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# Legal Certainty for Cross-Border Remote Workers: Comparison between Malaysia and Germany

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## *Abstract*

*This study examines the legal certainty for remote workers from various countries in the context of international civil law, in line with advances in digital technology that facilitate employment relationships without geographical boundaries. The purpose of this study is to examine how international civil law addresses cross-border remote workers and how countries protect the rights of their citizens who work remotely for foreign companies. The method used in this study is a normative legal approach that examines statutory regulations, concepts, and comparative law. The study findings indicate that cross-border remote work relationships contain foreign elements in the employment agreement, so that the relationship is subject to international civil law, particularly regarding the determination of applicable law, jurisdiction, and dispute resolution mechanisms. The results of the study indicate that cross-border remote work arrangements contain foreign elements in the employment agreement, so that they fall within the scope of international civil law, particularly regarding the determination of applicable law, jurisdiction, and dispute resolution mechanisms. In Indonesia, there are currently no specific regulations governing cross-border remote workers, so legal protection still relies on the general provisions of Law No. 13 of 2003 concerning Manpower, Law No. Law No. 6 of 2023 concerning Job Creation, as well as the Civil Code, have not fully accommodated the characteristics of cross-jurisdictional digital employment relationships. Comparisons with Malaysia through the amendment of the Employment Act 1955 and Germany through Article 13(1) of Regulation (EC) 883/04 show that both countries have adapted more quickly to remote work through flexible work arrangements and protection of workers' rights. This study concludes that Indonesia still lacks regulations to provide legal certainty for cross-border remote workers. Therefore, comprehensive, specific regulations are needed to ensure that employment status, rights protection, and dispute resolution mechanisms can operate effectively.*

## INTRODUCTION

The rapid development of technology and globalisation has triggered the rising phenomenon of cross-border remote workers and the gig economy.[1] This system of work releases the employment relationship from the constraint of a fixed physical location. Cross-border remote work is a working arrangement that enables an individual to work for a company located in another country while continuing to reside and conduct daily activities in a different country. According to another view, the remote-working system allows workers to perform their work without having to be present in an office, so that the work is carried out through technology-mediated channels[2] and involves a foreign element.

The remote-working system offers numerous benefits to both employers and workers. From the employer's perspective, the implementation of remote work enables the company to identify and recruit employees with the best qualifications, reduce operational expenses, and enhance productivity. From the worker's perspective, the remote-working system provides flexibility to manage working time, place, and method.[3] Based on the Remote Workforce Report survey data of 2022, 53% of companies in Europe and the United States have implemented and operated remote recruitment and work systems.[4] Survey and research data in Malaysia further show that 69% of millennial employees and 63% of Generation Z employees support the implementation of flexible working.[5] In Indonesia, data obtained through the Glints platform in 2024 show that nearly 40% of professionals prefer to work under a remote-working system.

Many Indonesian workers currently obtain employment from international digital companies such as Upwork, Fiverr, Deel, Gojek, Grab, and Fastwork without having to relocate to the country of the employer. With the growing popularity of this new mode of work, the prevailing provisions of the Manpower Law remain focused on domestic

[1]A. Y. Firdasanti et al., "Mahasiswa dan Gig Economy: Kerentanan Pekerja Lepas (Freelancer) di Kalangan Tenaga Kerja Terdidik," *Jurnal PolGov* 3, no. 1 (2021).
[2]T. Y. Mansjoer, T. N. Aritonang, and S. P. L. Sihombing, "Upaya Pencegahan Pengenaan Pajak Berganda Terhadap Pekerja Remote Indonesia Pada Perusahaan Asing Di Luar Negeri," *Journal of Tax Policy, Economics, and Accounting (Taxpedia)* 3, no. 1 (2025): 1–12.
[3]N. Ritawaty et al., "Analisis Studi Literatur Tantangan Penerapan Flexible Working," *Jurnal Syntax Admiration* 5, no. 6 (2024): 2162–2171.
[4]F. Cahyani et al., "Studi Komparasi Kualitas Hidup dan Kinerja pada Karyawan dengan Model Kerja Hybrid dan Full-Remote di Yayasan XYZ Jakarta Selatan," *Sehat Rakyat: Jurnal Kesehatan Masyarakat* 4, no. 1 (2025): 46–55.
[5]Z. Sathar, "Covid-19 and the Opportunity for a Demographic Research Reset" (Population Council, 2021), https://doi.org/10.31899/pdr1.1011.

employment systems,[6] which means that they cannot fully serve as a basis to address the complexity of cross-border remote employment relationships involving multiple legal systems. Furthermore, the protection of workers engaged in remote work has not been clearly regulated, so that the state needs to provide the legal protection required by workers as a preventive measure.

From the standpoint of the work arrangement itself, remote work does not fall within the category of Indonesian Migrant Workers (TKI/PMI), because the latter requires the individual to be physically present and work in the country of the employer. This condition gives rise to questions concerning which law applies (choice of law), which forum should be selected if a dispute arises (choice of forum), and the jurisdiction of the courts authorised to settle disputes. In ensuring legal certainty for workers and employers, private international law essentially plays a role in determining the connecting factors in cross-border legal relationships. However, the Indonesian legal system does not yet have specific regulation on remote working, so that the settlement of legal problems still depends on the general provisions of labour law and international contract law.

Several jurisdictions have begun to adapt their legal systems to accommodate remote working. The Malaysian legal framework, for instance, has been adjusted to accommodate flexible-work arrangements through the amendment of the Employment Act 1955, which came into force in 2023 and introduced provisions on flexible working arrangements (FWA).[7] Malaysia subsequently enacted the 2025 Gig Worker Bill into law, providing a modern approach for gig workers who had long worked without adequate protection. A key breakthrough is the establishment of a tripartite consultative council composed of the government, gig workers, and platform companies, which functions as a forum for determining and discussing standard contracts, tariffs, and unilaterally-imposed issues.

