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JURIDICAL ANALYSIS OF "AGILE WORKING" FROM INDONESIA'S POSITIVE LABOR LAW'S POINT OF VIEW

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ABSTRACT

The Covid-19 pandemic has resulted in the adoption of flexible work systems called Agile Working, which combines work flexibility and technology. This research focused on Indonesian labor laws, namely UU 13/2003, Law No. 6 of 2023, and PP No. 35/2021, to establish legal certainty for Agile Working. Previous research identified a lack of legal framework for remote working, which shares similarities with Agile Working. This research aimed to address this gap by providing new insights and findings. Using the Dogmatic Normative Juridical Method, the researchers analyzed Agile Working within the framework of Indonesian labor law. The researchers engaged in a literature review, encompassing laws, regulations, court decisions, and other legal literature, to thoroughly examine the relevant legal provisions. This involved assessing compliance with labor regulations such as the Manpower Law, government regulations, and labor policies. Relevant court decisions were also considered for legal interpretation.

The research concluded that Agile Working could be implemented in Indonesia with legal protection, particularly concerning Working Time and Overtime Pay. The authors recommended that workers and employers adhering to Agile Working in Industrial Relations must uphold their rights and obligations to ensure compliance with the law. To summarize, this research updated previous studies on Agile Working, offering fresh insights and contributions. Through the normative research method, the authors analyzed and interpreted labor laws, providing a deeper understanding of how Agile Working aligns with Indonesian labor law. The research confirmed the legal implementation of Agile Working in Indonesia, emphasizing the importance of respecting rights and obligations.

Keywords: agile; flexible work; labor; location; time.

1. INTRODUCTION

Human beings are social beings who in their lives carry out various activities, one of which is to meet needs of lives. The needs are numerous, ranging from basic needs: clothing, food, boards; to other secondary or tertiary needs. Humans take various efforts to meet the needs, one of which is by working. Work is a form of human activity that involves awareness, in order to achieve results that are in accordance with their expectations. Brown, reported from Anoraga's book, explained that "work is actually an important part of human life, because work is an aspect of life that gives status to society"[1].

The conception of the way humans work has also changed over time. Once humans worked only to make ends meet, by hunting, farming, mining rocks and others. However, when it is increasingly modern, humans get to know money, so that all the necessities of life that used to be obtained independently, have now been bought with money. In modern times humans work to earn money to make ends meet. The high and low wages earned by workers will affect the performance of these workers[2]. This opinion was supported by Barry Schwartz in his book entitled "Why We Work", in which Barry stated that "we wouldn't work if we didn't get

1 Pandji Anoraga, *Psikologi Kerja*, Cet.4. (Jakarta: Rineka Cipta, 2006).
2 Moh Helmi Hidayat, "Implikasi Upah Terhadap Kinerja Pengrajin Batik Tulis Madura di Kelurahan Kowel Pamekasan," *Masyrif: Jurnal Ekonomi, Bisnis dan Manajemen* 1, no. 1 (2020): 89, https://doi.org/10.28944/masyrif.v1i1.222.

paid"[3]. In Barry's opinion, "paid" is an essential element of work.

Referring to the juridical understanding, the scope of labor law in Indonesia itself is now regulated by a lot of laws and regulations, starting from Law No. 13 of 2003 concerning Manpower, Law No. 11 of 2020 concerning Job Creation, Government Regulation in Lieu of Law (PERPPU) No. 2 of 2022, and various other government regulations. Juridically, the definition of employment itself is regulated in Article 1 number 1 of Law 13/2003, namely "Employment is everything related to labor at the time before, during, and after the period of employment". The definition of Article 1 number 1 of Law 13/2003 shows that everything is in relation to labor; before a person begins working, such as during an internship or job training; throughout the duration of their employment where they earn wages; and even after the employment period ends, whether due to job completion, expiration of the employment agreement, or termination of employment. At its essence, employment encompasses all aspects of labor related to one's work.

Since the Covid-19 pandemic hit two years ago, the Government, both from the central government and local governments, have implemented a Work From Home or WFH policy for workers in many business sectors. Work From Home itself has actually been known by workers under the term "Freelance"[4]. The difference between freelancing and the work from home system implemented during the COVID-19 pandemic is that the work from home system requires employees who previously work in the office to transition to working from home. This policy is a preventive measure to curb the spread of COVID-19 in Indonesia. The government issued Government Regulation Number 21 of 2020 regarding Large-Scale Social Restrictions (PSBB) to support this initiative. As a result of this PSBB, many workers were laid off, like those from the hospitality sector, and airlines where community mobilization was severely restricted[5].

One of these WFH policies can be seen from the issuance of the Circular Letter of the DKI Jakarta Provincial Manpower, Transmigration and Energy Service Number 14 / SE / 2020 of 2020 concerning Work From Home Appeals which followed up on the Instruction of the Governor of DKI Jakarta Province No. 16 of 2020 concerning Increased Vigilance against the Risk of Transmission of Corona Virus Disease (Covid-19) Infection. The legal basis for implementing Work From Home can be seen in Law No. 13 of 2003 concerning manpower. Juridically, the application of which companies carry out Work From Home rules is not regulated in writing regarding.

