractual arrangements between two parties employers and workers that give rise to reciprocal rights and obligations based on an employment agreement. This definition is stipulated in Article 1 point 15 of Law No. 13 of 2003 on Manpower, which states that an employment relationship is based on an agreement involving the elements of work, command, and wage. These three elements are cumulative, meaning the absence of one disqualifies the relationship from being legally recognized as an employment relationship. This regulation forms the operational foundation for labor protection in Indonesia, including in determining which legal subjects are entitled to employment guarantees such as social security, minimum wage, and

[17] Joseph E. Stiglitz, "Asymmetries of Information and Economic Policy," https://www.project-syndicate.org/commentary/asymmetries-of-information-and-economic-policy-2001-12?, December 4, 2001.

[18] Fitria Esfandiari and Aan Eko Widianto, "Pancasila Legal System: Balancing The Fulfillment Of National Moral Values And Law Enforcement In Indonesia," *Indonesian Journal of Law and Economics Review* 19, no. 1 (January 12, 2024). doi: https://doi.org/10.21070/ijler.v19i1.999.

[19] Notonagoro, *Pantjasila Dasar Filsafat Negara Republik Indonesia: Kumpulan Tiga Uraian Pokok-Pokok Persoalan Tentang Pantjasila* (Universitas Gadjah Mada, 1962).

legal protection in industrial disputes.

The evolving structure of the labor market has introduced flexible employment forms that cannot be fully classified within the formal legal framework. One such form is freelance work, which refers to employment not bound by permanent contractual relationships but instead based on projects, output, or presence. Etymologically, "freelance" comes from the English words "free" and "lance," referring to an independent mercenary not sworn to any one lord. In modern labor contexts, a freelancer is someone who works independently without long-term commitment to a single employer. Such work is common in the creative economy, notably among fashion or hijab models who work on commercial projects, invitations, or event-based sessions.[20] These work arrangements are often informal, based on verbal or electronic agreements, without written contracts as required by labor law.

Under the prevailing legal framework, freelance workers only receive protection if their work relationships meet all elements prescribed by law, including the element of "command" in the sense of formal subordination.[21] However, in freelance contexts especially for model freelancers the work system tends to be more collaborative and non-subordinative. This model is not strictly subject to employer directives as in permanent employment but is based on limited, outcome-oriented work agreements. Nevertheless, if the freelancer performs labor, receives payment, and works within parameters set by the employer, an employment relationship should be considered as substantively established. Therefore, a strictly formalistic approach to defining employment relationships excludes many freelance workers from the protection of positive law, depriving them of the constitutional guarantees owed to every citizen.[22]

[20] Aura Anisah and Ratih Damayanti, "Media Hukum Indonesia (MHI) Published by Yayasan Daarul Huda Krueng Mane Perlindungan Hukum Bagi Pekerja Freelance: Analisis Regulasi, Tantangan, Dan Akses Jaminan Sosial Di Indonesia" 2, no. 4 (2024): 566. doi: https://doi.org/https://doi.org/10.5281/zenodo.14241772.

[21] Rachmayani, "PERLINDUNGAN HUKUM UNTUK PEKERJA LEPAS: MENYIKAPI TANTANGAN DI ERA GIG ECONOMY," *Journal Presumption of Law* 7, no. 1 (April 26, 2025): 18–30. doi: https://doi.org/10.31949/jpl.v7i1.11866.

[22] S H S Ulil Albab, Azhar Muhammad Hasan, and Khevin Bhaskara Sibarani, "LEGAL PROTECTION OF GIG WORKERS IN INDONESIA: REVIEWING LEGAL JUSTICE, CERTAINTY, AND

II. Methods

This research employs a normative juridical method with a qualitative approach, which is a legal study based on systematic analysis of prevailing positive legal norms and relevant legal doctrines.[23] The primary objective of this approach is to examine the adequacy and alignment of the national labor law system in providing legal protection guarantees for freelance workers, particularly in the modeling sector such as fashion and hijab models. The analysis is conducted through a statute approach,[24] which involves the examination of legal provisions including the 1945 Constitution of the Republic of Indonesia, especially Article 27 paragraph (2) and Article 28D paragraph (2), Law No. 13 of 2003 on Manpower and its amendments through Law No. 6 of 2023, Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, and Ministerial Decree No. 100/MEN/IV/2004 on daily freelance work.[25] This approach is complemented by a conceptual approach to elaborate and compare legal and justice theories in the context of non-formal employment relationships.[26] Accordingly, this research aims to identify normative gaps and the inadequacy of legal protections for freelance models who do not fully meet the cumulative elements of work, wage, and command as outlined in Article 1 point 15 of the Manpower Law.

