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LEGAL PROTECTION OF GIG WORKERS IN INDONESIA: REVIEWING LEGAL JUSTICE, CERTAINTY, AND EXPEDIENCY

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Abstract

The rapid development of technology raises the existence of new employment concept called the gig economy. This concept implements a partnership agreement between the company (digital platform) and the gig workers, which can be classified as a non-standard employment relationship or disguised employment relationship. Non-standard work relationships in the gig economy have not yet received a clear legal form in Indonesia, so they do not reflect the objectives of law formation, i.e., justice, legal certainty, and expediency. On the contrary, the UK Supreme Court decision stated that partnership relations in the gig economy can be categorized as an employment relationship. This study focuses on two research problems: 1) the legal relationship between gig workers and regarding the elements of justice, legal certainty, and expediency for gig workers from the perspective of labor law in Indonesia, and 2) the comparison of gig worker arrangements between the United Kingdom and Indonesia. This study uses a juridical-normative research method and empirical study techniques. The results of this study may suggest that the absence of legal forms can impact the welfare and legal protection of gig workers unlike in the UK, where gig workers are considered under the category of employment relationship and therefore receiving employment benefits. Therefore, there is a need for specific regulations for the application and practice of the gig economy to ensure the rights and legal protection of gig workers.

Keywords: gig economy, legal protection, labor law.



A. Introduction

The spring tide of massive and modern technology impacts many sectors, including the workforce or labor market. With fast and efficient technological capabilities, many factories started using machines in the production process and changed the nature of work. As a result, the factory's need for human labor is decreasing.¹ In 2018, *Future of Jobs Report* conducted by World Economic Forum (WEF) shows that in 2022, several fields of work are no longer needed and will be replaced by a new profession.² Additionally, McKinsey Global Institute reported that 52.6 million jobs in Indonesia, covering several sectors, are threatened to be replaced by technology. In 2030, there will be around 800 million workers who are at risk of losing their jobs.

As a result of reducing the need for labor, a new phase called the gig economy appears and rises. The gig economy applies the concept of 'partnership' between the employer and gig workers (or part-time workers) as business-to-business, which differs the conventional company-to-workers concept.. International Labor Organization (ILO) defines Dependent Self-Employment as a non-standard employment relationship, which means a situation where a person works not under an employment contract and not considered as a class of workers whose income depends on one or several of their clients. This dependence can be reflected in how the company gives instructions for a job that must be done by workers.³

Indonesia's gig economy began to develop rapidly in line with the emergence of digital platforms in the ride-hailing sector, such as GoJek, Grab, and Maxim, which spread throughout Indonesia.⁴ The partnership work system that is carried out by these platform companies offers 'flexibility' to its workers to freely choose the time and place of work, making this work a prima donna among the community. The main attraction of the concept offered by the gig economy is the flexibility for gig worker to determine their working hours.

1 Beni Agus Setiono. "Peningkatan daya saing Sumber Daya Manusia Dalam Menghadapi Revolusi Industri 4.0", *Jurnal Aplikasi Pelayaran dan Pelabuhan* 9, No. 2 (March, 2019): p.2.

2 Wisnu Cipto. "Wujud Perlindungan Hukum Tenaga Kerja di Era Revolusi Industri 4.0", <https://merahputih.com/post/read/wujud-perlindungan-hukum-tenaga-kerja-di-era-revolusi-industri-4-0> (accessed on 25 September 2022).

3 International Labor Organization. "Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects". (Geneva: ILO, 2016), p.1.

4 Afifa Yustisia Firdasanti, et. al. "Mahasiswa dan Gig Economy: kerentanan Pekerja Lepas (*Freelancer*) di Kalangan Tenaga Kerja Terdidik", *Jurnal PolGov* 3, No. 1 (2021): p.200.