Germany, in turn, has developed the concept of mobile working with a focus on occupational health protection, personal data protection, regulation of working hours, and the involvement of works councils in digital-work policies. The development of such regulations demonstrates that the state plays a critical role in creating legal certainty and providing protection for remote workers in the midst of the changing digital economy.

[6]C. S. Nuriskia and A. A. Nugroho, "Perlindungan Hukum Pekerja Dalam Penerapan Sistem Remote Working Sebagai Pembaharuan Sistem Kerja," *Jurnal USM Law Review* 5, no. 2 (2022).
[7]"Remote and Flexible Work Options," Rivermate, accessed January 5, 2026, https://rivermate.com/guides/malaysia/remote-work.

Various prior studies have concluded that Indonesia does not yet have specific regulation governing the remote-working system, which presents a challenge for remote workers in determining the applicable legal regime. There is therefore a need for a conceptual framework on remote working in order to obtain legal protection for remote workers.[8] Given the current development of work systems, statutes ought to address the question of the applicable legal regime and to serve as a legal umbrella for remote workers. In practice, however, statutes such as the Manpower Law, the Job Creation Law, and their implementing regulations still contain legal ambiguity, so that this research is of considerable urgency given the rapid growth of cross-border remote work and the many potential issues that follow.

The legal uncertainty currently existing directly threatens the fulfilment of the rights of citizens who work for foreign companies under a remote-working scheme. The lack of clarity in regulation creates an environment in which workers are vulnerable to exploitation by parties acting in bad faith. Advances in information and communication technology have driven the emergence of new work models involving cross-border remote workers, allowing individuals to work for entities in other countries without having to relocate physically. This phenomenon gives rise to various legal implications, particularly in the area of private international law, including the determination of the applicable law, jurisdiction, and the protection of the rights and obligations of the parties involved. At the same time, states face challenges in ensuring the fulfilment of the rights of their citizens who work remotely across jurisdictions, in light of differences in legal systems, labour standards, and protective mechanisms applicable in each country.

This study is an original work by the authors and is not a duplication of any other work previously published. As reference and benchmark, several prior studies are relevant. First, the study conducted by Amanda Fitriani Eka Putri (2024) entitled "Relevansi Undang-Undang Ketenagakerjaan dalam Menjawab Tantangan Remote Working di Indonesia." That study employed a normative juridical method with a statute and comparative approach. Its findings indicate that, in terms of regulation, Indonesia lags behind other countries such as Singapore, Thailand, and Spain. This is because the Manpower Law as elaborated in the Job Creation Law, which serves as the legal umbrella for workers, has not adequately accommodated the challenges of industrial development, particularly in the remote-working system. This causes legal uncertainty in regulating working hours, overtime wages, facilities, and occupational safety for remote workers.

[8]A. M. A. Putra, M. Isrok, and N. P. Hidayah, "Legal Protection of Remote Working Workers in Particular Time Employment Agreements," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 22–30.

The difference lies in the focus of discussion: the prior study examined domestic remote workers and national regulations compared with those of other countries, whereas the present study focuses on the private international law system and examines the regulation of remote workers from the perspective of private international law.

Second, the study conducted by Devina Novela (2024) entitled "Dinamika Perlindungan Hukum Pekerja Remote Working Melalui Implikasi Digital dan Pengaturan Di Indonesia." That study employed a normative juridical method focused on the examination of secondary legal materials, namely books, statutes, journals, and prior articles. Its findings indicate that remote working has both negative and positive impacts. The study also emphasises the importance of implementing economic, social, and technical protections regulated in the Manpower Law, the Job Creation Law, and the Personal Data Protection Law (PDP Law) to ensure the fulfilment of remote workers' rights. The difference in research focus is that the prior study focused on the impact of digitalisation on remote workers in Indonesia and the legal protection arrangements in general, whereas the present research focuses on how the system of private international law regulates remote workers by combining a normative and an empirical approach.

Third, the study conducted by Maria Mugiono (2025) entitled "Perlindungan Hukum terhadap Hak-hak Pekerja Freelance dan Remote Working dalam Hukum Ketenagakerjaan Indonesia." That study applied a normative juridical method with a statute approach and a literature review. The findings explain that, in practice, many workers do not have written employment agreements, which weakens legal protection over the basic rights they ought to enjoy, such as social-security entitlements, occupational-safety protection, and legal certainty as to the status of the employment relationship. The difference lies in the research method: the prior study used a normative juridical method with a statute approach, collecting data by tracing legal documents, literature, scholarly journals, and other reliable sources. The present study, by contrast, applies a normative-empirical legal method, collecting data through questionnaires to obtain a more realistic picture of the issue as it develops in the field.

Accordingly, this study focuses on two principal issues: how the system of private international law regulates cross-border remote workers, and how the state ensures the fulfilment of its citizens' rights as cross-border remote workers. In line with these research questions, this study aims to examine and analyse the rules of private international law concerning cross-border remote workers, and to assess the role of the state in providing protection and guaranteeing the rights of its citizens in such cross-border work practices. It is therefore hoped that this study can contribute to the development of legal

scholarship, in particular concerning the dynamics of global labour relations in the digital era.