The legal sources used in this study consist of primary legal sources, in the form of legislation, and secondary legal sources, including legal literature, academic journals, previous research findings, relevant court decisions, and expert opinions from labor law scholars

EXPEDIENCY," *Journal of Interdisciplinary Law and Legal Issues*, vol. 1, no. 2 (2023). doi: https://doi.org/10.56444/jidh.v7i2.3154.

[23] Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023). doi: https://doi.org/10.56444/jidh.v7i2.3154.

[24] Fuvut Wardani and Sri Anggraini Kusuma Dewi, "Efforts to Solve Absenteeism by Employees at Companies According to the Labor Law Number 13 of 2003," *YURISDIKSI : Jurnal Wacana Hukum Dan Sains* 19, no. 2 (2023). doi: https://doi.org/10.55173/yurisdiksi.v19i2.158.

[25] M Marzuki, *Penelitian Hukum* (Surabaya: Universitas Airlangga, 2010).

[26] Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," *HUMANIKA* 21, no. 1 (2021), https://doi.org/10.21831/hum.v21i1.38075.

and social justice theorists.[27] The theoretical framework guiding the analysis includes Aristotle's concept of distributive justice,[28] John Rawls' difference principle,[29] the principles of participation and distribution by Louis Kelso and Mortimer Adler,[30] and the notion of social justice in the legal philosophy of Pancasila as formulated by Notonagoro.[31] A triangulation technique is employed to test data validity, by comparing findings across various legal sources and academic references to derive objective and scientifically accountable conclusions. The scope of discussion is specifically limited to freelance workers in the modeling industry, excluding other types of freelance labor, in order to maintain analytical focus and depth on the normative challenges faced by labor groups not explicitly accommodated under the current labor regulations.

III. Result and Discussion

Employment relationships within the Indonesian labor law system are established based on a legal relationship between employers and workers, founded on an employment agreement that requires the presence of work, command, and wages as formal elements, as stipulated in Article 1 point 15 of the Labor Law. This normative construction forms a rigid legal protection framework[32] that recognizes only employment relationships fulfilling those elements cumulatively. Meanwhile, contemporary work realities have undergone significant transformation due to technological advancements and economic globalization, which have given rise to flexible, project-based work

[27] Maiyestati, *Metode Penelitian Hukum* (Sumatera Barat: LPPM Universitas Bung Hatta, 2022).

[28] Paula Gottlieb, "Aristotle: Nicomachean Ethics," in *Central Works of Philosophy Volume 1: Ancient and Medieval*, 2010, https://doi.org/10.1017/UPO9781844653584.004.

[29] John Rawls, *A Theory of Justice (Original Edition)*, *Development Policy Review*, 1971.

[30] Blake, Kelso, and Adler, "The Capitalist Manifesto."

[31] Notonagoro, *Pantjasila Dasar Filsafat Negara Republik Indonesia: Kumpulan Tiga Uraian Pokok-Pokok Persoalan Tentang Pantjasila.*

[32] Irna Rahmawati and Arinto Nugroho, "PERLINDUNGAN HUKUM BAGI PEKERJA HARIAN LEPAS YANG BEKERJA BERDASARKAN PERJANJIAN KERJA SECARA LISAN BIDANG JASA KONSTRUKSI (STUDI KASUS PEKERJA HARIAN LEPAS PT. PILLAR PERMATA)," *NOVUM: JURNAL HUKUM* 4, no. 4 (2017).

models within the gig economy. A large segment of workers, including freelance models in the creative industry, operate outside the formal employment structure as defined by law. This has created a normative dilemma, as freelance workers' legal status becomes ambiguous despite their substantive contribution to national economic productivity. Therefore, a comprehensive analysis of Indonesia's labor law system is needed to assess the extent to which the current normative configuration is capable of addressing the rise of non-traditional employment relationships such as freelance modeling.

The welfare state concept adopted by Indonesia through its Constitution positions the state as an active protector of citizens' fundamental rights, including the right to work and a decent livelihood. This is reinforced by the principle of social justice articulated in the fourth paragraph of the Preamble to the 1945 Constitution, which serves as the philosophical foundation for the national legal system, including labor regulation. In the context of freelance workers, including fashion and hijab models, the absence of explicit legal protection reveals a disparity that contradicts the constitutional mandate of social justice. The current legal-formal approach employed by the labor system tends to overlook the structural vulnerabilities faced by informal workers. [33] Thus, a more comprehensive approach grounded in theories of distributive and substantive justice is necessary, positioning the state not only as a regulator but also as a guarantor of rights for structurally vulnerable labor groups.

