



Legal Construction of the Fulfillment of Social Security Rights for Freelance Workers

Harmono^{1*}, Iwan G Gumilang², Fatina Rizka Sahila³, Anis Khoerunnisa⁴,
Muhammad Ivan Risfanda⁵

Universitas Swadaya Gunung Jati

Corresponding Author: Harmono harmono@ugj.ac.id

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ABSTRACT

The increasing number of freelancers in Indonesia, particularly among Millennials and Generation Z, reflects a shift in employment trends toward more flexible work arrangements. However, these workers, mostly part of the informal labor sector, often do not receive adequate legal protection, especially regarding social security and labor rights. Despite their significant contributions to the digital economy and various industries, freelancers still face legal uncertainty due to the absence of specific regulations that obligate employers to fulfill their responsibilities. This study examines the legal framework governing freelancers' rights in Indonesia, focusing on Law No. 24 of 2011 concerning the Social Security Administrative Body (BPJS) and Government Regulation No. 35 of 2021. Methods, Using a normative juridical research method, this study analyzes laws, legal principles, and the effectiveness of sanctions imposed on employers who neglect their obligations. The results reveal that existing laws do not explicitly include freelancers in the category of workers entitled to social security, and the administrative sanctions are insufficient to ensure compliance. The study recommends revising the legal framework to regulate freelancers' rights explicitly and impose stricter penalties on non-compliant employers. Implementation. Such changes are essential to ensure legal certainty, justice, and social protection in Indonesia's evolving labor market.

INTRODUCTION

Freelancers *work as entrepreneurs* to complete a job that is determined in accordance with the expertise or field of the company's or client's request. This type of work is also known as informal labor, which is synonymous with its characteristics, namely unorganized, irregular, unregulated, and not registered, and mainly consists of less competent people in the formal sector. So it can be said that informal or freelance workers are pretty vulnerable to government review and the implementation of clear rights and obligations. Many do not get fundamental rights like formal workers, such as employment insurance, health insurance, and other benefits. (Prastyo, 2019)

Although freelancers (*Freelancer*) are dominated by groups that do not have competence in the formal sector, some of them are present as a form of technological advancement needed in various work sectors, including freelancers. The so-called workforce *Freelancer* is usually related to the field of Marketplace (Market) as a provider of services or other service offerings, where the profession is limited to the employer for a short period, independent of the auspices of a company or legal entity. (Masakazu et al., 2023)

Job type is *Freelancer*. It is in great demand by many young generations because the type of work fits perfectly with their character, who like flexible working hours and workplaces. Despite the job offer, *Freelancer* benefited from loyalty and easy job qualifications, but *Freelancer* has a considerable work risk. This is due to the type of workforce *Freelancers* still do not have a definite job guarantee, and do not get state protection. The current situation still mentions that many *freelancers* are not getting some of their rights guaranteed by the labor law, including clarity of employee status, working hours that exceed the maximum limit, and discriminatory treatment that unfortunately still exists from the employer (Indriana, 2021). Based on information from several *freelancers*, he said that there are still many companies that have not carried out their obligations, namely providing social security to freelancers, because there are no strict rules related to sanctions or fines for companies that are negligent or underestimate the fulfillment of the rights of freelancers. Therefore, from this legal phenomenon, there is an unhealthy employment relationship gap due to the authority and responsibilities of each party that have not been fulfilled as stated through Government Regulation (PP) No. 35 of 2021 Regarding Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relationship that what is defined by employment relationship is the relationship between Employers and Workers or Laborers under employment contracts, who have labor, rewards, and instruction. So that, referring to the applicable government regulations, the agreement of both parties must be realized so that justice can be applied to workers and employers (Permana & Sutrisno, 2022)

This situation poses many risks that can harm freelancers, considering that the figures recorded by the Central Statistics Agency (BPS) show that the number of freelancers increased from 46.47 million in 2023 to 146.62 million in 2023. Based on this data, the number of freelancers is increasingly in demand and dominates several fields of work, including its influence on developing digital needs in Indonesia. In fact, it is estimated that in 2030, millennials are expected to

dominate the workforce's contribution as freelancers, marked by the number of freelance platforms or websites that provide on-demand workers or *freelance* services. Not a few companies developing in Indonesia are looking for freelancers more relevant to the projects or programs currently needed by the related industry.