## METHODS

In this study, the authors employ the normative juridical legal research method, which is the process of discovering a rule of law, legal principles, and legal doctrines by examining secondary data relevant to the legal issue under examination.[9] The normative juridical approach is used to examine legal certainty for cross-border remote workers, particularly from the perspective of private international law. In this study, the authors apply the statute approach, that is, a legal approach undertaken by examining statutes and regulations relevant to this research.[10] Through this approach, the authors examine the relevance of Law No. 13 of 2003 on Manpower, Law No. 11 of 2020 on Job Creation, and other regulations relevant to the issue at hand as the basis of analysis. The second approach is the conceptual approach, that is, an approach based on legal views and doctrines developed in the science of law; this approach is used as the foundation of analysis for understanding the legal issue from various perspectives and is necessary because no specific legal regulation yet exists with respect to the issue under study.[11] Furthermore, the comparative approach is applied to the legal systems of Indonesia and of countries that have already enacted regulation on remote workers, in order to identify differences and similarities that may inform policy recommendations.[12] The countries used for comparison regarding remote work regulations are Malaysia, through the Employment Act 1955, and Germany, through Regulation (EC) 883/04. This comparative approach employs a functional method, examining the provisions of these countries concerning remote work regulations and comparing them with Indonesia's framework in relation to the legal issues raised. The data-collection technique used in this research is library research on primary, secondary, and tertiary legal materials[13] to obtain, analyse, and identify information relevant to the issues under examination. Data analysis in this study is qualitative, through legal reasoning by classifying legal materials based on their relevance to the topic under research.

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[9]Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).
[10]Marzuki, *Penelitian Hukum*.
[11]Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, 3rd ed. (Malang: Bayumedia Publishing, 2013).
[12]K. J. Maulana, "Analisis Yuridis Pendekatan Komparatif Dalam Antropologi Hukum Menurut Para Ahli," 2022.
[13]Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

## RESULTS AND DISCUSSION

### 1. Regulation of Cross-Border Remote Workers from the Perspective of Private International Law

The increasing development of remote work, which allows workers to perform their work from a location different from the domicile or business premises of the employer, has been driven by the rapid advancement of technology. Platforms such as Upwork, Fiverr, Deel, Gojek, Grab, Fastwork, and other professional engagements have been made possible by such technological development. When workers adopt a remote-working scheme, the employment agreement functions as an autonomous source of law within the working framework. This agreement not only operates as an arrangement between the worker and the employer but also serves as a legal instrument that supports national development. The employment agreement provides legal certainty in the employment relationship and regulates the rights and obligations of both parties. Pursuant to Article 1 of Law No. 13 of 2003 on Manpower, an employment agreement is an arrangement made between the employer and the worker that regulates the rights and obligations of each party. Accordingly, an employment agreement is not merely an administrative document but a legally binding agreement that establishes the existence of an employment relationship.

Agreements made within the system of cross-border remote work involve a foreign element, so that the legal relationship transcends the boundaries of any single national legal system. Their legal status has two dimensions, namely Indonesian and international law. Within the Indonesian legal system, the international civil contract is not regulated by a specific statute but falls within the domain of private international law (PIL), a branch of national law that functions to determine which law should be applied to civil legal relationships involving a foreign element.[14]

The principle of freedom of contract in the choice of applicable law is a fundamental principle recognised in Indonesian contract law. In other words, freedom of contract is a widely recognised legal principle that grants the parties to an agreement the freedom to determine the content and form of the agreement, the law applicable to it, and the method or forum for dispute resolution.[15] This is reflected in Article 1338 of the Indonesian Civil Code, which provides that an agreement lawfully made binds the parties and operates as

[14]A. N. Yanti, F. K. Fahrudin, and R. C. Putri, "Kontrak Perdata Internasional: Perlindungan Hak Individu Dalam Hubungan Dengan Perusahaan Asing," *Jurnal Adijaya Multidisplin* 3, no. 6 (2026): 776–786.
[15]A. J. Meilala, *Hukum Kontrak dan Perdata Internasional* (Jakarta: LPPM Press UPN Veteran Jakarta, 2024).

a statute between them.[16] However, in the framework of international contracts, the application of this principle has not been considered optimal because of the insufficient accommodation of The Hague Principles 2015 into national regulation.[17]

The application of the principle of freedom of contract frequently comes into conflict with the principle of lex loci laboris in cross-border remote-work systems, because the work is performed in a location different from that of the employer. In practice, the law applied is that of the place where the work is performed and not the law chosen by the parties, in order to ensure the most favourable protection of the worker. Although the principle of freedom of contract creates space for the choice of the applicable law, in practice this principle is often constrained by labour statutes that are mandatory in character (mandatory rules) and by the doctrine of public order. The objective is to protect the worker in cases where the agreement conflicts with morality, justice, or the protection of human rights,[18] and to safeguard public interest and ensure the minimum protection of workers.[19]

Private international law plays a key role in establishing the competent court, the applicable law, and the mechanism for cross-border dispute resolution.[20] Remote workers in Indonesia depend heavily on employment agreements that are prone to creating an imbalance in bargaining position because there is no clear regulation. Accordingly, the application of such agreements must be restrained by the principle of contractual fairness, emphasising the balance between the rights and obligations of workers and employers.[21]

Because agreements are generally concluded electronically without the physical presence of the parties, the principles of lex loci contractus (the law of the place where the agreement is made) and lex loci laboris (the law of the place where the work is performed) come into tension within the remote-working system. Accordingly, private international law adopts the closest-connection approach. This approach evaluates the