To address this complexity, the paper is divided into three main parts. First, it analyzes the configuration of Indonesia's labor law and the construction of employment relationships to identify normative limitations in covering freelance workers. Second, it systematically explores the perspective of social justice as a foundational principle of the state that should underpin legal protections for all forms of work, including freelance modeling, using justice theories from classical and contemporary thinkers. Third, it formulates a normative proposal for an ideal form of constitutional legal protection based on principles of substantive and participatory justice that meets the legal needs of freelance workers amid the changing landscape of modern employment. Through this structure, the article aims to provide both conceptual and

[33] Esy Kurniasih and Anggraini Dwi Milandry, "IMPLIKASI PEMBERLAKUAN UNDANG-UNDANG CIPTA KERJA TERHADAP PERLINDUNGAN HUKUM PEKERJA HARIAN LEPAS," *JKIH : Jurnal Kajian Ilmu Hukum* 1, no. 2 (2022). doi: https://doi.org/10.55583/jkih.v1i2.296.

practical contributions to the development of a more inclusive, responsive, and equitable labor law system in Indonesia.[34]

1. *The Configuration of Indonesian Labor Law and the Construction of Employment Relationships*

Protection of workers/laborers constitutes an integral part of the broader protection of citizens, which is a constitutional obligation of the state. In labor law theory, there are three main types of legal protection that serve as the pillars of employment relationships: (1) social protection, which aims to ensure a decent standard of living for workers as human beings; (2) technical protection, which concerns workplace safety and the prevention of occupational accidents caused by tools or materials; and (3) economic protection, which guarantees adequate income, including during periods of involuntary unemployment. These three elements form a unified framework that represents the state's responsibility to uphold the dignity and welfare workers.[35] Indonesian labor law was established based on constitutional values and the Pancasila ideology, emphasizing social justice and respect for human dignity in employment relations. The 1945 Constitution of the Republic of Indonesia, through Article 27(2) and Article 28D (2), affirms the right to work and fair treatment as fundamental human rights that must be protected by the state. This constitutional mandate is further elaborated in Law Number 13 of 2003 on Manpower, which governs workers' and employers' rights and obligations, types of employment relationships, wage systems, and social security schemes. However, these regulations predominantly rely on the formal structure of employment relationships based on the cumulative elements of "work, command, and wage," as stipulated in Article 1 point 15 of the Manpower Law. Consequently, non-formal work arrangements such as freelance labor are often excluded from comprehensive legal protection. [36] Before the

[34] "The Future of Work: Adapting Management Practices to the Gig Economy and Freelancer Culture," *European Economic Letters*, 2023. doi: https://doi.org/10.52783/eel.v13i3.409.

[35] Nikmah Dalimunthe and Muhammad Aulia Fajri, "Analisis Status Pekerja Freelance Dalam Perjanjian Kerja Waktu Tertentu (PKWT) Dalam Perspektif Hukum Ketenagakerjaan Di Indonesia," *AHKAM* 2, no. 3 (2023). doi: https://doi.org/10.58578/ahkam.v2i3.1297.

[36] Benny Bambang Irawan Nitinegoro and Mahmuda Pancawisma Febriharini, "LEGAL PROTECTION FOR WORKERS WHO HAVE WORK

enactment of the Omnibus Law (Job Creation Law), worker protections were normatively regulated under Law Number 13 of 2003 and its implementing regulations, such as Ministerial Decree Number 100/MEN/IV/2004. This framework recognized two primary forms of employment contracts: indefinite-term contracts (PKWTT) for permanent employees and fixed-term contracts (PKWT) for temporary jobs. The PKWT further included a more flexible scheme known as daily freelance work agreements. Article 10 of Decree No. 100/MEN/IV/2004 defines daily freelance workers as individuals employed for fewer than 21 days per month; if they exceed this threshold for three consecutive months, their status must automatically be converted into permanent employment. In practice, however, this provision is often disregarded by employers, leaving many freelance workers without legal certainty or proper protection.[37]