The problem of rules related to strict sanctions against companies that do not carry out their obligations to provide social security and employment for freelance workers or *Freelancer*. The primary purpose of writing this research is that the government needs to provide strong legal protection for freelancers who currently have an essential role in the digitalization of work in Indonesia. Because the policies that have been previously enacted still do not accommodate this problem, often freelance workers do not receive good legal protection. This legal protection is intended as a reflection of legal instrumentation that is in line with the function of justice and truth, has certainty, and has a beneficial value for the parties in the production process so that the Labor Law does not only prioritize the interests of entrepreneurs, but also pays attention and provides social security for employees, including freelancers or *Freelancer*.

The study of regulations that have not yet strictly regulated the negligence of employers, especially as should be stated in Law No. 24 of 2011 concerning the Social Security Administration Agency, where the Law is still general and does not explicitly regulate sanctions and fines for employers who act arbitrarily against freelancers, especially regarding social security and employment that are not provided for workers.

Previous research has also tried to influence the implementation of equality in employment policies for freelancers in Indonesia. This research was written by Indriana et al in 2021, with the substance of research on government policies in the legal protection of the rights of freelance workers, which are still not appropriately implemented. This research provides data and reasons that strengthen this research to answer the problems.

So that the core of the discussion that is highlighted in this study includes how the legal study of Law No. 24 of 2011 concerning the Social Security Administration Agency which has not yet accommodated strict rules related to employers who do not carry out obligations for freelancers, namely the granting of social security and employment rights and what actions need to be taken to ensure that the fulfillment of social security obligations for freelancers can run at the same age and fair in the era of globalization

LITERATURE REVIEW

Social Security

Human rights are fundamental social security rights inherent in every individual from birth, regardless of race, religion, ethnicity, or social status. Protecting human rights is an important element in the modern state of law, including in Indonesia, because it ensures that every individual has rights and freedoms guaranteed by law. The 1945 Constitution, as the country's supreme constitution, plays a crucial role in ensuring the protection of human rights for all Indonesian citizens. Since the 1998 reform, Indonesia has made four amendments to the 1945 Constitution. This amendment strengthened the

country's legal and political framework, including human rights protection. One of the significant changes resulting from the amendment is strengthening human rights protection in the constitution, which includes the affirmation of fundamental rights and freedoms that must be respected and protected by the state. However, while these constitutional changes have strengthened the legal framework for human rights protection, questions remain about the extent to which the 1945 Constitution has accommodated comprehensive human rights protection. In addition, another challenge that arises is how to implement this protection in daily practice. Various cases of human rights violations and injustices still occur, which shows that although the legal framework has been strengthened, implementation on the ground still faces many obstacles (Rahman et al., 2024).

Freelance Worker

Workers from historically marginalized populations are an increasingly important, but not well-understood, set of participants in the developed narratives about the many futures of work. Here, we argue that the growth of non-standard work and the changes in worker/employer relationships that this reflects, the rising number of independent workers, and the surge of digital labor platforms demand more attention to what these new working arrangements mean for historically marginalized groups. To do so, in this paper we: (1) summarize long-documented inequalities in traditional workplaces, (2) highlight how these issues translate into the under-regulated and fast-evolving landscape of digital labor platforms, and (3) focus on how the emergence of data-driven algorithms and AI technologies may impact these issues. Our discussion draws attention to how HCI researchers can continue to address issues of bias and inequality embedded within technology. In particular, we focus on how issues of bias are diminished, transformed, or exacerbated in emerging forms of digitally-mediated work that seem to be core to discourse on work futures. (Munoz et al., 2022)

Legal Construction Freelance Work

Everyone is free to enter into agreements, regulated and unregulated by law, because Indonesia's civil law regulatory structure is open. The freedom of contract principle is another name for this open system. Everyone has the freedom to enter into agreements under the principle of freedom of contract, including the freedom to choose the parties to an agreement, its terms, and whether to enter into one. It does not contravene the laws, norms of decency, or oppressive regulations. Additionally, Article 1320 of the Civil Code contains provisions regarding the conditions for an agreement's validity, including: (1) the existence of an agreement for those who bind themselves, (2) the capacity to agree, (3) a particular thing, and (4) a legal reason. These provisions can be seen as limitations on the principle of contract freedom (Putri, 2023).

The Civil Code's Article 1338, subparagraph (1), declares that "all agreements made validly apply as law to those who make them," which is known as the "freedom of contract" principle. However, there are situations when the parties' freedom to reach an agreement cannot be realized because they hold

different positions or have different negotiating power. This arrangement allows those parties to influence key agreement clauses more directly. Standard agreements feature terms and conditions that have been arbitrarily chosen. A standard agreement is one whose terms are predetermined and presented as a form.