[16]D. N. M. Arrahman, "Kompleksitas Yurisdiksi dan Pilihan Hukum dalam Perjanjian Kerja Lintas Batas: Studi Perlindungan Pekerja Remote Internasional di Indonesia," *Advances in Education Journal* 2, no. 3 (2025): 2041–2048.
[17]G. L. Meryadinata, S. I. S. Najib, and A. Bastomi, "Choice of Law in International Contracts Based on the Hague Principles 2015: Indonesian Positive Law Perspective," *Justisi* 11, no. 2 (2025): 640–656.
[18]A. I. Nabilah et al., "Analisis Hukum Perikatan dalam Perjanjian Jual Beli Saham Internasional oleh Perusahaan Asing," *Cakrawala Hukum* (2026).
[19]S. Wahyuni, "Konsep Ketertiban Umum Dalam Hukum Perdata Internasional: Perbandingan Beberapa Negara Civil Law Dan Common Law," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (2014).
[20]Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT Intermasa, 2008).
[21]M. F. Ahsan, "Pengadopsian Asas Proporsionalitas Dalam Kontrak Kerja Berdasarkan Undang Undang Cipta Kerja," *Journal Sains Student Research* 3, no. 6 (2025): 789–797.

totality of the legal relationship, including the domicile of the parties, the location of the central place of business of the employer, the place where wages are paid, the language used in the contract, and the economic purpose of the employment relationship, in order to determine the most appropriate and just law to apply.[22]

Several countries have already enacted and developed regulation concerning remote-working patterns. Indonesia, however, has no specific regulation on remote workers; to date, workers may only rely on existing general labour regulations,[23] namely Law No. 13 of 2003 on Manpower, Law No. 6 of 2023 on Job Creation, and the Indonesian Civil Code, in particular Article 1338, which regulates the principle of freedom of contract. Such regulations, however, are not yet adequate as a legal umbrella to address the challenges of the remote-working system, given the many limitations relating to legal substance, implementation, and supervision.[24]

In contrast to Indonesia, Malaysia has begun to recognise and demonstrate progressive development in respect of flexible working through several legal instruments within its positive legal framework. The Employment Act 1955, as amended in 2022, regulates permission for remote workers through written agreement. In addition, employers are obliged to ensure that remote workers enjoy a sound working environment and receive social-security protection. Employers also bear an obligation to develop policies on remote working, to take account of the workers' supporting needs such as laptops and computers, to monitor workers' welfare, and to provide training on time management.[25]

The procedure for applying for flexible working, or for a change of place, day, and hours of work, requires that an application be made in writing and submitted to the employer. If the employer approves, notice must be given to the employee within 60 days of receiving the application. If the application is rejected, the employer must provide reasons for the rejection.[26] Although this regulation has not been adopted specifically to

[22]A. Rosin, "Cross-Border Telework and the Applicable Labour Law: The Role of Different Connecting Factors in Determining Objectively Applicable Law," *European Labour Law Journal* 15, no. 4 (2024): 755–772.
[23]T. P. Utami and F. S. Rezah, "Aspek Hukum Perjanjian Kerja Jarak Jauh (Remote Working) Terhadap Tanggung Jawab dan Hak-Hak Pekerja," *Legal Dialogica* 1, no. 1 (2025): 120–130.
[24]A. Maharani et al., "Ketenagakerjaan Di Indonesia: Tantangan Dan Peluang Di Era Globalisasi," *Jurnal Manajemen, Akuntansi dan Pendidikan* (2024).
[25]I. A. N. Salsabila et al., "Analisis Yuridis Perlindungan Hukum Terkait Jumlah Jam Kerja Bagi Remote Workers Di Indonesia," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* (Yogyakarta: FH UII, July 2024), 129–139.
[26]"An Overview of the Amendments to the Employment Act 1955 Pursuant to the Employment (Amendment) Act 2022," ACCA Global, accessed February 26, 2026, https://www.accaglobal.com/gb/en/student/exam-support-resources/fundamentals-exams-study-resources/f4/technical-articles/my-employment-act-1955.html.

protect remote workers, its existence demonstrates Malaysia's readiness to address the challenges of cross-jurisdictional remote-working patterns.[27]

Germany, as a member of the European Union, takes a more advanced and systematic approach to regulating remote working, including in cross-border contexts. Like Malaysia, Germany does not yet have specific regulation on remote workers; however, on the basis of employment-agreement frameworks, Germany now permits employees to perform work from home, even where that home is located in a different country. Under Article 13(1) of Regulation (EC) 883/04, where a worker performs most of their work remotely, the social-security regime applicable to the worker follows the place of residence.[28] Moreover, in practice, German law does not look only at the formal employment relationship but also takes into account the economic dependence of the worker, including those in the semi-independent category. This demonstrates Germany's readiness to address the cross-border dimension due to its strong coordination with EU law on the mobility of digital labour.[29]

Based on the differences in provisions and regulations on remote working, there is a corresponding divergence in the degree of legal certainty afforded to remote workers. Indonesia has yet to adopt specific regulation; Malaysia has taken further steps; and Germany, as part of the European Union, is already preparing to address the dynamics of remote working. This gives rise to a legal vacuum in respect of disputes, conflicts, or violations of the rights of cross-border remote workers. Some states have begun to develop regulatory frameworks for new modes of work, encompassing data protection, occupational health, and working hours. The divergence in regulatory preparedness shows that the issue of cross-border remote workers requires harmonisation in order to prevent regulatory arbitrage.