The Job Creation Law, enacted through Law Number 11 of 2020 and reinforced by Government Regulation Number 35 of 2021, introduced fundamental changes to the structure of labor law, including provisions on daily freelance workers. Article 11 of the regulation mandates that employment relationships between employers and freelancers be outlined in written agreements, and that employers are required to fulfill all employee rights, including enrollment in social security programs. Furthermore, the wage system under this framework may be based on either time units or work output, implicitly recognizing the flexibility of modern work arrangements such as freelancing.[38]

Beyond social security and wage systems, other crucial aspects of labor protection include social, technical, and economic safeguards. Social protection concerns the fulfillment of humane living standards; technical protection focuses on occupational

ACCIDENTS AND NOT REGISTERED IN THE BPJS PROGRAM," *UNTAG Law Review* 6, no. 2 (2022). doi: https://doi.org/10.56444/ulrev.v6i2.3461.

[37] Flora Bajard, "A 'Hijacked Salaried Status' in French Cooperatives of Freelance Workers: The Political Meaning of Shifts Between Standard and Non-Standard Employment," *Frontiers in Sociology* 5 (2020). doi: https://doi.org/10.3389/fsoc.2020.00036.

[38] Sang Kyun Cho, "Effect and Determination of Employee Status under the Labor Standards Act of a Freelance Announcer of a Broadcasting Company," *Center for Public Interest & Human Rights Law Chonnam National University* 31 (2023). doi: https://doi.org/10.38135/hrlr.2023.31.421.

health and safety; and economic protection ensures secure income. These elements are integral to labor law and highlight the complexity of regulating contemporary employment relationships.

Labor law is also inseparable from the concept of employment contracts. An employment relationship constitutes a legal bond between an employee and an employer, giving rise to mutual rights and obligations. Such contracts typically take the form of written agreements. Unfortunately, in freelance practices, these relationships are often formed without adequate written documentation, resulting in legal uncertainty.[39]

Under the pre-Omnibus Law regime, daily freelance workers were not explicitly recognized as subjects entitled to social security, unless voluntarily registered by the employer. This changed with Article 11(3) of Government Regulation Number 35 of 2021, which obliges employers to enroll freelance workers in social security programs if their employment relationship fulfills the elements of work, command, and wage. This provision strengthens the legal status of freelance workers in terms of social protection, though its implementation remains heavily dependent on effective government oversight.[40]

The distinction between pre- and post-Omnibus Law protections also pertains to job status certainty. Article 10 of Decree No. 100/MEN/IV/2004 stipulates that freelance workers employed for more than 21 days over three consecutive months must be granted permanent status but fails to specify a supervisory mechanism. In contrast, Government Regulation No. 35 of 2021 clearly mandates the automatic conversion of such work relationships to PKWTT, marking a significant legal improvement.[41] Nonetheless, in practice, these legal norms have yet to comprehensively reach freelance workers in informal sectors, such as fashion and hijab modeling. Their ad hoc, project-based work arrangements, often lacking formal contracts, make it difficult to classify them under existing labor law criteria. Yet, their

[39] Tine Eidsvaag, "Social Protection of Digital Platform Workers under Norwegian Law," *Eastern European Journal of Transnational Relations* 5, no. 2 (2021). doi: https://doi.org/10.15290/eejtr.2021.05.02.03.

[40] Asiah Bidin et al., "Legal Protections of Gig Workers In," *Law, Politics & Society: The Unravelling of Malaysia and Indonesia Potentiality*, 2021.

[41] Susilo Wardani, "Legal Protection of Daily Freelance Labors in Small-Scale Industry: A Study on Wig and Fake Eyelashes Industries in Indonesia," 2018. doi: https://doi.org/10.2991/amca-18.2018.110.

economic contributions to the creative industry are substantial. Therefore, the normative gap in Indonesian labor law must be addressed through a more adaptive legal approach responsive to labor market transformations.[42]

In this context, it is essential to promote a more inclusive legal construction of employment that does not rely solely on formal work structures but focuses on the substantive nature of the work relationship namely, productive engagement and remuneration. Labor protection must be directed toward substantive safeguards, not merely formal ones, emphasizing the socio-economic relationships between employer and worker. This principle aligns with the spirit of social justice enshrined in Pancasila and the 1945 Constitution, which obligates the state to protect vulnerable groups.[43]

In conclusion, the configuration of Indonesian labor law, both before and after the enactment of the Job Creation Law, continues to face substantial challenges in regulating and protecting non-traditional forms of employment such as freelancing. Accordingly, there is a pressing need for normative reform and more responsive juridical approaches, so that labor law evolves from a purely regulatory instrument into a mechanism that advances justice and social welfare for all Indonesian workers.[44]

2. Social Justice Perspective on Legal Protection for Freelance Workers

Social justice is one of the foundational principles in the Indonesian labor law system, enshrined in the fourth paragraph of the Preamble to the 1945 Constitution and reaffirmed in Article 28D paragraph (2), which guarantees the right to work and to receive fair and

[42] Antonio Aloisi, "Commoditized Workers The Rising of On-Demand Work, A Case Study Research on a Set of Online Platforms and Apps," *SSRN Electronic Journal*, 2015. doi: https://doi.org/10.2139/ssrn.2637485.