Although the parties to the agreement are given freedom in a typical agreement, they are still subdued by techniques of coercion, decency, and public order. A legitimate covenant has legal weight in the eyes of the parties who make it. According to the definition of "valid," an agreement must be made in good faith and in compliance with the law. Article 1338, paragraph 3, of the Civil Code explains the concept of good faith by stating.

METHODOLOGY

The legal research method applied in this study is normative juridical, which describes the process to obtain a judicial norm, legal principle, or legal rules that respond to legal problems currently occurring. One of these legal issues is the fulfillment of freelancers' rights to social security, which is not carried out by some entrepreneurs, causing gaps and even injustice to freelancers who have not received their rights. (Marzuki, 2007)

The legal theory put forward by Abdul Khakim also states that labor law is a regulation or principle made in writing or unwritten and serves to regulate the labor relationship between employers and employees or workers. Therefore, this legal theory is in line with the form of the implementation of social security, which acts as a form of policy effort that applies in the environment of employers and workers to ensure that legal protection runs fairly and benefits both parties as evidence of the fulfillment of responsibilities, rights, and obligations. (Khakim, 2007) (Hermawan et al., 2022)

The study of the implementation of the fulfillment of the rights of freelancers in this study also needs to be assessed from several aspects that play a role in strengthening the law, including;

- 1) In terms of legal factors, it can be in the form of problems that originate from the Law or the regulations themselves;
- 2) Regarding law enforcement factors, it can be said that parties should form and implement the law.
- 3) In terms of facilities that can help and support the running of law enforcement.
- 4) In terms of community factors, namely the environment where legitimate regulations should be enforced and implemented by legal subjects;
- 5) Regarding cultural factors, the place of work and the creation of humans themselves are influenced by association and lifestyle. (Soekanto, 2005)

Thus, the research method of this study focuses on the rule of law, namely Law No. 24 of 2011 concerning the Social Security Administration Agency, which has not accommodated strict sanctions and regulations to provide legal certainty for the fulfillment of social security rights of freelance workers in Indonesia.

Especially considering that, based on the presentation of quantitative data obtained through the Central Statistics Agency (BPS) of the Republic of Indonesia, the younger generation's interest in freelance work is getting higher in the digital era.

RESULTS AND DISCUSSION

Freelancers have a role that greatly influences the development of information technology, communication, and even the internet. Especially in the business sector where the emergence of part-time employees (*Freelancers*) can manage Human Resources (HR), especially in meeting the needs of human resources with specific skills as we know, starting from information technology experts, visual design, and other related fields play an essential role in improving the quality of customer service. (Mustofa, 2018) .

Freelancers are now growing to meet the demands of jobs in various fields, especially the digital field, where many *start-up* companies in Indonesia (new) are more in need of freelancers, according to the job competencies they are looking for. The high supply of freelance labor certainly has many positive impacts, including supporting an independent economy and reducing the risk of unemployment in Indonesia. Many of the various companies in Indonesia now offer considerable opportunities for workers who are interested in taking jobs with a focus on specific competencies.

This is also shown by data sourced from the Central Statistics Agency (BPS), which provides a graph of the number of freelancers that grows quite high every year, starting from 2020, which originally had 33.34 million people, to 46.47 million people in 2023. The number of freelance workers that continues to grow every year provides evidence that the interest in the profession as a freelance worker is becoming a choice pursued by people in Indonesia.



Figure 1. Source: BPS, data is processed from 2020 to 2023

Based on data quoted on the official website, SWA.CO.ID (2020) shows that working as a freelancer is very popular among the Millennial and Gen Z age groups throughout Indonesia. This is evident from the results of the survey, providing data that as many as 65% of all respondents are in the age group under 30 years old, and as many as 27% are in the age group of 30-40 years. The rest are 40 years old and above, on average, they choose to be interested in becoming a freelance worker. Surveys show that freelance work has considerable potential

even in terms of income. It is proven that more than a fifth of respondents stated that they are able to earn a monthly income of more than Rp 3.5 million from their work as freelancers. Almost all say that this type of job is quite in demand because of the flexible nature of the job in terms of time and place, and this job is more focused on developing skills than educational qualifications.

The increase in interest in freelance work or becoming a *freelancer* is inversely proportional to the anxiety freelancers feel today, most of whom do not get their rights, including social security and employment. This type of work is still very vulnerable to uncertainty and unclear employment relationships that affect the differences in the work system, and the rights obtained as a worker have not been fulfilled, all because they do not have health insurance and (Gumilang et al., 2019) Pensions.