Gig workers are not tied to one company and have relatively erratic working hours. Something different from the concept of the world of work in general, which is tied to working hours, for example, having to work 5-9 hours per day.⁵

However, the freedom given does not guarantee the gig worker for being more prosperous. In fact, gig workers are forced to work as long as possible in order to gain a decent wage. An algorithmic system created by the independent contractor (company/digital platform) makes the workers unable to refuse offers that come because it can affect the self-assessment of workers and cause a consequence in the future.⁶

In Indonesian legal terms, a partnership working relationship or gig economy concept is not contained in the Indonesian Labor Law, the Government Regulation in-lieu-of Law (Perppu) on Job Creation, or Government Regulation Number 35 of 2021 concerning Work Agreements. Nevertheless, the “partnership” terms exist in Act Number 20 of 2008 concerning MSMEs, but the concept contained is different from the practice in the field.⁷ This legal vacuum creates uncertainty in the working relationship between the online transportation driver as a gig worker and the application company so that the application company legally does not give “worker's rights” to the driver. In this context, “the worker’s rights” include the right to leave, the minimum wage limit, and the right to health insurance. These rights should be obtained if the concept of legal relations for gig workers is legally formalized.

The concept of inter-employment relations between online transportation drivers and application companies in the United Kingdom (UK) can be a useful comparison and precedent in this study because of several points and aspects. Primarily, the similarity in terms of the existence of non-standard employment relationships or Dependent self-employment. Second, the UK already has definite regulations and definitions regarding non-standard employment relationships, not only in the concept of employment relations but also in terms of the rights and obligations that must be met. Contrarily, no Indonesian

5 M.A. Anwar and M. Graham. “Between a Rock and a Hard Place: Freedom, Flexibility, Precarity and Vulnerability in the Gig Economy in Africa. *Competition and Change* 25, No. 3 (2020): p.240.

6 T. Warren. “Work-life Balance and Gig Work: Where Are We Now and Where to Next with the Work-life Balance Agenda?”, *Jurnal of Industrial Relations* 63 (April, 2021): p.522-545.

7 Nabiyla Risfa Izzati. “Disebut ‘Mitra’ tapi Tak Ada Payung Hukumnya: Pekerja Gig Economy Tidak Terproteksi”, <https://theconversation.com/disebut-mitra-tapi-tak-ada-payung-hukumnya-pekerja-gig-economy-tidak-terproteksi-190464> (accessed on 31 January 2023).



regulations contain such matter. Also, the UK stands as the most countries with employment relations Dependent self-employment in the European Union, which is as much as 20.6% of all dependent self-employment workers of EU28.⁸

Noting the lack of a sense of justice that gig workers gain in working in the field gig economy, as well as uncertainty in legal protection to guarantee workers' rights of gig workers that should be obtained, urge the authors to review the practice of the gig economy in Indonesia and raise a question: *First*, how the legal relationship between gig workers and independent contractor (company/digital platform) in Indonesia regarding the elements of justice, legal certainty, and expediency as the objectives of law formation and *Second*, how is the comparison of gig worker arrangements between United Kingdom and Indonesia. Focus on online transportation drivers as gig workers, this study will analyze the legal relationship between gig workers and independent contractors from the perspective of labor law in Indonesia. It is then interesting to examine the principles of justice, legal certainty, and expediency to determine gig workers' conditions and practice. Furthermore, in the event of the concept of employment relations, this study will also compare gig worker arrangements between the UK and Indonesia.

B. Research Methods

This research uses qualitative research, with juridical-normative research methods through conceptual and statutory approaches. The assessment is obtained from literature studies and used data sources consisting of primary legal materials in the form of Indonesian Labor Law, the Government Regulation in-lieu-of Law (Perppu) on Job Creation, and the Minister of Transportation Regulation. In addition, the study also uses the data from the interview with a gig driver (the paper anonymizes the identity for confidentiality concerns). Moreover, secondary materials in the form of books and legal journals related to the problem are being researched.

8 Ioana Alexandra Horodnic and Colin C. Williams. "Evaluating the Working Conditions of the Dependent Self-Employed", *International Journal of Entrepreneurial Behavior & Research* 26, No. 2 (2020): p.333.