[43] Ben Casselman, "Maybe the Gig Economy Isn't Reshaping Work after All," *The New York Times*, 2018.

[44] Antonio Aloisi, "Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms," *SSRN*, 2015. doi: https://doi.org/10.2139/ssrn.2637485.

decent remuneration.[45] This principle imposes a constitutional obligation on the state to ensure the equitable distribution of rights and obligations across all forms of labor relationships, including those that deviate from conventional norms. However, the legal framework remains dominantly tailored to formal and full-time employment, thus systematically marginalizing workers whose labor arrangements fall outside this paradigm. Freelance workers, particularly in industries like modeling that operate on ad-hoc, project-based structures, are often denied access to labor protections afforded to their full-time counterparts.[46] The persistence of this legal exclusion represents a contradiction between constitutional ideals and actual policy implementation.[47] Social justice, if understood as more than rhetoric, should serve as the state's normative foundation in recalibrating labor laws to reflect labor market realities.[48]

Data from Indonesia's Central Bureau of Statistics (BPS) indicates that as of February 2022, freelance or part-time workers reached approximately 34 million individuals, accounting for around 24 percent of Indonesia's 144 million-strong workforce. This demographic shift reflects the rapid transformation of the national labor structure, a process accelerated by the economic repercussions of the COVID-19 pandemic and the prevalence of mass layoffs in the formal sector. Freelancers have become an essential pillar of Indonesia's digital and creative economies, especially in modeling where employment is increasingly sourced through online platforms. Despite this prominence, these workers remain inadequately protected due to outdated statutory definitions of employment.[49] The inability of current

[45] Frank I. Michelman, "In Pursuit of Constitutional Welfare Rights: One View of Rawls' Theory of Justice," *University of Pennsylvania Law Review* 121, no. 5 (1973). doi: https://doi.org/10.2307/3311279.

[46] Richard Croucher, Mark G.E. Kelly, and Lillian Miles, "A RAWLSIAN BASIS FOR CORE LABOUR RIGHTS," *Comparative Labor Law and Policy Journal* 33, no. 2 (2012).

[47] Samuel Scheffler, "Distributive Fustice, the Basic Structure and the Place of Private Law," *Oxford Journal of Legal Studies* 35, no. 2 (2015). doi: https://doi.org/10.1093/ojls/gqu030.

[48] Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (2022). doi: https://doi.org/10.24090/VOLKSGEIST.V5I1.6361.

[49] Elizabeth Pendo, "Substantially Limited Justice?: The Possibilities and Limits of a New Rawlsian Analysis of Disability-Based Discrimination," *St. John's Law Review* 77 (2004): 2.

regulations to accommodate such non-standard labor forms poses a significant threat to the realization of decent work, as defined by international labor standards. Rather than adapting to structural transformations, the legal system lags, reinforcing structural exclusions that contradict economic inclusivity and social justice.[50]

> From the standpoint of labor law, freelancers face legal precarity rooted in the absence of formal employment agreements and institutional protections. Many employment relationships in modeling are governed by informal, often verbal, agreements lacking contractual specificity, thereby depriving workers of a legitimate legal avenue to assert their rights. This absence of legal documentation inhibits accountability and creates a power imbalance where employers hold disproportionate control over work terms and conditions. The prevailing "no work, no pay" ethos exposes freelancers to income instability, disregarding the sustained contribution they make to production cycles and economic output. The lack of enforceable legal frameworks erodes the protective functions of labor law, transforming it from a tool of equity into a mechanism that inadvertently sustains inequality. Legal uncertainty, in this context, translates directly into social and economic vulnerability.