After two years of Indonesians living through the COVID-19 pandemic, the spread of the virus in Indonesia has been successfully suppressed. As a result, there has been a transition in the work system from work-from-home to Agile Working. Agile working, as understood, is an innovative approach to work that integrates modern technological advancements, evolving attitudes towards the workplace, and changing expectations placed on employees in the 21st century. In the Agile Working work system, workers are given freedom by companies to choose how they work, their working hours, and where they work. The work flexibility within this system can actually increase workers' productivity and improve the quality of work[6] . Some companies implement agile working system by determining what days the workers do the work from the office, and what days they do not need to work in the office.

The main purpose of implementing an agile working culture is to reduce the problems caused by conventional work culture such as congestion during commuting hours and air pollution that is getting worse day by day due to many employees' vehicles, and excessive stress on employees when commuting to work. In addition, the goal of agile working is to connect people, processes, technology, connectivity and locations, and

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3 Barry Schwartz, *Why We Work* (New York: TED Books Simon & Schuster, Inc., 2015) : 4.

4 Nanang Rudi Hartono dan Amalia Suci Ramadhani, "Tinjauan Yuridis Kebijakan Work From Home Berdasarkan Undang-Undang Ketenagakerjaan," *Jurnal Supremasi* 10, no. 2 (2020): 69, DOI : https://doi.org/10.35457/supremasi.v10i2.1158.

5 Vicko Taniady et al., "Phk Dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia," *Jurnal Yustisiabel* 4, no. 2 (2020): 97, DOI: https://doi.org/10.32529/yustisiabel.v4i2.701.

6 Sri Widiyati, Amalia Fitri Dwi Widyati, dan Dewi Mariana, "Determinasi Produktivitas Kerja: Flexible Working Space, Transformational Leadership dan Organizational Culture," *Jurnal Pendidikan dan Kewirausahaan* 10, no. 2 (2022): 589–597, DOI: https://doi.org/10.38035/jmpis.v3i1.879.

to track down the most suitable and interesting approaches while trying to do a particular task.

With the characteristics of this very flexible work system, it creates two situations where workers are comfortable with the agile working system, but there are also workers who feel overworked because they have to work outside working hours due to the flexibility of work space and time. The authors also found that working from home typically results in greater job intrusion, besides uncertain working hours. Constant family gatherings during working from home stresses workers out due to work problems and family[7]. Naturally, workers will feel more pressure at work as a result. In addition, the agile working work system also creates uncertainty about the location or place where the worker works.

The authors have searched and studied several studies around "Flexible Working" or Agile Working during the Covid-19 pandemic, but what researchers found was the results of general research, not legal research. The research found by the author was on "The Effect of Competency and Flexible Work Arrangement System on Employee Performance at the Garut Regency Library and Archives Office During the Covid-19 Pandemic" written by Devy Irawati in 2021. In the results of the study published in the "Public Journal: Scientific Journal in the Field of State Administration Sciences", it was found that "the flexible work arrangement system has a positive and significant effect on the performance of employees of the Garut Regency Library and Archives Office during the Covid-19 pandemic[8]". From the results of the research above, it is known that if an agency could implement a flexible work system well, the better the performance of existing employees would be.

In addition to the research above, the author also found a study on "Flexible Working Arrangement, Work-Life Balance and Performance of Women Workers in Banjarmasin City in the Middle of a Pandemic" written by Rizky Nastiti and Lisandri in 2022. This research was published in the Journal of Inspirational Research in Management and Entrepreneurship, Volume 6 No.1 March 2022. The results of the research conducted by Rizky and Lisandri above were that the Flexible Working Arrangement has a positive effect on the lives and performance of female workers in Banjarmasin City[9]. It is also known from the research that by flexible work arrangements, women workers in Banjarmasin City are increasingly able to manage time with their children, husband, and families.

From the two studies above, a brief conclusion can be drawn that the phenomenon of flexible working arrangements in the Covid-19 pandemic has been applied in the world of employment in Indonesia. However, considering the perspective of legal research, the author's findings were limited to a single legal study titled "Legal Protection of Workers in the Implementation of the Remote Working System as a Work System Renewal" written by Centia Sabrina Nuriskia and Andriyanto Adhi Nugroho in 2022. The research team that conducted this study explored the concept of remote working which is a development of Work From Home after the COVID-19 pandemic[10]. In the conclusion of the study, it was said that Indonesia does not yet have special arrangements regarding Remote Working.

Referring to the results of research conducted by Centia Sabrina and Andriyanto above, the authors disagreed with the argument on Indonesia having no special arrangement regarding Remote Working. In conception, Remote Working is one part of the flexible work system as does work from home during the COVID-19 pandemic and after the pandemic developed into Agile Working. The author felt the need to conduct further research on the juridical review of the Agile Working System in Indonesia through the point of view of labor law rules currently in force in Indonesia. In writing this article, the authors will demonstrate that there

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7 Erni Driyantini, Hanisa Rinda Putri Pramukaningtiyas, dan Yeni Khoirunnisa Agustiani, "Flexible Working Space, New Work Culture to Improve Organization Productivity and Performance," *Jurnal Ilmu Administrasi* 17, no. 2 (2020): 219, DOI : https://doi.org/10.31113/jia.v17i2.584.