C. Results and Discussion

1. Gig Economy Within the Employment Framework in Indonesia

Indonesia's rule of law provides the idea that the law will play a role in every aspect of social, national, and state life. In the 1945 Constitution, as the main legal basis, Indonesia's social and political statements guaranteed employment and a decent living for workers as are contained in Article 27 (2) of the 1945 Constitution. The constitution stipulates that the State guarantees employment for every citizen, and "the State" is obliged to meet the economic needs of workers in the form of decent work wages.⁹

In general, the working relationship or employment framework in Indonesia is standardized into 2 (two) categories: First, Specific Time Work Agreement (PKWT), and second, Unspecified Time Work Agreement (PKWTT). At first glance, it seems that the gig economy is categorized as a Specific Time Work Agreement (PKWT) because of its short-term or non-permanent concept as stipulated in Article 56 Paragraph (1) of Act Number 13 of 2003 (Labor Law), which has recently updated with Government Regulation in lieu of Law Number 2 of 2022 (Perppu Job Creation). Regardless, there is a fundamental distinction between the gig economy concept and the PKWT contract. The PKWT contract can only be made for certain jobs which, according to the type and nature or activities of the work, will be completed within a certain time, as stipulated in Article 59 of the Perppu Job Creation, i.e.,¹⁰ :

- a. work that is completed once or that is temporary in nature;
- b. work that is estimated to be completed in the not-too-distant future;
- c. seasonal work;
- d. work related to new products, new activities, or additional products that are still in trial or exploration; or
- e. work whose type and nature or activities are not fixed.

Apart from that, Government Regulation Number 35 of 2021 Concerning Work Agreements for a Specific Time, Outsourcing, Working

⁹ Abdullah Sulaiman. *Politik Hukum Buruh RI*. (Jakarta: YPPSDM Jkt, 2010), p. 27.

¹⁰ Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja.



Time and Rest Time, and Termination of Employment Relations, specifically in Article 5(1), explains what is meant by the term in the PKWT agreement, that is¹¹:

- a. work that is estimated to be completed in the not-too-distant future;
- b. seasonal work; or
- c. work related to new products, new activities, or additional products that are still in trial or exploration.

Furthermore, Paragraph (2) writes down several jobs in the PKWT agreement that are once-completed or temporary work.

Meanwhile, based on Article 1 point 15 of the Labor Law, a worker or laborer can be said to have a standard employment relationship if the work agreement fulfills the elements of the work agreement as follows:

1) Work

The promised work is the object of the agreement that must be agreed between the employer (company) and the worker. The work must be carried out by the worker himself on the orders of the employer (company). So, the agreement will have legal consequences in the form of rights and obligations, as regulated in Article 1603 of the Civil Code as follows: "The worker is obliged to do the work that has been agreed to according to his ability to the best of his ability. If the nature and extent of the work to be done is not defined in an agreement or regulation, then this is determined based on custom."

Work must be done alone and only with permission from the employer (employer/company) to replace doing the work, which adheres to Article 1603(a) of the Civil Code as follows: "Workers are obliged to do the work themselves, only with the permission of the employer can he order a third person to replace him."

2) Command

A command or order is a manifestation of a job given by the employer (company) to workers because of an agreed work agreement. Commands can be specified broadly, such as instructions, work targets,

11 Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja.

etc.,. This shows an unequal position between the employer and the recipient of the work, as well as a subordination relationship between the giver of orders and other parties who receive orders. The obligation of workers to obey orders from the employer (company) as stipulated in Article 1603 paragraph (b) of the Civil Code explains, "*Workers are obliged to comply with the rules of implementing work and rules intended to improve the employer's company rules given by or on behalf of the employer within the limits of statutory regulations, agreements or regulations, or if these do not exist, then within the limits customary boundaries.*"

3) Wages or pay

Wages are indispensable in an employment relationship since it is a purpose for a person to work. Therefore, if there are no wages, then the relationship is not included in the employment relationship. Based on Article 1(30) of the Labor Law, the definition of wages is as follows: "*Workers/laborers' rights that are received and expressed in the form of money as compensation from the employer to workers/laborers which are determined and paid according to a work agreement, agreement, or statutory regulations, including allowances for workers/laborers and their families for a work and/or services that have been or will be performed.*"

The government's efforts to protect workers in the gig economy are only seen with the regulations issued by the Ministry of Transportation because the majority of gig workers are in the online-based transportation or ride-hailing sector. Concerning online transportation drivers, gig workers are not recognized as workers in Indonesia's employment framework, so this regulation was taken over by the Ministry of Transportation by regulating vehicle specifications for online transportation or ride-hailing as stipulated in Regulation of the Minister of Transportation Number 12 of 2019 (PM 12/2019) concerning Safety Protection for Motorbike Users That are Used For the Benefit of the Community.¹² However, PM 12/2019 does not regulate

12 Pranade Mas, Agusmidah, and Suria Ningsih. "Studi Komparasi Hubungan Kerja



the problems that occurred in the community, in particular regarding the protection of the rights and obligations of the drivers and application companies. The Minister of Transportation, by the regulation, only emphasizes the relationship between online motorcycle taxi drivers and application companies as a working partnership.