Furthermore, freelance workers are systematically excluded from the tripartite structure of labor protections-social, technical, and economic embedded within labor law theory. Social protections such as health benefits and social security are generally unavailable to freelancers because they are not officially registered under employment-based welfare schemes. Technical protections, including occupational safety and risk mitigation, are often ignored, despite modeling involving physical and psychosocial hazards such as body image pressure, exploitative work environments, and unstable hours. Economic protections, like guaranteed income or severance compensation, are also out of reach due to the lack of formal recognition of freelancers as employees. This systemic exclusion implies that the structural foundations of labor law fail to account for the fluidity and hybridity of modern employment models. Consequently, freelancers in sectors like

https://consensus.app/papers/substantially-limited-justice-the-possibilities-and-pendo/70969617182159c98a167af5b4dcc297/.

[50] Guo Xia, "Rethinking the Distributive Paradigm of Justice: Feminism Versus Rawls," 2002. https://consensus.app/papers/rethinking-the-distributive-paradigm-of-justice-feminism-xia/a1c3084b05dd59fe94bcfa56c556a9ae/.

modeling find themselves trapped in a precarious legal void, where rights exist in theory but remain inaccessible in practice.

Another compounding factor is the low level of labor law literacy among freelance workers, combined with the inadequate outreach and regulatory oversight by government institutions. A large portion of freelancers are unaware of their rights to be registered in national social security programs, as stipulated by Law No. 24 of 2011. In modeling, this gap is especially pronounced: field studies reveal that the majority of model freelancers operate without written contracts, are not covered by occupational insurance, and are vulnerable to discriminatory practices based on appearance, gender, and age. These challenges are further aggravated by inconsistent government enforcement and the lack of accessible grievance redress mechanisms for informal workers. The existing institutional vacuum not only deepens systemic neglect but also perpetuates the invisibility of freelancers in the policy domain. Bridging this gap requires both regulatory reform and intensive awareness campaigns targeted at informal labor groups.

From a normative perspective, the continued legal exclusion of freelancers contradicts fundamental theories of justice.[51] John Rawls' difference principle posits that social and economic inequalities are only justifiable if they benefit the most disadvantaged members of society;[52] the exclusion of freelancers from labor protections fails this moral test. Similarly, Aristotle's concept of distributive justice suggests that rights and resources should be allocated based on contribution and merit principles that are violated when freelancers, who contribute meaningfully to economic value chains, are denied statutory recognition.[53] Indonesia, as a welfare-oriented constitutional state, must embed affirmative legal doctrines that actively correct labor market

[51] Robert Amdur, "Rawls' Theory of Justice: Domestic and International Perspectives," *World Politics* 29, no. 3 (1977). doi: https://doi.org/10.2307/2010005.

[52] Richard Arneson, "Rawls, Responsibility, and Distributive Justice," in *Justice, Political Liberalism, and Utilitarianism: Themes from Harsanyi and Rawls*, ed. Marc Fleurbaey, Maurice Salles, and John A Weymark (Cambridge: Cambridge University Press, 2008), 80–107. doi: https://doi.org/DOI: 10.1017/CBO9780511619595.004.

[53] Aristotle, "Nicomachean Ethics," in *Seven Masterpieces of Philosophy*, 2016. doi: https://doi.org/10.2307/jj.18254729.12.

asymmetris.[54] Ensuring justice for freelancers requires not merely reforming existing rules but instituting a paradigm shift where all workers, regardless of contractual form, are seen as integral participants in the economy.

To this end, the principle of social justice for freelancers must evolve from a declarative ideal to an operational mandate within national labor policy. The government must develop specific legal instruments that formally recognize freelancers as rights-bearing legal subjects within the labor law regime. These instruments should include minimum wage provisions adjusted for project-based work, mandates for social security coverage regardless of contract duration, and simplified dispute resolution frameworks tailored for informal labor. Policy design should be grounded in empirical realities of freelance work, ensuring that regulations are not only normative but also implementable. Legal frameworks should no longer privilege formality at the expense of inclusion; rather, they must embody a comprehensive vision of labor justice that transcends structural rigidity.

Ultimately, justice for freelance model workers hinges on whether the legal system can expand its conceptual boundaries to reflect labor market pluralism. Models, often at the forefront of Indonesia's fashion and advertising industries, embody the intersection of cultural labor and commercial enterprise. Yet, their legal invisibility negates the social contributions they make. Recognizing their rights is not just a matter of legal reform but also of cultural revaluation an acknowledgment that all labor, regardless of its form, deserves dignity, respect, and protection. In this context, social justice should be viewed not only as a philosophical goal but as a tangible policy imperative. Only through such an expansive and inclusive framework can the ideals of equality, protection, and justice be realized for all segments of the Indonesian labor force.