Of the large number of *freelancers* in Indonesia, few companies must provide social and employment protection to their employees. This is because the regulation that expressly discusses social security rights for freelancers as should be contained in Law No. 24 of 2011 concerning the Social Security Administration Agency which functions to expand the benefits of social security programs to 5 (five) programs as stated in Article 6 of Law No. 24 of 2011, starting from Health Insurance, Work Accident Insurance, Old Age Insurance, Pension Insurance, and Death Insurance.

In connection with this legislation, it is mentioned that from the point of view of various social protection programs for workers, workers now have better protection. However, unfortunately, it is not written that the type of freelancer also has the legitimacy to receive equal treatment like the employees referred to in the regulation. The existing rules are still general and do not strictly protect freelancers.

The sanctions given through this regulation are only administrative sanctions aimed at business entities that do not register social security rights to work through Law No. 24 of 2011 concerning the Social Security Administration Agency. According to the provisions of this law, business entities can be classified as parties that employ workers outside the scope of government agencies. Administrative sanctions for companies that do not verify social security for their workers, as stated in Article 17 of Law Number 24 of 2011, which reads:

- (1) Non-government employer entities that do not comply with the rules as stated in Article 15, paragraph (1) and paragraph (2), as well as any party that does not implement the rules as stated in Article 16, will receive administrative sanctions.
- (2) The administrative consequences as mentioned in paragraph (1) can be in the form of:
 - a. Written reprimands;
 - b. Fine; and/or
 - c. They do not receive certain public services.
- (3) BPJS imposes penalties as stated in paragraph (2) on points a and b.

- (4) The implementation of corrective actions under paragraph (1) sub c is carried out by the Government or local governments after BPJS submits a request.
- (5) Detailed procedures regarding the implementation of administrative sanctions will be regulated through Government Regulations.

Meanwhile, in Government Regulation Number 35 of 2021 related to Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Article 11 Paragraph 3 where Business Actors, as described in paragraph (1), are obliged to fulfill all rights of Workers/Laborers, including the right to social protection programs. This means that Every Worker who meets eligibility in the employment relationship is entitled to every right, including freelancers, in a company.

Therefore, it is necessary to regulate companies that do not fulfill the obligations of the rights fulfilled by workers who have completed their work per the applicable contract, especially since freelance work has now become a definite livelihood for the community. Therefore, the implementation of existing policies should contain sanctions for companies that deliberately neglect to prioritize equal work rights for all types of workers in Indonesia's diversity, namely providing social security and employment that are useful for protecting the welfare of workers. The regulation related to the company's obligations to the rights and guarantees of freelancers or freelancers who work provides clear legal protection for both parties, the company and freelancers. With the freelancing labor policy, there are no longer demands for the welfare and rights felt by freelancers, who often get social views about the differences in the work system.

The smaller number of freelancers will affect the number and quality of people with these skills, even though the type of freelancer or *freelancer* is a skilled worker and an expert in some digital sector job that many companies need today. Other impacts will also affect the community's economy and state income from this sector. Reducing the quality of workers capable of competing amid digitalization will cause economic setbacks, especially in developing countries such as Indonesia.

The State of Indonesia is a developing country whose aspiration is to form a just and prosperous country to obtain the status of a progressive country. Given this, the role of workers, especially workers with special areas of expertise, is very supportive of a country oriented towards being able to control rapidly developing technology and utilize it to create intellectual, innovative, and creative human resources to meet the international trade market (Diani, 2021)

Legal protection for freelancers or *freelancers* from the company's negligence of the company's obligations to the rights that are the needs of workers is an act of violating the labor agreement and unlawful actions that have been stipulated by Law No. 24 of 2011 related to the Social Security Administration Agency and needs to be pursued by all related parties for the advancement of the workforce in Indonesia as a state asset that can survive and create jobs that is just and prosperous.

Workers will be faced with various risks when carrying out work. The existence of labor social security is a certainty of rights that workers will receive, where every worker will definitely face old age conditions, which have an impact on the decline in productivity of work ability and cause workers to lose their jobs, so that it has an impact on their earnings, which will also stop. In addition to ability, the risk of illness caused by the environment and the work system also affects workers' ability.