In the regulations mentioned above, the non-classification of online drivers as workers within the scope of labor law in Indonesia is the main problem. Seeing the uniqueness of the relationship between gig workers (herein online transportation drivers) and the application companies, there is an urgency for a law to regulate the definition of the partnership. Having a special definition of the gig economy partnership relationship will clarify rights and obligations. Therefore, it is necessary to regulate this matter in labor law.

Even online transportation drivers are categorized as ‘partners’ and not as ‘workers’. On the other hand, the government has tried to make laws and regulations to provide legal certainty to the drivers (as workers in the gig economy) also for consumers. Some of the protection rules provided, including¹³:

a. Protection of Safety and Security in the Transport of Persons

PM 12/2019 has regulated driver and passenger safety equipment standards on security aspects of crime, including panic button in an emergency and the ethics of drivers when providing transportation services to passengers/consumers.

b. Income Protection

In determining the calculation of service fees, it has been regulated in Chapter II, Article 11 to Article 13 of PM 12/2019. Article 12(2) stipulates that in determining service fees, application companies are required to conduct prior discussions with stakeholders. In this case, the standard of service fees is determined by the Minister and signed by the Director General on behalf of the Minister.

c. Protection in Partnership Implementation

Non-Standar *Dependent Self Employment* Dalam Hukum Ketenagakerjaan di Indonesia dan Hukum Inggris Pada Era Gig Economy”, Mahdi: Indonesia Jurnal of Law 1, No. 2 (Agustus 2022): p.193.

13 Oka Halilintarsyah. “Ojek Online, Pekerja atau Mitra?”, Jurnal Persaingan Usaha 1, No. 2 (2021): p.72.

Regarding problems of suspension and breaking up of partnerships, Article 14 PM 12/2019 has stipulated that application companies must make standard operating procedures (SOPs) related to suspension and breaking up of partners by involving the drivers. Article 14(3) regulates that application companies are required to conduct discussions with the drivers prior to the SOPs regarding suspend and breaking up partners established. Based on Article 18, companies are required to have a complaint service center so that at any time online, Ojek drivers can make complaints regarding the constraints and problems that occur while they are doing their job.

1. Review of the Aspects of Justice, Legal Certainty, and Expediency of Law Regarding the Condition of Gig Workers.

Gustav Radbruch mentioned there are 3 (three) aspects in realizing the ideals of law so that the law is not sharp downwards and blunt upwards. These aspects are justice (*gerechtigkeith*), legal certainty (*rechtssicherheit*), and expediency (*zweckmassigkeit*).¹⁴ All three are important because, in the general law aspect, there are norms contained in positive law that put forward relevant actions in a society and provide protection for the justiciable against arbitrariness.¹⁵ In this discussion, the measurement for assessing each of these legal values is as follows:

1. the aspect of justice is measured by the equality between parties (online drivers and application company);
2. legal certainty is by the existence of a legal umbrella that can guarantee rights and obligations; and
3. the aspect of expediency is measured by decent living conditions economically and sociologically.

Considering that Indonesia does not yet have specific regulations governing partnerships and legal protection for Gig Workers, this sub-chapter will discuss how legal protection is for Gig Workers in the

14 Tata Wijayanta. "Asas Kepastian Hukum, Keadilan, dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga", *Dinamika Hukum Journal* 14, No. 2 (May, 2014): p.219.