When a dispute arises, redress is generally sought through litigation before the courts. For remote-working systems, however, this avenue faces constraints such as differences in legal systems, jurisdictions, and the enforcement of judgments when the proceedings take place in another country. Subsequently, the International Trade Law Commission

[27]R. Azmi et al., "Regulating Work from Home to Promote Work-Life Balance: A Comparative Legal Review of Malaysia, the UK and Australia," *Sriwijaya Law Review* (2026): 156–179.
[28]"Working Remotely from Another Country – Social Security Law," Noerr, 2023, accessed February 28, 2026, https://www.noerr.com/en/insights/working-remotely-from-another-country-social-security-law.
[29]A. I. Cahyani, "Employment Law in the Digital Age in Regulating Freelance and Remote Workers Through a Comparative Review of Indonesia and Germany," *Law Research Review Quarterly* 12, no. 1 (2026): 574–596, https://doi.org/10.15294/lrrq.v12i1.45454.

and other international organisations have developed Online Dispute Resolution (ODR) as an alternative for resolving disputes in the digital era.[30]

ODR generally offers various tools and features to facilitate the dispute-resolution process, including secure communication channels, document sharing, and videoconferencing. The use of technology in ODR allows the parties to engage in the resolution process from anywhere, enhancing accessibility and reducing costs. In addition, ODR platforms support multilingual functions, enabling the parties to communicate in the language of their choice.[31] Online dispute-resolution practice has been demonstrated by the Singapore International Arbitration Centre (SIAC), which has held 90% of all registered cases by way of virtual hearings.[32]

This is illustrated by the case between Nexcess.net, LLC and Md. Asaduzzaman. The complainant, Nexcess.net, suffered losses after Md. Asaduzzaman committed a violation of trademark rights. The violation consisted of creating a web brand/domain name almost identical to Nexcess.net, namely Nexcesshot.com. The two trademarks were both registered and held valid registration numbers with WIPO. Because the parties were located in different jurisdictions, the dispute was settled online, beginning with an online verification-request system and the online submission of evidence. The final outcome was the removal of the respondent's trademark for having committed fraud against the complainant's domain name, which caused loss to the complainant.[33] Accordingly, an effective, efficient, and digitally compatible dispute-resolution mechanism, namely ODR, is required.[34]

In Indonesia, the institution that assists in dispute settlement through non-litigation channels is the Indonesian National Arbitration Body (BANI),[35] and the legal basis for conducting online arbitration is in fact provided in Article 4 of Law No. 30 of 1999. Procedurally, this is also supported by the BANI Rules, particularly Articles 3 letter m, 4 paragraphs (1) and (3), and 19 paragraph (1). Although the BANI Rules do not expressly

[30]H. S. Hatibie, "Revolusi Penyelesaian Sengketa Digital: Transformasi Sistem Peradilan Melalui Online Dispute Resolution di Era Ekonomi Digital," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 9920–9934.
[31]K. B. G. Singh, "Online Dispute Resolution in Cross-Border Disputes: A Comprehensive Analysis," SSRN Scholarly Paper, 2023, https://ssrn.com/abstract=4643682.
[32]E. Hertiawan, "Tanggung Jawab Advokat Dalam Mewujudkan Access to Justice Melalui Online Dispute Resolution," 2021.
[33]A. Fitria, "Aspek Hukum Arbitrase Online Sebagai Alternatif Penyelesaian Sengketa Bisnis," *Lex Jurnalica* 17, no. 2 (2020).
[34]K. D. Rediasa, N. K. S. Adnyani, and I. D. G. H. Y. Yudiawan, "Online Dispute Resolution (ODR) sebagai Alternatif Penyelesaian Sengketa Jual Beli Akun Game Online berbasis Aset Digital," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 3398–3414, https://doi.org/10.61104/alz.v4i2.4844.
[35]M. R. A. H. Nasution, "Penyelesaian Sengketa Bisnis Melalui Arbitrase Di Era Digital" (doctoral diss., 2025).

use the term "online arbitration," the mechanism may still be applied pursuant to the agreement of the parties as provided in Articles 4 and 31 of Law No. 30 of 1999.[36] In addition, the second amendment, which became Law No. 1 of 2024, provides that "the parties have the authority to determine the forum, whether a court, arbitration, or other alternative dispute-resolution institution, that is competent to handle disputes that may arise from the international electronic transactions concluded by them."[37]

Settlement through Online Dispute Resolution (ODR) covers the filing of claims, virtual hearings, document exchange, and the rendering of final decisions carried out on digital platforms without physical presence.[38] The online arbitration procedure provided in Article 4 paragraph (3) of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution covers exchanges of letters, facsimile, e-mail, or other means of communication accompanied by a record of receipt by the parties. Furthermore, in the event of a dispute arising from a particular electronic agreement, the parties have the right to determine independently the method and procedure for online dispute resolution, even if the contract does not expressly stipulate ODR.[39] However, the conduct of online arbitration must rest on the prior agreement of the parties and the consent of the arbitration institution.[40] Although efforts have been made to facilitate dispute settlement, in order to guarantee legal certainty, the choice of applicable law and the forum for dispute resolution must constitute principal elements expressly stated in the contractual clauses, since both are key instruments in determining the authority and procedure for the cross-border resolution of disputes. This shows that the regulation of cross-border remote work requires clear, consistent, and specific rules to support the evolution of the remote-working model.[41] The applicable legal provisions cannot be determined on geographic grounds alone, but must also take into account the legal

[36]D. Hanida, "Penerapan Online Dispute Resolution (ODR) Dalam Upaya Penyelesaian Sengketa E-Commerce di Indonesia," *YUSTISI* 10, no. 3 (2023): 31–39.
[37]K. S. D. Widiantari, "Upaya Penyelesaian Sistem Online Dispute Resolution (ODR) Dalam Kasus Penipuan Penjualan Kosmetik Melalui Media E-Commerce di Indonesia," *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 2, no. 2 (2025): 78–89.
[38]N. Noviyani et al., "Peran dan Tantangan Arbitrase Online dalam Penyelesaian Sengketa Niaga Internasional: Studi Kasus Perusahaan Start-Up di Indonesia," *Veritas Procedura* 1, no. 1 (2025): 104–131.
[39]D. Sulistianingsih, "Penggunaan Online Dispute Resolution (ODR) Pada Penyelesaian Sengketa Melalui Arbitrase di Indonesia," in *Hukum dan Politik dalam Berbagai Perspektif*, no. 1 (2023): 46–68.
[40]"Penyelesaian Sengketa Secara Online Indonesia," Hukumonline, accessed May 16, 2026, https://www.hukumonline.com/berita/a/penyelesaian-sengketa-secara-online-di-indonesia-oleh--kania-rahma-nureda-lt593793b7764b1/.
[41]S. Morales, "Cross-Border Remote Work: Challenges and What to Anticipate," ADCO Law, 2024, accessed February 28, 2026, https://adcolaw.com/blog/cross-border-remote-work-challenges-and-what-to-anticipate/.