8 Devi Irawati, "Pengaruh Kompetensi Dan Sistem Pengaturan Kerja Fleksibel Terhadap Kinerja Pegawai Di Dinas Perpustakaan Dan Kearsipan Kabupaten Garut Pada Masa Pandemi Covid-19," Jurnal Publik 15, no. 2 (2022): 56, DOI: https://doi.org/10.52434/jp.v15i2.54.

9 Rizky Nastiti dan Lisandri Lisandri, "Flexible Working Arrangement, Work-Life Balance dan Kinerja Pekerja Perempuan di Kota Banjarmasin di Tengah Pandemi," *Jurnal Riset Inspirasi Manajemen dan Kewirausahaan* 6, no. 1 (2022): 19–25, DOI: 10.35130/jrimk.v6i1.276.

10 Centia Sabrina Nuriskia dan Andriyanto Adhi Nugroho, "Perlindungan Hukum Pekerja Dalam Penerapan Sistem Remote Working Sebagai Pembaharuan Sistem Kerja," Jurnal Usm Law Review 5, no. 2 (2022): 678, DOI: 10.26623/julr.v5i2.5555.

are provisions in active labor law in Indonesia that can accommodate the existence of an agile labor system in which the concept of agile working and Remote working has the same essence, which is flexible working.

The main objective of this research on Agile Working from the point of view of Positive Labor Law in Indonesia was to find legal foundations that could be the basis for the implementation of Agile Working in Indonesia. The researchers wanted to know whether Agile working can be legally applied in Indonesia. After knowing the legality, researchers also wanted to know what rights and obligations must be owned and carried out both from the perspective of employers and workers. The authors hoped that from the conclusion of this research regarding the juridical basis or legality of the implementation of Agile Working in Indonesia can be drawn. Hence, both employers and workers who apply Agile Working work system can carry out their industrial relations correctly based on aapplicable legal rules.

The discussion of the Agile Working system will start from theories about labor law, especially regarding labor relations, and employment agreements. Then it is constricted deeper into a working system. Conventional work system that requires workers to be present at work, due to the COVID-19 pandemic, has changed to work from home or WFH. After discussing WFH briefly, the discussion continued in the development of WFH into Agile Working. The discussion about Agile Working will start from examples or facts of the existence of Agile Working in Indonesia, and focus on a flexible work system from the conception of the workplace and working time.

After discussing the basics of existing theories and facts, the discussion continues by examining the agile working system from the conception of Positive Law on Employment in Indonesia. The writing team will examine the characteristics of Agile Working and how if applied in labor regulations in Indonesia. At the end, this paper will produce a conclusion about the conception of Agile Working from the point of view of labor law in Indonesia. Therfore, the legal certainty of Agile Working in Indonesia will be clearer, which will lead to objective legal justice for the people of Indonesia[11].

2. METHOD

The problem formulation of writing this legal scientific article is "Can the agile working system in labor relations in Indonesia be implemented in accordance with Indonesia's positive labor law?. To answer the problem, the author planned to employ the normative-dogmatic juridical methods for conducting research. This methodology involves the exploration of legal doctrines, principles, and rules to address the legal issues at hand [12]. The statute approach involves an exhaustive review of all laws and regulations pertaining to the issue being addressed. On the other hand, the conceptual approach relies on the views of legal scholars as a supplementary basis for analysis[13].

Referring to the use of dogmatic normative legal research, the first step in gathering materials for writing scientific article was done by library research, namely inventory sheet. Once the legal documents were collected, the second step was to categorize and determine which legal documents would be used. The last was systematization, namely the hierarchy of laws and regulations. After performing the above research steps, the researchers analyzed the data using syllogism inference method, i.e. general data analysis, including laws and regulations, texts and expert opinions, and further went into detail, to provide answers that helped formulate the problem study correctly which was the case of the legitimacy of the flexible work system implementation in Indonesia. To get valid answers, valid explanations and systematic explanations were used. Authentic interpretation is the definitive interpretation of the meaning of a word as defined in the legal document itself. Meanwhile, the meaning of systematic interpretation is to explain by considering or paying attention to the arrangement of related terms in the law.

The legal materials used in this study were as follows:

Primary legal materials:

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11 Agus Santoso, *HUKUM, MORAL & KEADILAN*, 1 ed. (Jakarta: Kencana Prenada Media Group, 2012) : 95.

12 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010).35.

13 *Ibid, 93*

1. Law No. 13 of 2003 about Manpower
2. Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law.
3. Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment.

Secondary legal materials were in the form of various reference books, expert opinions, journals, government websites, related to labor regulation in Indonesia. Regarding secondary legal material, it would be discussed in the next chapter as the authors wanted to link this research with previous studies that have been published in scientific journals, especially the one conducted by Centia Sabrina Nuriskia and Andriyanto Adhi Nugroho in 2022 entitled "Legal Protection of Workers in the Implementation of the Remote Working System as a Work System Renewal". In addition, the author would also discuss the implementation of agile working that takes place in Indonesia both from the government and private sectors.

3. FINDINGS AND DISCUSSION

3.1 Substance, Definition, and Characteristics of Agile Working Systems

The very existence of the agile working system itself is essentially an evolution of the conventional form of work, where workers have to go to the office, work from the office, and later go back home based on their routine working hours. As explained in Chapter 1, when the Covid-19 pandemic hit Indonesia, the government required workers and employers to use the work from home (WFH) system. Working from home means Workers do their work from home, Workers no longer physically work in the office, but they can work from homeWorking hours that workers should have spent in the office changed to time at home, which, incidentally, becomes flexible. This flexible working hour is a work concept in which a person can work with flexible working hours and locations[14]. The concept of flexible working hours is closely related to remote work, proposed by Jack Nils in 1970. Remote work is a work coordination system that allows employees to work from home or from an approved location, using IT to communicate with their superiors. [15].