15 L. J. van Apeldorn. *Pengantar Ilmu Hukum*. (Jakarta Timur: PT Balai Pustaka, 2015): p.18.



aspects of legal certainty, justice, and expediency.

a. Inequality of Relations between Online Transportation Drivers and Companies as a Representation of Aspects of Justice

Lawrence M. Friedman's argument departs from Plato and Aristotle. Plato emphasizes that justice is based on harmony and divides the two concepts of justice: individual justice and collective justice. Individual justice can be achieved when someone is burdened and accepts something according to his level of ability.¹⁶ Meanwhile, collective justice is more on harmony. Here, harmony implies that an association must provide rights that are in accordance with the capabilities of its community members.¹⁷

Furthermore, Aristotle describes his teacher's theory of justice. In this theory of justice, the emphasis is more on proportions, known as distributive justice and corrective justice. Distributive justice is justice for each individual when he gets the burden of rights and obligations according to his portion. Meanwhile, corrective justice is more towards the determination of rights between communities.¹⁸ As opposed to Plato and Aristotle, John Rawls, in his book "A Theory of Justice", offers the concept of justice as fairness, which emphasizes social justice. The construction of justice for Rawls, which is applied to the fundamental structure of society and to the distribution of social and economic benefits, is placed on two main principles: 1) Everyone has equal rights to the broadest fundamental freedoms, and 2) Social and economic inequality must be regulated so that social and economic aspects so that (a) provide proper benefits for everyone and (b) open to every position and position of every person.¹⁹

The implementation of the justice aspect is still not fully contained in the gig economy concept, especially for online transportation drivers as gig workers. Often and unconsciously, online drivers work under

16 The Liang Gie. *Teori-teori Keadilan* (Yogyakarta: Sumber Sukses, 1982): p.22.

17 E. Sumaryono. *Etika dan Hukum: Relevansi Teori Hukum Kodrat Thomas Aquinas*. (Yogyakarta: Penerbit Kanisius, 2002): p.92.

18 Andrew West and Sherrena Buckby. "Professional Judgement in Accounting and Aristotelian Practical Wisdom", *Accounting, Auditing & Accountability Journal* 36, No. 1, (2023): p.131-134.

19 John Rawls. *A Theory of Justice*. (Massachusetts: Harvard University Press, 1999): p. 53.



injustice. They work with ‘more power’ and only to get disproportionate benefits. What is meant by ‘excess power’ here is the process of adapting to a new job and decreasing skills (deskilling-skill trap) who was initially capable as an academic turned into an online driver. The result is that they tend to work harder in adapting to their new skills.²⁰

Alex De Ruyter, along with others, put forward the results of their research that reveal online drivers are a new type of commodification of labor that needs to adapt to new expertise.²¹ Another research entitled *Goto Keeps Gig Workers Away from Decent and Fair Work: A Survey of GoKilat Courier Working Conditions* finds that around 96% of all respondents make online drivers their main job, 60% of them do not have health insurance, and the other 97% of respondents do not have vehicle insurance. Every day, they work an average of 11.2 hours.²²

In such a work-place scenario, the power of online drivers is also fairly weak in front of companies and consumers. This finding explains that the rating system provided by the application (company) makes the position of online drivers slightly weak. The rating here is divided into three elements: comments, ratings, and complaints.

To start with, from the consumer’s point of view, if it is only based on these three aspects, it does not always show objective answers and online drivers tend not to be able to defend themselves. As a result, drivers may experience a blockade or suspension from applications (company).

From the company’s point of view, if the performance of online drivers hits 45%, it means that the drivers are demanded by the company to work even harder to restore the rating so that the drivers continue to get awards. The award referred to here is a bonus given by the company, usually, in the form of money outside the order rate, around IDR 2,000 - IDR 3,300. The findings displays that to reach 75%-100% required

20 Dian Fatmawati, M. Falikul Isbah, and Amelinda P. Kusumaningtyas. “Pekerja Muda dan Ancaman *Deskilling-Skill Trap* di Sektor Transportasi Berbasis Daring”, *Jurnal Studi Pemuda* 8, No. 1, (2019): p.32.

21 Birgitta Bergvall-Kåreborn and Debra Howcroft. “Amazon Mechanical Turk and The Commodification of Labor”, *New Technology, Work, and Employment Journal* 29, No. 3, (November, 2014): p. 213-223.