The coverage of labor social security has expanded, considering that Indonesia is currently facing the challenge of transforming various types of jobs that will develop in the future. Based on the analysis of the situation, it is possible that in the future the number of individuals who choose part-time work or freelancing will continue to grow. This type of worker carries out tasks through a temporary agreement scheme with a short duration and minimal access to labor protection services. Therefore, different tactics and legal protection are needed to obtain Employment Social Security certainty for the workforce

Creating jobs, goods, and services obtained through the company's business and paying taxes has generated income for the state treasury. Its contribution to the country's economy can be felt by the results of contracts or employment agreements. As stipulated in the Labor Law Number 13 of 2003, the employment agreement between an employee or worker and a company or employer includes the rights, terms of employment, and responsibilities of each party as outlined by the workers. Companies employ workers based on the agreement stated in the contract, either in the form of written documents, oral, or unwritten statements, to create a working relationship that is the basis for the birth of rights and responsibilities that exist between staff and business entities. In the study of Law Number 24 of 2011, it was found that the rules related to freelance workers have not been given strong legal protection and equal rights with formal workers. One of them is the fulfillment of social security rights that are not fair and given to freelancers because many companies still underestimate this legal event due to the absence of sanctions and regulations that mention the obligations of employers to freelancers.

CONCLUSIONS AND RECOMMENDATIONS

This study discusses legal issues related to social protection for freelancers (*Freelancers*) in Indonesia. Freelancers are part of the informal workforce with no permanent employment relationships, no social security, and often do not have the legal protections they deserve. Although many work in the digital sector and contribute significantly to the economy, no regulation explicitly requires employers to provide social security as stipulated in Law No. 24 of 2011 concerning BPJS and Government Regulation No. 35 of 2021.

The method applied in this study is normative juridical to legal principles, laws, and regulations. This study highlights that although the BPJS Law contains five social security programs (health, work accidents, old age, retirement, and death), its implementation for freelancers has not been effective because there are no strict sanctions against companies that ignore them.

BPS data shows a significant growth in the number of freelancers in Indonesia, especially among millennials and Gen Z, which indicates that this profession is becoming a future job trend. However, freelancers face legal and welfare uncertainty due to lacking clarity on employment status and social security.

This study recommends expanding legal protection and applying strict sanctions to employers who are negligent in fulfilling social security obligations for freelancers. More specific regulations are needed so that freelancers have equal rights with formal workers for the sake of justice, certainty, and mutual well-being in an increasingly flexible and digital world of work.

Implementation

Based on the results of the research that has been carried out, some suggestions can be given through writing the following articles, including;

1. Revision of Law No. 24 of 2011 concerning BPJS. The government needs to revise Law No. 24 of 2011 to include provisions that explicitly regulate freelancers' rights, including employers' obligation to register freelancers in the social security program.
2. The application of strict sanctions against companies. To create a deterrent effect and justice for informal workers, legal sanctions, not just administrative ones, against companies that do not meet freelancers' social security obligations must be strengthened.
3. Preparation of specific derivative regulations The Government needs to immediately prepare government regulations or ministerial regulations that detail the mechanism, form of employment relationship, rights, and obligations of companies to freelancers, especially in the digital and creative economy sectors.
4. Socialization and legal education for freelancers. The Government and related institutions, such as BPJS Ketenagakerjaan, need to intensify education and socialization for freelancers about their rights and the importance of social security protection so that they are more aware of the law and are not easily exploited.
5. To facilitate easy access to BPJS for *freelancers*, BPJS needs to provide a flexible and digital-based contribution scheme, so that freelancers can easily register independently if the employer is not responsible. This is important so that fundamental rights can still be guaranteed.
6. Increasing supervision and law enforcement The Government, through the Ministry of Manpower and BPJS, needs to increase supervision of companies that hire freelancers and create an open and safe reporting system for *freelancers* who experience rights violations.
7. Partnerships with digital platforms The Government needs to encourage cooperation with freelance service providers so that they can actively participate in including social security programs for workers registered on the platform.

ADVANCED RESEARCH

Future research should explore policy solutions to strengthen social protection for freelancers in Indonesia, especially in the context of the digital economy. Studies can investigate the feasibility of mandatory social security schemes tailored to freelancers, including mechanisms for registration, premium payments, and enforcement. Comparative research with countries that have successfully integrated freelancers into national social protection systems could offer valuable models for Indonesia.

In addition, research should examine the legal gaps in existing regulations, particularly the lack of sanctions for companies that fail to enroll freelancers in BPJS programs. It is also necessary to assess freelancers' awareness of their rights and the accessibility of BPJS services. Collaborations between the government, digital platforms, and labor organizations may serve as a strategic pathway to improve implementation, ensure legal compliance, and promote inclusive social security for informal workers.

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