connections most closely linked to the employment relationship. Private international law can serve as a means of coordination between national legal systems in order to create legal certainty and balanced protection for both workers and employers. In Indonesia, the legal regulation of remote workers is not yet comprehensive and tends to be fragmentary, and protection for remote workers still rests on a conventional employment paradigm. There is thus no specific regulation on choice of law, jurisdiction, or protection for cross-border remote workers.

What is therefore needed is a more adaptive regulatory renewal, drawing on the practices of states that have begun to accommodate flexibility in their legal systems, together with the harmonisation of substance based on international practice and the strengthening of supporting resources, including the equitable development of digital infrastructure, capacity-building of human resources, and the improvement of institutional coordination as priority steps to ensure that harmonisation is realised not only normatively but also effectively in practice.[42]

**2. State Guarantee of the Fulfilment of Citizens' Rights as Cross-Border Remote Workers**

Remote work constitutes a form of cross-border digital employment that creates a legal relationship with a foreign party;[43] accordingly, the protection of workers also requires cooperation with other states and the application of international law. The state is obliged to ensure the fulfilment of minimum labour standards that may not be derogated from by contractual agreement.[44] This principle aligns with the concept of labour development in Indonesia, which positions workers as subjects of national development whose rights are guaranteed even where the work is performed under a cross-border remote-working scheme.

In cross-border employment relationships, Indonesian workers face a complex legal situation because the elements of work, employer, place of work, and payment may be located anywhere without regard to jurisdictional limits. This shows that not only must normative legal protection be provided to domestic workers, but it is also essential to ensure mechanisms of legal protection for citizens who work for foreign companies

[42]G. Widjaja, "Tantangan Harmonisasi Regulasi Digital Di Indonesia: Perbedaan Kerangka Hukum Nasional Dan Internasional Serta Keterbatasan Sumber Daya Dalam Akselerasi Sinkronisasi," *Netizen: Journal of Society and Business* 1, no. 11 (2025): 588–599.
[43]N. S. Widiastiani, "Quo Vadis Perlindungan Hukum Pekerja Digital Lintas Batas Negara Sebagai Pekerja Migran," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* (November 2025).
[44]A. Irma, "Konflik Kebebasan Berkontrak dan Hak Pekerja Atas Kebebasan Bekerja dalam Perspektif Hukum Ketenagakerjaan di Indonesia," *Proceedings Series on Social Sciences & Humanities* 29 (2025): 10–17, https://conferenceproceedings.ump.ac.id/pssh/article/view/2071.

under a remote-working scheme. Cross-border workers are therefore often in a state of legal uncertainty as to the definition of "worker," their employment status, and the extent to which labour protection should apply in the digital economy.[45] Although the national legal system does not yet have a statute that expressly governs workers operating under remote-working schemes, the right to work nonetheless forms part of human rights (labour as a human right).

The fulfilment of the rights of citizens as workers forms part of the constitutional obligation of the state to guarantee the right to decent work and legal protection within the employment relationship. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides that every citizen has the right to work and to a livelihood befitting humanity. Article 28D paragraph (2) further guarantees the right to work and to obtain just and proper remuneration and treatment in the employment relationship.[46] These provisions form the basis of the state's obligation to guarantee workers' rights, including in new forms of digital employment relationships such as cross-border remote work.[47]

Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2023 on the Enactment of the Job Creation Government Regulation in Lieu of Law into a Law, serves as the basis for providing legal protection. Although this regulation has not specifically anticipated the characteristics of cross-border remote workers, it does regulate the basic rights of workers, namely working hours, wages, social security, and the termination of employment. In addition, legal protection is supported by other regulations, including those relating to taxation, immigration, and personal data protection.

The absence of specific regulation creates legal uncertainty, particularly for Indonesian workers employed by foreign companies, and provides scope for employers to evade liability because they are not located within Indonesian territory. Workers operating under a remote-working scheme are generally regarded as freelance workers or independent contractors, so that they do not enjoy basic rights such as social security, leave, or severance pay. However, when the nature of the remote-working relationship is examined—including the existence of instructions, work targets, supervision, and

[45]V. N. Paramitha et al., *Masa Depan Ketenagakerjaan Yang Adil: Hukum, Etika, dan Kebijakan di Era Otomatisasi dan AI: Bunga Rampai* (Yayasan Kajian Perencanaan dan Pembangunan, 2026).
[46]Republic of Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, arts. 27 and 28, accessed April 17, 2026, https://www.dpr.go.id/dokumen/jdih/undang-undang-dasar.
[47]N. P. Hidayah and I. Anggraeny, "Fulfillment of Workers' Rights in Remote Working: The Perspective of Labor Development Principle in Indonesia," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 124–137, https://doi.org/10.22219/ljih.v31i1.25338.

payment—it fulfils the elements of an employment relationship as set out in Article 1 number 15 of the Manpower Law.[48]