After the passage of time, post Covid-19 pandemic, a new term has appeared in the concept of flexible working, which is Agile Working. The phrase "Agile" in Indonesian means *gesit* or *tangkas*. This flexible or agile working system is useful when the company is faced with an uncertain situation. The agile way of working is meant to enable organizations and teams to cope with turbulent environments characterized by uncertainty, stiff competition, changing customer needs, and new technology. [16]. The work flexibility in working hours and locations and in additional technology support causes agile work systems to be deployed in many companies today.

The discussion of the Agile Working system must start from the existence of a working relationship. The employment relationship itself is a relationship between workers and employers that occurs after an employment agreement[17]. The key elements of an employment relationship are the job, orders, and salary. If these three factors come together, a working relationship is born. Person who is employed by another party typically expects to receive wages from their employer, which is commonly referred to as the employer[18].

An employment relationship arises from an employment agreement. The employment agreement itself has been defined in Article 1 number 14 of Law No. 13/2003 concerning Manpower, namely as "An agreement between workers / laborers and employers or employers containing the conditions of work, rights, and

14 Kresna Chandra Putra et al., "The Impact of Flexible Working Hours, Remote Working, and Work Life Balance to Employee Satisfaction in Banking Industry during Covid-19 Pandemic Period," *Journal of Business Management Review* 1, no. 5 (2020): 343

15 *Ibid, 344.*

16 Kerstin Alfes et al., "New ways of working and the implications for employees: a systematic framework and suggestions for future research," International Journal of Human Resource Management 33, no. 22 (2022): 4370, https://doi.org/10.1080/09585192.2022.2149151.

17 Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, 3 ed. (Jakarta: PT Raja Grafindo Persada, 2003) : 39.

18 Aloysius Uwiyono et al., *Asas-Asas Hukum Perburuhan*, 2 ed. (Depok: PT Raja Grafindo Persada, 2014).

obligations of the parties". In theory, the work agreement itself actually has a basic concept as an agreement in general, only devoted to work[19]. If referring to the provisions of Article 1320 of the Civil Code which contains the terms of validity of the agreement and is associated with work elements, it can be said that a work agreement will be valid if there is an agreement between the worker and the employer. The agreement is made by the worker and the employer who is capable of performing legal actions. The existence of the agreed work and the work itself must not violate applicable legal provisions.

General clauses such as "work", "orders", and "wages" are intrinsically always present in an employment agreement. This is in accordance with the opinion of Subekti in his book entitled "Various Agreements" where it is notarized that "an employment agreement is an agreement between a worker (worker) and an employer (employer), which is characterized by the remuneration of a certain wage / salary change promised and a relationship above which is a partnership relationship where one party (employer) has the right to give orders that must be obeyed by the other party (worker)"[20]. These clauses are hereinafter referred to in various books as "Elements of an Employment Agreement".

In an employment relationship there will be an agreement between the Employer and its Employee. The agreement is a physical form of an employment relationship that will further produce a work system where components in work such as humans, machines, tools, and the work environment will interact with each other to produce an effective and efficient work method in order to get maximum work results. One of the work systems developed during the Covid-19 pandemic in Indonesia was Work From Home (WFH) policy. This WFH policy was first voiced by President Joko Widodo on March 15, 2020[21].

The president's call for WFH has been implemented by numerous companies, including those in the private sector, state-owned enterprises, and the civil service. For almost two years, the majority of Indonesians have been working from home due to the impact of the Covid-19 pandemic. According to Crosbie & Moore, working from home refers to performing paid work primarily from one's residence, with a minimum requirement of 20 hours of work per week[22]. The existence of the WFH work system continued gradually until mid-2021 where around August 2021 many companies began to implement both WFH and WFO (Work From Office) policies altogether. Fadhila &; Wicaksana through research published in 2022 stated that "the Flexible Working Arrangement policy through Work from Home and flexible working time is an alternative work culture in the midst of a crisis situation"[23]. The joint application of WFH and WFO gave rise to a new work system which is often referred to as Flexible Working or in this writing is discussed as Agile Working.

The main orientation of companies that implement Agile Working is about the success of workers to complete their work with quality. Several international companies such as Google or PwC have been using this Agile work system since before the Covid-19 Pandemic appeared. One statement from PwC Indonesia Jakarta employees highlights that PwC branches in other countries have successfully implemented agile working. Following suit, PwC Indonesia has also embraced agile working by enabling employees to work remotely, introducing employee equipment storage lockers, and expanding meeting rooms to accommodate the new work arrangement. In 2018 when PwC Indonesia moved to WTC Building 3, Irhoan Tanudiredja as Territory Senior Partner of PwC Indonesia stated that "PwC Indonesia has opened a business in WTC 3 and implemented our new agile work method. We are breaking down barriers by embracing the future of technology. New work methods leveraging cutting-edge technology that foster stronger connections with our clients. Together, in this ever-changing business environment, we collaborate to build trust in society and solve important issues"[24].

