

LABOUR JUSTICE AND SOCIAL PROTECTION POLICY: FLEXIBILITY, WAGE SETTING AND THE INFORMAL MAJORITY

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Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Informal work; Labour justice; Minimum wage; Social protection; Ujra.</i> Kata Kunci: <i>Kerja informal; Keadilan perburuhan; Pelindungan sosial; Ujrah; Upah minimum.</i>	Abstract Indonesian labour policy has been reorganised around flexibility, while the majority of the workforce remains in informal employment beyond the reach of both the reformed protections and the social insurance system, which raises the question of whom labour law is for. This study aims to analyse the distributive consequences of the flexibility turn, to assess the constitutional and Islamic legal foundations of wage justice, and to formulate criteria for a social protection policy that reaches the informal majority. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by a reading of the contract of hire and the classical rules on wage determination and prompt payment, drawing on Indonesian labour and social security legislation, constitutional decisions, international labour standards, and comparative social protection models. The findings show that the reform expanded permissible fixed-term and outsourced work while narrowing wage-setting discretion through a formula-based mechanism, that the constitutional review of the reform addressed the process and parts of the substance without restoring the earlier protective architecture, and that eligibility for contributory social insurance remains structurally tied to formal employment. Islamic doctrine requires wage certainty, prompt payment and prohibition of exploitation of necessity. The study recommends non-contributory floors, portable entitlements and enforceable wage criteria. Abstrak Kebijakan ketenagakerjaan Indonesia ditata ulang di seputar fleksibilitas, sementara mayoritas angkatan kerja tetap berada pada pekerjaan informal yang tidak terjangkau baik oleh perlindungan hasil reformasi maupun oleh sistem jaminan sosial, sehingga muncul pertanyaan untuk siapa hukum perburuhan dibuat. Penelitian ini bertujuan menganalisis konsekuensi distributif dari pergeseran menuju fleksibilitas, menilai landasan konstitusional dan hukum Islam bagi keadilan pengupahan, serta merumuskan kriteria kebijakan perlindungan sosial yang menjangkau mayoritas informal. Penelitian menggunakan metode yuridis

	normatif dengan pendekatan perundang-undangan, konseptual, kasus dan perbandingan, ditopang pembacaan atas akad ijārah serta kaidah klasik tentang penentuan dan penyegerakan upah. Hasil penelitian menunjukkan bahwa reformasi memperluas kerja waktu tertentu dan alih daya sambil mempersempit ruang penetapan upah melalui mekanisme berbasis formula, bahwa pengujian konstitusional atas reformasi tersebut menyentuh proses dan sebagian substansi tanpa memulihkan arsitektur perlindungan sebelumnya, dan bahwa kepesertaan jaminan sosial kontributif tetap terikat secara struktural pada hubungan kerja formal. Doktrin Islam mensyaratkan kepastian upah, penyegerakan pembayaran, dan larangan mengeksploitasi keterdesakan. Penelitian merekomendasikan rantai perlindungan nonkontributif, hak yang dapat dibawa berpindah, dan kriteria pengupahan yang dapat ditegakkan.
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I. INTRODUCTION

Labour law exists because the employment relationship is not a bargain between equals. Its protective architecture, from minimum wages to dismissal procedures, is a legislative correction of asymmetry. Any reform that redistributes risk within that relationship is therefore a decision about justice, whatever vocabulary of competitiveness accompanies it.¹

Indonesian labour policy underwent exactly such a redistribution. Job creation legislation amended core provisions of the Manpower Law, expanding the permissible use of fixed-term contracts and outsourcing, altering severance arrangements, and replacing the previous wage-setting process with a formula anchored in economic indicators.² The Constitutional Court's subsequent review of the labour provisions confirmed that the reform's constitutionality was contestable in both form and substance and directed legislative correction, without itself restoring the prior framework.³

The constitutional standard against which this must be assessed is explicit. Every citizen has the right to work and to a livelihood befitting humanity, and every person has the right to work and to receive just and proper remuneration and treatment in the employment relationship.⁴ These provisions do not prescribe a

¹ Guy Davidov, *A Purposive Approach to Labour Law* (Oxford: Oxford University Press, 2016), 34–46.

² Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, amending Law Number 13 of 2003 concerning Manpower; Government Regulation Number 36 of 2021 concerning Wages, as amended.

³ Constitutional Court of the Republic of Indonesia, Decision Number 168/PUU-XXI/2023 concerning the review of the labour provisions of Law Number 6 of 2023.

⁴ Constitution of the Republic of Indonesia 1945, Articles 27(2) and 28D(2).

particular wage mechanism, but they do establish that remuneration is subject to a justice standard rather than to market outcome alone.