In Indonesia, the state guarantee is still limited to general labour regulation that does not specifically address remote working. By contrast, Malaysia has begun to accommodate flexible-working patterns through the arrangements provided in the Employment (Amendment) Act 2022. Under that regulation, workers have the right to apply for flexible working arrangements, including changes in working time, working days, and place of work, including working remotely. Moreover, the basic rights of workers, such as wages, working hours, and occupational-safety protection, continue to apply, because Malaysian labour law does not, in principle, draw a distinction between remote and office-based workers.[49] In addition, the new Part XIIC inserted into the Employment Act 1955, in Section 60A, reduces the maximum weekly working hours to 45, which indirectly serves to protect remote workers as well. Nevertheless, the protection of workers still depends largely on the contract concluded between the worker and the employer and is not yet supported by a comprehensive regulatory framework.[50]

Meanwhile, Germany does not have a single statute that specifically regulates workers performing work remotely; rather, the regulation of remote working is distributed across several labour-law instruments. Work-from-home or remote working is treated as a legitimate form of work and falls within the concept of economically dependent workers (*Arbeitnehmerähnliche Personen*) on a single employer. Although such workers are not formally regular employees, they continue to enjoy certain legal protections. In practice, however, this arrangement must be in accordance with the agreement concluded between the worker and the employer, whether through individual employment contracts, collective agreements, or company-level agreements.

The German legal system recognises a range of fundamental rights that attach to workers even when the work is performed remotely. Among the principal rights is the right to occupational health and safety protection, which continues to apply when work is performed remotely, as set out in the ArbStättV (Workplace Ordinance). In addition, workers have the right to participate, through works councils, in determining remote-work policies in accordance with Section 87 of the Works Constitution Act, which strengthens collective protection of workers. The employer, in turn, bears the obligation

[48]"Hubungan Kerja dan Pemutusan Hubungan Kerja," JDIH Kemnaker, 2014, accessed April 17, 2026, https://jdih.kemnaker.go.id/berita/detail/hubungan-kerja-dan-pemutusan-hubungan-kerja.
[49]Interact Law, "Remote Working Legislation Global Report," 2022, accessed May 22, 2026, https://www.interact.law/wp-content/uploads/2022/05/Remote-working-legislation-global_Interact-Law-1.pdf.
[50]A. R. R. Saepudin and S. A. Al Mustofa, "[article title not specified]," *Veteran Law Review* (2024).

to provide the necessary work facilities for remote workers.[51] This shows that although workers do not enjoy an absolute right to work remotely, they have the right to obtain protection once the remote-work arrangement has been agreed. This is in line with the principle of the Rome I Regulation, which affirms that the choice of law in an employment contract may not deprive a worker of the minimum protection of the country where the work is performed, so that the rights of workers in cross-border employment relationships continue to be safeguarded.

Table 1. Comparative Framework of Remote-Work Regulation: Indonesia, Malaysia, and Germany

| **Comparison Criterion** | **Indonesia** | **Malaysia** | **Germany** |
|---|---|---|---|
| Specific Regulation On (Cross-Border) Remote Work | None. No statute specifically governs remote or cross-border remote workers. | No dedicated remote-work statute, but FWA introduced via the Employment (Amendment) Act 2022; the Gig Worker Law 2025 covers gig workers. | No single remote-work statute; rules are distributed across labour-law instruments and coordinated with EU law. |
| Primary Legal Instruments | Law No. 13/2003 (Manpower); Law No. 6/2023 (Job Creation); Art. 1338 Civil Code; for online dispute, Art. 4 Law No. 30/1999 & the BANI Rules; Law No. 1/2024. | Employment Act 1955 as amended by the Employment (Amendment) Act 2022 (FWA; Sec. 60A / Part XIIC); Gig Worker Law 2025. | Art. 13(1) Regulation (EC) 883/04; ArbStattV (Workplace Ordinance); Sec. 87 Works Constitution Act; the Rome I Regulation principle. |
| Flexible-Work Mechanism | No formal FWA; arrangements rest | Formal FWA: written | "Mobile working" permitted on an |

[51]"Remote Working Legislation, Laws & Regulations in Germany," CMS Law, 2024, accessed April 29, 2026, https://cms.law/en/int/expert-guides/cms-expert-guide-to-remote-working/germany.

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|---|---|---|---|
| | on the individual employment agreement. | application to the employer; approval notified within 60 days; rejection must state reasons. | agreement basis (individual, collective, or company-level), including from a home located in another country. |
| Worker Classification & Basic Rights | Often treated as freelancers / independent contractors (no social security, leave, severance); yet instruction, targets, supervision, and payment satisfy the employment relationship under Art. 1 No. 15 Manpower Law. | Labour law draws no principled distinction between remote and office workers; basic rights (wages, hours, OSH) continue to apply, though protection remains largely contract-dependent. | Recognises economically dependent / semi-independent workers (Arbeitnehmerahnliche Personen) who retain certain protections despite not being regular employees. |
| Social Security | General provisions only; remote/freelance work frequently falls outside coverage in practice (proposed integration of BPJS Ketenagakerjaan & BPJS Kesehatan). | Employers are obliged to secure social-security protection and a sound working environment for remote workers. | Where most work is performed remotely, the applicable social-security regime follows the worker's place of residence (Art. 13(1) Reg. 883/04). |

| | | | |
|---|---|---|---|
| Working-Hours Protection | General working-hours rules of the Manpower Law; no remote-specific limit. | Sec. 60A (Part XIIC) caps weekly working hours at 45, indirectly protecting remote workers. | Working-hours regulation is a focal protection; OSH duties (ArbStattV) apply to remote work. |
| Private International Law Dimension | Cross-border relationships fall under PIL; freedom of contract (Art. 1338) is constrained by lex loci laboris, mandatory rules, and public order; the closest-connection approach applies; the Hague Principles 2015 are not yet fully accommodated. | Not specifically addressed in the sources analysed; the framework centres on domestic flexible-work regulation. | Strong EU-law coordination on digital labour mobility; under the Rome I Regulation, the chosen law may not deprive the worker of the minimum protection of the country where work is performed. |
| Dispute Resolution | Litigation and non-litigation via BANI; online arbitration permitted under Art. 4(3) Law No. 30/1999 and the BANI Rules; Law No. 1/2024 lets parties choose the forum for | The Gig Worker Law 2025 establishes a tripartite consultative council (government, gig workers, platforms) as a forum for standard | Collective mechanisms, notably works-council participation in remote-work policy (Sec. 87 Works Constitution Act), alongside EU-level coordination. |