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19 Koesparmono Isran dan Armansyah, *Hukum Tenaga Kerja*, ed. Cokro dan Adi Maulana (Jakarta: Penerbit Erlangga, 2016):69.

20 Subekti, *Aneka Perjanjian* (Bandung: Citra Aditya, 1995) : 58.

21 Rahmaniyah Dwi Astuti dan Irwan Iftadi, *Analisis dan Perancangan Sistem Kerja* (Yogyakarta: Deepublish, 2016) : 1.

22 Tracey Crosbie dan Jeanne Moore, "Work–life Balance and Working from Home," *Social Policy and Society* 3, no. 3 (2004): 223–233, DOI: 10.1017/S1474746404001733.

23 Aulia Annisaa Fadhila dan Lungid Wicaksana, "Sistematik Review: Fleksibel Working Arrangement (Fwa) Sebagai Paradigma Baru Asn Di Tengah Pandemi Covid-19," Spirit Publik: Jurnal Administrasi Publik 15, no. 2 (2020): 111, DOI: 10.20961/sp.v15i2.44542.

24 Irhoan Tanudiredja, "PwC Indonesia New Location, New Way of Working," 2018.

If summarizing the opinion of Irhoan Tanudiredja along with the facts found in the field from one of the employees, the agile work system implemented by PwC is in accordance with the definition of Agile Working itself, which is a new work system by breaking down obstacles in terms of location by utilizing new technology for better quality work.

Based on the example of PwC in the previous paragraph, the main characteristics of Agile Working which is the **flexibility of time and location** of a worker in a company can be defined in more detail. In addition to the factors of working hours and workplace flexibility, technical factors such as the internet and computers are certainly also important to realize the working relationships using agile work systems. However, this discussion focuses on flexibility in working hours and work location.

Working Time in the Agile Working work system has flexible characteristics where workers tend to work in times to complete the work. Companies that implement agile working will tend to provide targets in the form of due dates to their workers for a job or in other words there will be a time limit of a job to be completed by workers. From the company's side, of course, this is quite profitable where the company only needs to determine the time and wait for the results from its workers.

Of course, the working time of this agile system is different from the working time in general as stipulated in the laws and regulations that have been determined by the maximum number of days and hours for working in a week. According to some sources, this flexible working time can make workers do the work even during holidays. Even the aftermath of these uncontrolled hours is overwork which is often referred to as "workaholic"[25].

Next is about working anywhere related to the **Work Site**. Agile Working makes workers freely work wherever they want. Not only at home, a person can work in coffee shops, restaurants, even in its development now there are many flexible working spaces (FWS) which can be used by the community as another workspace than the office. According to the Secretary General of the Ministry of Communication and Informatics, Rosarita Niken Widiastuti, "FWS can be carried out in the employee's home/residence or other location located in the same area as the employee's office or residence, which has information and communication technology facilities supporting FWS and does not endanger data security, health and safety of employees, and does not defame employees and organizations.[26]"

The existence of a flexible workplace certainly has positive and negative impacts for both companies and workers. From the company side, a flexible workplace will certainly reduce office operating costs. For example, from previously renting three-floor building for office, agile working system allows one office to rent one floor where workers can visit if needed. In addition, the operational costs of electricity, water, internet, and even cleanliness will be reduced. However, the downside for companies is that it is difficult to control and supervise their workers. Conventional attendance systems such as fingerprints also need to be updated to digital absences. From the worker's point of view, the positive side is that workers will feel more comfortable working in varied places. Workers will not feel bored with their workplace because they can work wherever they want. The negative side for workers is that the work device is fully handed over to the worker, for example, computer was provided when working from office, but working off the office area requires the workers to own a laptop. In addition, working at FWS also lacks privacy because workers can meet other workers from other offices which vary greatly[27].The keys to achieving optimal working conditions in a flexible workplace are: internal communication, policy formulation, feasibility, availability, scheduling, response speed, productivity

25 Paola Spagnoli dan Danila Molinaro, "Negative (Workaholic) emotions and emotional exhaustion: Might job autonomy have played a strategic role in workers with responsibility during the COVID-19 crisis lockdown?," *Behavioral Sciences* 10, no. 12 (2021) : 2, DOI:10.3390/bs10120192.

26 Setu Ferdinandus, "Terapkan Fleksibilitas, Kominfo Siapkan Pegawai Bekerja Produktif dan Aman," *Siaran Pers No. 73/HM/KOMINFO/06/2020*, https://kominfo.go.id/index.php/content/detail/3415/Kominfo+%3A+Pengguna+Internet+di+Indonesia+63+Juta+Orang/0/berita_satker.

27 Ni Luh Kadek Resi Kerdiati, "Co Working Desain Interior Co Working Space Sebagai Representasi Tren Gaya Kerja Pada Masyarakat Urban di Bali: Studi Kasus Go Work Park 23 & Dojo Bali," in *SANDI: Seminar Nasional Desain 2021*, vol. 1 (Denpasar: PROGRAM STUDI DESAIN KOMUNIKASI VISUAL FAKULTAS SENI RUPA DAN DESAIN INSTITUT SENI INDONESIA DENPASAR, 2021), 111–118, https://eproceeding.isi-dps.ac.id/index.php/sandi-dkv/article/view/100.

measures, office equipment, technical support, and a supportive physical environment[28].