The deeper problem, however, lies outside the reform entirely. The majority of Indonesian workers are informally employed, as own-account workers, casual labourers, family workers or platform-mediated service providers. For them the entire debate over fixed-term contracts and severance is beside the point, because they have never been within the scope of the protective regime. Contributory social insurance likewise presupposes an identifiable employer and a regular wage, which is precisely what informal work lacks. A labour policy that concerns itself exclusively with the formal minority addresses the smaller part of the justice problem.

Three literatures are relevant. Purposive labour law scholarship argues that protection should follow the vulnerability that justifies it rather than the contractual form in which work is organised. Social protection scholarship has documented the performance of non-contributory floors in middle-income countries and the portability of entitlements across employment statuses.⁵ Islamic legal scholarship has examined the contract of hire, the requirement of wage certainty and the prohibition of exploiting necessity, generally without engaging contemporary social insurance design.

The gap is the absence of an analysis that treats formality itself as the variable. Indonesian labour scholarship debates the reform on its own terms; social protection scholarship rarely engages the labour law framework; Islamic economic scholarship discusses wages doctrinally without asking who is covered. This article asks: what are the distributive consequences of the flexibility turn; what do constitutional and Islamic legal standards require of wage determination; and what criteria would extend protection to the informal majority?

II. RESEARCH METHODS

The research is normative juridical, applying statutory, conceptual, case and comparative approaches.⁶ The statutory approach examines the Manpower Law as amended, the wage regulation, the social security framework legislation and the implementing administration statute. The conceptual approach reconstructs purposive labour law theory, the concept of the social protection floor, and the Islamic law of hire including wage certainty, prompt payment and the prohibition of exploiting necessity. The case approach analyses constitutional decisions on the reform and on wage setting. The comparative approach considers Brazil, India and South Africa as middle-income jurisdictions that have extended protection beyond formal employment by different techniques.

⁵ International Labour Organization, *Social Protection Floors Recommendation, 2012 (No. 202)*, paragraphs 4–6.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

Primary materials comprise Indonesian legislation and regulations, constitutional decisions, international labour standards, and classical Islamic sources on the contract of hire. Secondary materials consist of peer-reviewed scholarship and institutional reports from the last fifteen years. Analysis proceeds by qualitative content analysis, comparative tabulation and normative evaluation against constitutional and maqāsid criteria. Published aggregate labour statistics are used descriptively; the study does not generate original survey data.

III. RESULTS AND DISCUSSION

A. Flexibility as a Transfer of Risk

The first finding concerns what flexibility actually redistributes. Expanded use of fixed-term contracts and outsourcing does not merely alter contractual form; it transfers the risk of demand fluctuation from the enterprise to the worker. Under an indefinite contract the employer absorbs variation by retaining staff through downturns; under sequential fixed terms the worker absorbs it through intermittent unemployment, with no accrued entitlement to cushion the interval.

This transfer is defensible only if compensated, either through higher remuneration reflecting the assumed risk or through social protection covering the intervals. Neither condition obtains where fixed-term work is remunerated at the same minimum as permanent work and where unemployment benefit is limited in duration and conditional on formal contribution history. The result is that the reform distributed risk downward without distributing compensation, which is the precise configuration that the constitutional standard of just remuneration is directed against.

The wage mechanism compounds the effect. Replacing negotiated determination with a formula keyed to economic indicators converts wage setting from a political process in which worker representatives participate into a technical calculation in which they do not. Even a generous formula would have this effect, because the participation itself is part of what the constitutional guarantee of just treatment protects. The Constitutional Court's insistence on meaningful participation in the formation of the legislation applies with equal force to the mechanisms the legislation creates.

B. The Informal Majority and the Limits of Contributory Design

The second finding concerns coverage. Indonesia's social security architecture is contributory, organised around employment status and administered through membership tied to employer registration.⁷ Health coverage has been extended substantially through subsidised membership for the poor, which demonstrates

⁷ Law Number 40 of 2004 concerning the National Social Security System, Articles 17–19; Law Number 24 of 2011 concerning the Social Security Administering Bodies.

that non-contributory extension is administratively feasible. Employment injury, old age and pension coverage, however, remain largely tied to formal employment.

For informal workers, the barriers are structural rather than attitudinal. Contributions are levied on a regular wage that does not exist; registration presupposes an employer who does not exist; and enrolment competes with immediate consumption needs in households with volatile income. Voluntary schemes for independent workers therefore attract low and unstable participation, and the participation they do attract is concentrated among those with the most stable informal incomes, which is to say the least vulnerable segment of the uncovered population.

Comparative experience indicates that the effective techniques are non-contributory floors financed from general revenue, simplified contribution regimes with subsidised rates for low-income independent workers, and portability of entitlement across status changes. Each decouples protection from the employment contract, which is the correct response to a labour market in which the contract is precisely what most workers lack.