3. The Ideal Concept of Constitutional Protection for Freelance Workers

In the realm of modern labor law, the notion of constitutional protection for freelance workers especially in the modeling sector necessitates a reconstruction of the principle of legal protection (*rechtsbescherming*) that is progressive, adaptive, and transformative.[55]

[54] Joseph Heath, "Rawls on Global Distributive Justice: A Defence," *Canadian Journal of Philosophy* 35 (2013). doi: https://doi.org/10.1080/00455091.2005.10716854.

[55] Ann Numhauser-Henning, "Flexible Qualification — a Key to Labour Law?," *International Journal of Comparative Labour Law and Industrial*

Such protection must not merely remain a declarative clause in constitutional texts (*lex scripta*) but must materialize into *substantive justice*, meaning real guarantees for the fundamental rights of freelance workers as legitimate legal subjects.[56] Considering the project-based, temporary, and non-subordinate nature of their employment, it is imperative to formulate new legal norms (*lex specialis futura*) that can respond to the complexities of non-formal labor within the creative industry.

Freelancers in modeling belong to the category of *atypical workers* those whose employment deviates from standard work patterns and often falls outside the normative scope of labor law protections.[57] Their status as *sui generis* legal subjects unique and non-uniform requires explicit recognition by the state through positive legal instruments.[58] Thus, there must be *constitutional recognition* of the existence and rights of freelance workers as a form of *affirmative constitutionalism* that demands the state take active and affirmative steps to protect vulnerable labor groups.

On the level of *ius constituendum* (law to be established), the author proposes the concept of a *Constitutional Employment Contract*.[59] This concept does not rely solely on the tripartite elements of employment, wages, and command as articulated in Article 1 point 15 of the Labor Law but also accommodates a collaborative, egalitarian employment relationship without absolute subordination. This aligns with the flexible employment structures in the modeling industry, which

Relations, 2001, 101–16. http://www.kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\IJCL\337855.pdf.

[56] Katherine Van Wezel Stone, "Rethinking Labour Law: Employment Protection for Boundaryless Workers," in *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work*, 2006. doi: https://doi.org/10.5040/9781472563804.ch-008.

[57] Anna Ginès i Fabrellas, "Atypical Work as Flexible Work: The Rise If Labour Instability in the Spanish Labour Market," *Z Problematyki Prawa Pracy i Polityki Socjalnej* 1, no. 18 (2020). doi: https://doi.org/10.31261/zpppips.2020.18.04.

[58] Monika Grabowska, "Flexible Employment Forms as an Element of Flexicurity," *Journal of International Studies* 5, no. 2 (2012). doi: https://doi.org/10.14254/2071-8330.2012/5-2/11.

[59] Katherine V.W. Stone, "Legal Protection for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employers," *Berkeley Journal of Employment and Labour Law* 27, no. 2 (2006).

are predominantly project-based, outcome-oriented, and rarely bound by fixed time arrangements.[60]

This concept of a *Constitutional Employment Contract* also reflects the doctrine of *social constitutionalism*, which sees the constitution not only as a source of legitimacy for power but also as a tool of *constitutional engineering* for social transformation.[61] In this context, freelance workers should not merely be seen as economic actors but as full citizens entitled to social security, legal protection, and cultural recognition. This approach aligns with the ideas of Roberto Mangabeira Unger, who argues that law should serve as an instrument of social transformation rather than a means of preserving the status quo.

To reinforce this protection, the author advocates for the establishment of the *National Commission for Flexible Labor Protection* (KNPKF), a quasi-judicial independent body with a specific mandate to address the rights of freelance workers.[62] This body could function similarly to the *Labour Ombudsman* in Nordic countries, but with stronger normative and constitutional legitimacy. Its roles would include advocacy, dispute resolution, digital contract monitoring, and formulating micro-policies for freelance groups such as models. With a participatory and data-driven approach, the KNPKF would act as a catalyst for *justicia correctiva* and *justicia distributiva* in the informal labor sector.

The principle of *Non-Discrimination by Work Arrangement* must also be upheld, prohibiting discrimination against workers based on the form of their employment relationship.[63] If enshrined in national labor

[60] Maria Edstrom and Martina and Ladendorf, "FREELANCE JOURNALISTS AS A FLEXIBLE WORKFORCE IN MEDIA INDUSTRIES," *Journalism Practice* 6, no. 5–6 (October 1, 2012): 711–21. doi: https://doi.org/10.1080/17512786.2012.667275.