3.2 Juridical Analysis of Agile Working System from Positive Labor Law in Indonesia

The rules of Indonesian labor law have changed quite a lot and have numerous implementing regulations. Law No. 13 of 2003 (Law 13/2003) on "Manpower" is still in force provided that there are several provisions that have been amended through Law No. 11 of 2020 (Law 11/2020). At the end of 2022, the Government issued a Government Regulation in Lieu of Law No. 2 of 2022 (PERPPU 2/2022) concerning "Job Creation" and then PERPPU 2/2022 is set to become law at the end of March 2023, namely in Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law. It is clearly stated in Article 185 of Law 6/2023 that Law 11/2020 is declared repealed and no longer valid. However, regarding the laws and regulations and implementing regulations of the previous law in Article 184 of Law 6/2023, it is stated that it is still valid as long as it does not conflict with the provisions regulated in LAW 6/2023. If so, it can be concluded that the existence of Law 13/2003, and LAW 6/2023 is a positive labor law umbrella in Indonesia, along with various implementing regulations. This writing will discuss more on Government Regulation No. 35 of 2021 about "Certain Time Work Agreements, Outsourcing, Work Time and Rest Time, and Termination of Employment" (PP 35/2021).

In the previous section, three main characteristics of Agile Working have been discussed, namely Flexible Working Time and Flexible Workplace. These two characteristics are contained in the form of an Agile working system equipped with a combination of technology to produce quality work results.

Legally, the discussion about this agile working system can start from the history of flexible working where during the Covid-19 pandemic it was known as the WFH method. The origin of why companies must implement WFH policies for their workers is health reasons, so that there is no transmission of the Covid-19 virus in the workplace. This health reason has certainly complied with the provisions of Article 86 paragraph (1) letter a, and Article 86 paragraph (2) of Law 13/2003 as follows:

> Article 86 paragraph (1) letter a of Law 13/2003: "Every worker/laborer has the right to obtain protection for Occupational Safety and Health"
>
> Article 86 paragraph (2) of Law 13/2003: "To protect the safety of workers/laborers in order to realize optimal work productivity, efforts are organized for occupational safety and health."

The WFH policy, whose purpose is to provide health security to workers during the Covid-19 pandemic, is certainly in accordance with the rules of Indonesian labor law, as one of the efforts for occupational safety and health. Again, we must remember that the strength of a company is the people in it. If workers are treated appropriately and according to their dignity, the company will get results they want[29].

As the covid-19 pandemic has gradually improved, the WFH work policy is changed to WFH-WFO where companies can implement policies for their workers to work from home for several days and to work at the office on the other days. This WFH-WFO policy has finally moved towards flexible working which in this study is billed as Agile Working. As mentioned in the previous chapter, the main goal of agile working is none other than to increase worker productivity with a work system anytime, anywhere, and in any way which is certainly assisted by advanced technology. Referring to the main goal of increasing productivity by opening up opportunities for workers to work flexibly equipped with technology is actually not prohibited by any legal rule, but what must be considered is regarding labor provisions such as Working Time and Wages, as well as

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28 Ahmad Rifai, M. Syamsul Maarif, dan Anggraini Sukmawati, "Keys To Successful Implementation of Flexible Working Space As a New Rormality in Public Organizations," *Business Review and Case Studies* 2, no. 1 (2021): 23–35, /DOI: http://dx.doi.org/10.17358/brcs.2.1.23.the Ministry of Finance is implementing a Flexible Working Space. This study aims to analyze studies related to crisis communication, internal communication, Flexible Working Space, and their application in the Ministry of Finance. The scope of this research focuses on literature references related to crisis communication, internal communication, and Flexible Working Space in the COVID-19 pandemic conditions, which can be applied to the government sector. This research uses secondary data through literature studies related to organizational communication, Flexible Working Space, and the latest data related to COVID-19. The results show that crisis communication in the Ministry of Finance has adopted the Crisis and Emergency Risk Communication (CERC

29 Muhamad Sadi Is dan Sobandi, *Hukum Ketenagakerjaan di Indonesia*, 1 ed. (Jakarta: Kencana, 2020) : 223.

workers' rights that must be in accordance with positive labor law in Indonesia.

3.2.1 Discussion About Agile Working Time from The Point of View of Indonesian Labor Positive Law

Jobs that adhere to the Agile Working system will certainly make working time very flexible, where workers can work whenever they need to work. Legally, the actual working time has been regulated most recently in Article 81 number 23 of Law 6/2023 regarding changes in the provisions of Article 77 of Law 11/2020 which are as follows :

(1) "Each Employer is obliged to carry out the terms of working time.

(2) The working time as referred to in paragraph (1) includes :

a. 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week; or

b. 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week."

(4) The implementation of working hours for Workers in the Company is regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.

The provisions of Article 81 number 23 of Law 6/2023 are the same as the provisions in Article 21 paragraph (2) of PP 35/2021 where it is clear that the working time determined by law is 7 hours / day and 40 hours / week for 6 working days in one week, or 8 hours / day and 40 hours / week for 5 working days in one week, while its implementation is further regulated in the Employment agreement between the worker and the company, company regulations or collective labor agreement. Based on the above legal rules, it can be understood that the basis for regulating working hours should definitely be in accordance with Article 81 number 23 Law 6/2023 jo Article 21 paragraph (2) PP 35/2021, but for its implementation it can be regulated in the employment agreement or company regulations of the company. If a trade union exists, it is essential to consider the employment agreement in conjunction with their involvement.