C. Wage Justice in Islamic Legal Doctrine

The third finding is doctrinal. The contract of hire in Islamic law is valid only where the remuneration is known and specified, since uncertainty in the counter-performance renders the exchange defective.⁸ Applied to contemporary conditions, this requirement of certainty bears directly on arrangements in which remuneration depends on algorithmically determined rates that the worker cannot ascertain in advance, a condition now widespread in platform-mediated work.

The obligation of prompt payment is equally explicit, expressed in the prophetic instruction to give the hired worker his wage before his sweat dries.⁹ The tradition condemning one who takes the labour of a hired worker without paying him establishes non-payment as a grave wrong rather than as an ordinary breach of contract, which supports treating wage arrears as a priority claim in insolvency rather than as one debt among others.

Two further doctrines bear on wage determination. Classical juristic discussion of the just wage refers to the customary wage for comparable work in the locality, which is a market-referenced but not market-determined standard: it uses comparators to identify exploitation rather than treating whatever is agreed as necessarily fair. And the prohibition of contracting under duress, together with the restriction on exploiting another's necessity, qualifies consent in conditions of

⁸ 'Alā' al-Dīn al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (Beirut: Dār al-Kutub al-'Ilmiyya, 1986), 4:192–195.

⁹ Ibn Mājah, *Sunan Ibn Mājah*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Cairo: Dār Ihya' al-Kutub al-'Arabiyya, n.d.), 2:817, no. 2443.

severe inequality of bargaining power.¹⁰ Together these supply a doctrinal basis for statutory wage floors that does not rest on importing external labour standards.

D. Comparative Extension Techniques

Table 1. Techniques for Extending Protection Beyond Formal Employment

Jurisdiction	Principal technique	Financing	Limitation
Indonesia	Contributory insurance with subsidised health membership	Contributions plus budget subsidy for the poor	Employment injury and old age coverage still tied to formal status
Brazil	Simplified contribution regime for micro-entrepreneurs plus non-contributory rural pension	Reduced contributions with general revenue support	Fiscal cost and classification disputes
India	Statutory framework for unorganised workers with registration-based benefits	General revenue with scheme-specific funds	Registration coverage and benefit adequacy
South Africa	Non-contributory grants targeted by means test	General revenue	Exclusion of working-age adults without dependants

Source: Processed from primary legal materials and comparative literature, 2026.

The comparison yields a consistent lesson: coverage expands when entitlement is detached from the employment contract and financed at least partly from general revenue, and it stalls when extension is attempted by inviting informal workers into a contributory scheme designed for formal ones. Indonesia's own experience with subsidised health membership confirms the point domestically, which makes the continued contributory design of employment injury and old age protection difficult to justify on administrative grounds.

E. Criteria for a Just Labour and Social Protection Policy

Five criteria follow. First, compensation for transferred risk: where fixed-term and outsourced work is permitted, it should carry either a remuneration differential or an accrued entitlement payable at the end of each term, so that flexibility is purchased rather than simply taken. Second, participatory wage determination: any formula should be accompanied by a genuine negotiation stage with worker and employer representation, and by a statutory floor defined by reference to a costed decent living standard. Third, non-contributory protection floors for employment injury and old age, financed from general revenue and delinked from employer registration. Fourth, portability of accrued entitlements across changes of status, since workers move repeatedly between formal and informal work. Fifth, statutory wage transparency, requiring that the basis of remuneration be ascertainable in advance, which addresses both the classical requirement of certainty and the contemporary opacity of platform rate setting.

¹⁰ Ibn Qayyim al-Jawziyya, *Iʿlām al-Muwaqqiʿin ʿan Rabb al-ʿĀlamīn*, ed. Mashhūr Ḥasan ʿĀl Salmān (Dammam: Dār Ibn al-Jawzī, 2002), 3:275–279.

IV. CONCLUSION

The flexibility turn in Indonesian labour policy transferred the risk of demand fluctuation from enterprises to workers without providing compensating remuneration or protection, and it converted wage setting from a participatory process into a technical calculation. Constitutional review identified defects without restoring the prior architecture, leaving the legislature with a correction it has yet to complete.

The larger deficit lies beyond the reform. Contributory social insurance presupposes an employer and a regular wage, which most Indonesian workers do not have, so the majority of the workforce remains outside both the protective regime and the insurance system. Comparative experience and Indonesia's own subsidised health membership both indicate that extension succeeds when entitlement is detached from the employment contract and financed from general revenue.

Islamic legal doctrine supports this direction through the requirement that remuneration be certain and ascertainable, the obligation of prompt payment, the customary wage as a comparator for identifying exploitation, and the qualification of consent obtained under necessity. The study recommends compensation for transferred risk, participatory wage determination with a costed living floor, non-contributory protection floors, portable entitlements and statutory wage transparency. Further research should measure the coverage gap by sector and by employment status, since the design of any extension depends on knowing precisely who is currently outside.

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