[61] Martha K. Zebrowski and Roberto Mangabeira Unger, "Law in Modern Society: Toward a Criticism of Social Theory," *The Western Political Quarterly* 30, no. 1 (1977), https://doi.org/10.2307/448220.

[62] Hanita Sarah Saad, "REGULATING ATYPICAL EMPLOYMENT IN THE MALAYSIAN PRIVATE SECTOR: BALANCING FLEXIBILITY AND SECURITY.," *Journal of Global Management* 3, no. 1 (2012).

[63] Agata Ludera-Ruszel, "Labour Market Flexibility v. Job Security – a Comparative Analysis of Swiss and Po- Lish Labour Law Regulations on Fixed-Term Employment Contracts," *Przegląd Politologiczny*, no. 3 (September 1, 2015): 55–63. doi: https://doi.org/10.14746/pp.2015.20.3.4.

regulation, this principle ensures that all freelance workers, including part-time models or project-based workers, receive equal rights alongside permanent employees. This reflects the principles of *equality before the law* and *equal protection under the constitution* as codified in Article 28D(1) of the 1945 Constitution. Such a guarantee is vital in the era of flexible labor to ensure equal legal access regardless of employment format.

Within the framework of *digital constitutionalism*, the state also bears responsibility for regulating digital labor relations that are increasingly prevalent in the platform economy.[64] As freelance model recruitment is now largely conducted through social media and online platforms, there is a need for minimum standards on personal data protection, digital contract transparency, and access to information.[65] Without such regulations, freelancers risk falling into *digital disenfranchisement* a condition where legal subjects lose access to protections due to algorithm-driven and data-based work systems. This represents a serious challenge requiring the state's presence as a *regulatory state* to balance individual rights with technological innovation.

Furthermore, constitutional protection for freelance workers in the modeling industry must be understood as part of a national strategy for creative economic development. This sector plays a crucial role in the economy and requires a legal foundation that ensures the sustainability of its workforce. By providing comprehensive and equitable protection for freelance models, the state not only fulfills its constitutional mandate but also supports national productivity and enhances the global reputation of Indonesia's creative industries. Therefore, this proposal is not merely a legal necessity but part of a strategic vision for inclusive and just development.

This ideal concept aims to elevate freelance model workers from a state of *legal vacuum* to inclusion in a national legal system that is responsive, inclusive, and just. The state has a duty to ensure that social justice does not remain a normative doctrine in the constitution but becomes a concrete and operational *juridical* norm that encompasses all modern forms of labor. This reaffirms that in a democratic state governed by law and based on Pancasila, all forms of labor must be recognized, respected, and protected without discrimination, as a true embodiment of *social justice* and genuine constitutional protection.

[64] Van Wezel Stone, "Rethinking Labour Law: Employment Protection for Boundaryless Workers."

[65] Edstrom and and Ladendorf, "FREELANCE JOURNALISTS AS A FLEXIBLE WORKFORCE IN MEDIA INDUSTRIES."

IV. Conclusion

The configuration of Indonesian labor law and its construction of employment relationships demonstrate that the normative framework remains anchored in classical legal doctrines, which define employment exclusively through the cumulative presence of work, wages, and authority, as articulated in Article 1 point 15 of the Manpower Law. While this model may suit permanent employment structures, it fails to inclusively accommodate the reality of non-standard labor arrangements, such as freelance work in the modeling industry, which is typically project-based, ad hoc, and non-subordinative. Consequently, the current legal regime lacks the institutional tools to effectively protect atypical workers, despite their increasing significance in today's labor market. From a social justice standpoint, legal protections for freelance workers must move beyond formal justice to embrace substantive justice—recognizing and responding to structural inequalities and vulnerabilities that freelancers face. The state must not remain passive in asymmetrical power dynamics between employers and freelance workers, but must instead guarantee equitable access to social security, fair remuneration, and legal recognition through enforceable contracts. This ideal of constitutional protection demands normative innovation, including the formulation of a Constitutional Employment Contract tailored to flexible work patterns, and the creation of a National Commission for the Protection of Flexible Work as an independent, quasi-judicial body to oversee advocacy, education, and dispute resolution. This initiative must be reinforced through the adoption of a non-discrimination-by-work-arrangement principle, ensuring freelance models receive equal labor rights as their full-time counterparts, and by embedding digital constitutionalism to address platform economy challenges. Strengthening constitutional protections for freelancers therefore represents the realization of *ius constituendum* the law as it ought to be toward a more inclusive, adaptive, and equitable labor law system for all forms of contemporary work.

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