Companies that implement agile working with flexible working hours practices certainly cannot violate the provisions of Article 81 number 23 Law 6/2023 jo Article 21 paragraph (2) PP 35/2021. The company/ employer must still adhere to one of the options required by the rule, whether to choose a working hour that is 7 hours or 8 hours. If the implementation is to implement flexible working hours, it must still be stated in the Terms of Employment or Company Regulations or Collective Labor Agreement.

The provisions of Article 23-25 in PP 35/2021, which governs Working Time in specific sectors or occupations, indicate that flexible working hours already have a legal framework in place. Companies in this particular business sector or job can hire their workers less or more than the working time specified in Article 21 PP 35/2021 (Article 23 paragraph (1) PP 35/2021). Certain business sectors or jobs referred to in Article 23 of PP 35/2021 are energy and mineral resources businesses in certain areas, general mining business sectors in certain operating areas, upstream oil and gas business activities, horticultural agribusiness sector, and fisheries sector in certain operating areas (explanation of article 23 paragraph (3) PP 35/2021).

Flexible working time can be a characteristic for certain business sectors in applying working time less than the provisions that have been regulated in Article 21 PP 35/2021 (Article 23 paragraph (2) letter b PP 35/2021). The definition of "flexible working time" is a working time arrangement that gives more freedom to employers and workers/laborers in regulating working hours (Explanation of Article 23 paragraph (2) letter b PP 35/2021). Meanwhile, for the business sector that applies working hours exceeding the provisions of Article 21 PP 35/2021, it must be in accordance with the work agreement, company regulations, or collective labor agreement (Article 25 paragraph (2) PP 35/2021).

Furthermore, regarding the conception of Agile working, workers will work outside working hours even on holidays because the working hours are flexible. As the authors discussed in the previous paragraph, there is no problem for companies to hire their workers using flexible working time as long as they do not violate the provisions in Law 6/2023 and PP 35/2021. If the company employs its workers beyond the established working hours, and / or exceeds what has been stipulated in the employment agreement / company regulations / collective labor agreement; then the work will be classed as overtime work time.

Overtime work time itself is regulated in Article 81 number 24 Law 6/2023 regarding changes to Article 78 of Law 11/2020, namely in paragraph (1) as follows :

(1) "Employers who employ Workers / Laborers exceeding the working time as referred to in Article 77 paragraph (2) must meet the requirements:
   a. there is approval from the Worker / Laborer concerned; and
   b. overtime work time can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week"

Furthermore, it is still in the amendment of Article 78 that it is also stated in paragraph (2) that Employers who employ their workers in excess of working time as stipulated in paragraph (1) are obliged to pay overtime wages. However, the obligation not to pay overtime wage is waived for work in certain sectors, as stated in paragraph (3).

Referring to the implementing regulations regarding overtime wage, it has been regulated in PP 35/2021 where the definition of overtime wage itself is "Wages paid by employers to workers/laborers who carry out work in overtime work" (Article 1 number 8 PP 35/2021). Furthermore, more detailed provisions regarding overtime work time are regulated in Article 26-30 PP 35/2021. The special emphasis on the rules regarding overtime pay is:

1. Overtime Wage is not mandatory for certain jobs or certain job groups. This is stated in Article 27 paragraphs (2) and (3) of PP 35/2021 as follows: "(2) The obligation to pay overtime wages is excluded for Workers/Labors in certain position groups. (3) Workers/Labors in certain classes of positions have the responsibility of being thinkers, planners, implementers, and controllers of the running of the Company with unrestricted working time and receiving higher wages."
2. Referring to point number 1, regarding certain types of positions, they must be regulated in the employment agreement, company regulations or collective labor agreement (article 27 paragraph (4) PP 35/2021). If it is not regulated in the employment agreement, company regulations, or collective labor agreement, then the company still has to pay overtime wages (article 27 paragraph (5) PP 35/2021).
3. There must be an order from the company and approval from the worker related to the implementation of overtime work time. An order from the company and the consent of such a worker must be in writing. (Article 28 PP 35/2021).
4. In addition to paying overtime wages, companies that employ their workers during overtime are obliged to provide opportunities for workers to rest in moderation and provide food and drinks of at least 1,400 (one thousand four hundred) kilo calories, if overtime work is carried out for 4 (four) hours or more with a record that the meals and drink cannot be replaced with money. (Article 29 PP 35/2021)
5. The method of calculation, payment, and provision of overtime wage is regulated in Article 31 – 33 PP 35/2021.

Thus, if a company that implements agile working by requiring workers to work during overtime work, then the overtime work time must still be in accordance with Article 81 number 24 of LAW 6/2023 regarding the amendment of Article 78 of Law 11/2020, namely in paragraph (1). Companies are still required to pay overtime wages in accordance with the provisions stipulated in Article 26-30 PP 35/2021.