| | | | |
|---|---|---|---|
| | international electronic transactions; ODR is developing. | contracts, tariffs, and unilaterally imposed issues. | |
| Regulatory Readiness / Legal Certainty | Lowest. Fragmentary and anchored in a conventional employment paradigm, leaving a vacuum for cross-border remote workers. | Intermediate. Progressive steps (FWA + Gig Worker Law), though protection remains largely contract-dependent. | Highest. Systematic, EU-coordinated, and already addressing the cross-border dimension. |

With the growth of the digital economy and the increasing prevalence of platform-based work and remote-working systems, the Gig Worker Bill is positioned as a specific regulation that comprehensively governs employment relationships in the gig sector. Its drafting and enactment are highly significant and urgent in order to address the long-standing legal vacuum that has produced uncertainty as to the legal status of remote and gig workers, the protection of fundamental rights, and dispute-resolution mechanisms. In addition, regulation is required that not only preserves the flexibility of the gig-economy partnership model but also obliges platforms to guarantee decent earnings, access to social-security and health-insurance schemes (BPJS Ketenagakerjaan and BPJS Kesehatan), and occupational health and safety protection. Indonesia may take Malaysia's 2025 Gig Worker Law as a model in formulating its own legislation, particularly with regard to the regulation of service agreements, supervisory bodies, and dispute-resolution mechanisms. The legal framework must be designed to balance the advancement of digital innovation with the protection of both employers and workers within the remote-working system. If regulation is too rigid, it has the potential to hinder innovation and to undermine economic competitiveness, while regulation that is too lax, overly complex, or excessively volatile may give rise to exploitation and lower labour standards.[52] Accordingly, the enactment of a gig-worker law is a strategic and important step toward building a national employment-law system that is flexible, responsive, and capable of addressing the modern transformation of work patterns in a fair and sustainable manner.

[52]"Remote Working Legislation, Laws & Regulations in Germany," CMS Law.

## CONCLUSION

This study demonstrates that cross-border remote work is not merely a new mode of employment but a structural shift that relocates the centre of gravity of worker protection from territorial labour law to the coordinating function of private international law. Because such relationships invariably contain a foreign element and engage more than one jurisdiction and legal system, the employment agreement operates as the primary, though not the exclusive, source of governing law. The principle of freedom of contract in selecting the applicable law therefore cannot operate in absolute terms; it is necessarily restrained by the principle of lex loci laboris, by labour statutes of an imperative character, and by public policy aimed at securing a minimum floor of worker protection. The broader implication is that Indonesia's difficulty is not simply the absence of a statute but a paradigm mismatch, in which a conventional, territorially bounded employment framework is asked to govern de-territorialised digital labour. As a consequence, Indonesian citizens who work remotely for foreign employers remain exposed to uncertainty as to employment status, applicable law, jurisdiction, social security, and dispute-resolution mechanisms, while employers situated outside Indonesian territory may evade liability. The comparative analysis confirms that Malaysia and Germany have advanced not because they enacted a single remote-work law, but because they preserved non-derogable minimum rights regardless of work mode and built mechanisms — flexible-work procedures, residence-based social-security coordination, and EU-level harmonisation — that are capable of operating across borders.

On this basis, the study recommends a concrete legislative blueprint rather than a general call for new rules. First, Indonesia should enact a lex specialis on cross-border remote and gig work that expressly recognises this category and its foreign element. Second, the statute should codify choice-of-law and jurisdiction provisions that adopt the closest-connection doctrine and align with the Hague Principles 2015 and the Rome I minimum-protection principle, so that a chosen law may never fall below the protective floor of the place where the work is performed. Third, it should mandate written agreements containing non-derogable clauses on wages, working hours, occupational safety, and dispute resolution, reinforced by a substance-over-form test — drawing on the indicators of instruction, targets, supervision, and payment under Article 1 number 15 of the Manpower Law — to prevent the misclassification of dependent workers as independent contractors. Fourth, it should integrate cross-border remote workers into the national social-security system (BPJS Ketenagakerjaan and BPJS Kesehatan) and consider a residence-based coordination logic comparable to Article 13(1) of Regulation (EC) 883/04. Fifth, following Malaysia's 2025 Gig Worker Law, it should establish a tripartite

consultative body of government, workers, and platform companies to set standard contracts and tariffs and to channel disputes. Sixth, it should institutionalise Online Dispute Resolution and online arbitration through BANI, building on Article 4 paragraph (3) of Law No. 30 of 1999 and Law No. 1 of 2024, so that cross-border disputes can be resolved efficiently without the physical presence of the parties. Looking ahead, regulatory design must balance innovation against protection: rules that are too rigid risk stifling the gig economy and undermining economic competitiveness, while rules that are too lax invite exploitation and the erosion of labour standards. Regional harmonisation, whether through ASEAN coordination or bilateral arrangements, is a logical next step to curb the regulatory arbitrage that uneven national readiness invites. Finally, future research should move beyond doctrinal analysis toward empirical study of how cross-border remote workers actually experience the protection of their rights, their employment status, social security, and dispute resolution, so that responsive legal policy can be grounded in the lived realities of digital labour rather than in its formal categories alone.

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