If the company / employer violates the provisions of working time, then the provisions for administrative sanctions are regulated in Article 61 paragraph (1) PP 35/2021. Companies / employers who implement agile working by not complying with the standard rules of working hours (Article 21 (1) PP 35/2021) or do not provide rest / nutrition as regulated in Article 29 paragraph (1) letter b & c PP 35/2021 may be subject to administrative sanctions in the form of :

a. "written reprimand;
b. restrictions on business activities;
c. temporary suspension of part or all of the means of production; and
d. termination of business activities."

Meanwhile, for employers/companies who should provide overtime (in accordance with the provisions of 81 number 24 LAW 6/2023 related to changes in Article 78 paragraph (2) of Law 11/2020) may be subject to criminal sanctions as stipulated in Article 81 number 68 LAW 6/2023 related to changes in Article 187 paragraph (1) of Law 11/2020, namely criminal sanctions in the form of confinement of at least 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least Rp10,000,000, 00 (ten million rupiah) and a maximum of Rp100,000,000.00 (one hundred million rupiah).

3.2.2 Discussion About Agile Working Location from The Point of View of Indonesian Labor Positive Law

Many offices have changed the work patterns of their employees since the Covid-19 pandemic began. Of course, it is because of the compulsion caused by the Large-Scale Social Restrictions (PSBB) imposed by the local government. Companies inevitably have to adjust work patterns so that the business continues to run. However, months later, only then did many realize that work does not have to come to the office as it can be done anywhere, at least, for most workers who are not directly involved in the production process and customer service. This is called Agile Working where workers are given the freedom to choose how they work, their working hours, and where they work.

As explained above that Agile Working gives employees the freedom to choose where they work, so in this case the Agile Working work system in general does allow workers to choose the location where they want to work as long as what is done is in accordance with the job description that has been set in the company. However, because this is not regulated in the Law No. 13 of 2003 (Law 13/2003), the implementation of the Agile Working work system can cause ineffectiveness of workers in carrying out their work. For example, if the office holds a meeting conference, but employees are in a noisy place, it can disturb the concentration of other employees. To avoid this, a Flexible Working Office Space appears, which means that employees continue to work like in the office, only with the concept of a workspace that is not in an office location, stays closer to home, and has a flexible system. This provides benefits in terms of totality in work and total concentration. This is also implemented in the Ministry of Finance by stipulating through the Minister of Finance number 223 / KMK.01 / 2020 concerning the Implementation of Workplace Flexibility (FWS) within the Ministry of Finance[30].

The Agile Working work system is inseparable from the discussion of how companies also apply the company's attendance system to their employees. In this case, usually the Agile Working system implements an online attendance system. As is known, proving attendance is an activity of recording employee working hours which includes entry and exit times, and rest periods. Attendance activities are generally carried out through attendance recording devices in the form of fingerprint attendance machines, attendance cards and attendance applications such as Mekari Talenta. The way it works, the company will store employee data on the attendance machine and will record. In other words, attendance activity is a credential activity where only people who have access can do attendance.

When reviewed according to the legal point of view regarding online attendance, the online attendance system has not been specifically regulated in the Law No. 13 of 2003 (Law 13/2003), returning to the respective policies of the Company Regulations. Initially the online attendance system only required a click on the 'present' button, but it slowly began to metamorphose with various mandatory conditions, such as location access, up to front camera access before showing attendance. In this case, the online attendance application requires employees to 'give permission' to the GPS location and front camera to "Selfie" and its gallery before showing attendance, so it is tantamount to forcing the choice.

There are several things that must be considered in this online attendance system. One of them is whether the implementation of an online attendance system by "Selfie" and "giving permission" to GPS locations does not violate the privacy rights of every employee. Even though by doing online attendance, employees can prove attendance and with that attendance employees can receive a salary according to the personnel that have been done for 1 (one) month. As important as it is, attendance is even in terms of laws and regulations, as stipulated

30 Ragil Prihadi, "Setelah Flexible Working Space, Kapan Flexible Working Hour?," *Djpb.Kemenkeu.Go.Id*, 2021, https://djpb.kemenkeu.go.id/kppn/sungaipenuh/id/data-publikasi/literasi-perben/2856-fws.html.

in Article 36 Letter J PP 35/2021 which gives special authority for companies to lay off their employees if they are proven to be absent.[31].

Until now, there is no law that specifically regulates the system and procedures for online attendance in each company. There is not much literature that discusses the impact of employees' obligations to "selfie" and to allow GPS locations. For companies, this may be a normal thing because employees are obliged to prove the attendance, but violations of the privacy rights of every employee who does online attendance, may occur.

4. CONCLUSION

After conducting discussion and analysis in the previous chapter, the authors suggest that the Agile Working Work System CAN BE APPLIED in Indonesia and has been accommodated by positive legal rules on employment in Indonesia. An Employment Relationship can implement an Agile Working System while still paying attention to Working Time in accordance with Article 81 number 23 of Law 6/2023 jo Article 21 paragraph (2) of PP 35/2021. Employers are also still obliged to pay overtime wages as the workers' right as stipulated in Article 81 number 24 of Law 6/2023. Lastly workers must also pay attention to their obligations to work according to their supposed working days and hours.

This conclusion certainly answers the results of previous research which states that there is no positive legal rule regarding remote working in Indonesia where in fact after this writing is finished, the Positive Law of Labor in Indonesia still accommodates the implementation of Agile Working which is a development of Remote Working in Indonesia.

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31 Refer to PP 35/2021

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