22 Arif Novianto. “Goto Menjauhkan Pekerja Gig dari Kerja Layak dan Adil: Survei Kondisi Kerja Kurir GoKilat”, *Buletin Insight* 2, No. 1 (Juli 2021): p. 10.



a lot of energy and free time to focus on doing work. In addition, in determining ratings, companies often impose service expectations on online drivers. The argument above is also in line with the interviews conducted with an online driver.²³

“At Grab, there is an Income Guarantee program. So, that is a program where it is possible to get approximately eleven trips a day with an income of IDR 100,000. Then there is another incentive program, namely getting IDR 70,000 if we can collect 100 diamonds or approximately ten trips during the night hours.”

The first and second points prove that the company continues to offer in the form of bonuses until late midnight. Other evidence is the absence of democracy in the form of two-way communication. From there it also shows that algorithms are tools used to carry out unilateral actions. The algorithm creates a platform with systematic method steps, providing instructions for processing requests from input become output. Often, doing previous methods or automating doing something. This makes the algorithm the commander in chief in managing data.²⁴ Similar to what Marx stated:

“...and follow them both into ‘the hidden abode of production’, on whose threshold there stares us in the face ‘No admittance except on business’...”²⁵

In the context of the gig economy, what is meant by ‘the hidden abode of production’ is a special space to explore and produce a system in the form of an algorithm under the control of capital owners and human resource controllers.

The question often asked is, why do people prefer jobs with high job susceptibility? The answer is the high standardization of education and skills as a condition of employment. The impact is that people who

23 The informant is a 24-year-old student at the Faculty of Law Universitas Gadjah Mada who has been a driver at the Grab company since 2021. the identity is anonymizing for confidentiality concerns.

24 Jamie Woodcock. “The Algorithmic Panopticon at Deliveroo: Measurement, Precarity, and the Illusion of Control”, *Ephemera: Theory & Politics in Organization*”, *Ephemera: theory & politics in organizations* 2, No. 3 (2020): p.73-74.

25 Karl Marx. *Capital: Volume I, Book One: The Process of Production of Capital*, <https://www.marxists.org/archive/marx/works/download/pdf/Capital-Volume-I.pdf>, p.123, (accessed on 30 January 2023).



do not get the opportunity to get these conditions prefer to work under vulnerability and normalize such a work culture rather than not working at all.²⁶ From the series of events above, it is clear that such partnership problems are not a natural desire of individuals, rather that there is no legal framework that regulates specific rules regarding partnerships in the Gig Economy.²⁷

b. Minister of Transportation Regulation Number 12 of 2019 as a Representation of Legal Certainty Aspects

The existence of legal certainty is a situation where a law is felt to be certain because there is already a power contained in it. This power comes from a community, organization, or other communal form in providing guarantees for the rights and obligations of each individual.²⁸

An explanation regarding legal certainty has also been mentioned by George Lloyd:

“...law seems to require a certain minimum degree of regularity and certainty, or without that, it would be impossible to assert that what was operating in a given territory amounted to a legal system.”

Lloyd’s view explains that without legal certainty, a subjective truth and uncertainty arise from a situation. Lloyd added that when that happens, someone will act arbitrarily. If the law does not have certainty, the consequence is that the meaning of the law will be lost because it does not have guidelines for acting for the community. Therefore, legal certainty must be clear, permanent, and consistent so that in its implementation, it is not affected by subjective views.²⁹

In Indonesia, the presence of companies that utilize gig economy concepts or business models, such as application-based transportation, still generates protests and discourse. The absence of a legal form is one of the main causes in this case. The impact is that online drivers are always at a disadvantage. According to Aulia D. Nastiti, regulatory

26 Jill Rubery, Damian Grimshaw, Arjan Keizer, and Mathew Johnson. “Challenges and Contradictions in the ‘Normalising’ of Precarious Work”, *Work, Employment and Society* 32, No. 3 (2018): p.512.

27 Nabiyla Risfa Izzati (n 7).

28 Theo Huijbers. *Filsafat Hukum Dalam Lintasan Sejarah*. (Jakarta: Kanisius, 1982): p.162.

29 Fence M. Wantu. “Antinomi Dalam Penegakan Hukum Oleh Hakim”, *Mimbar Hukum* 19, No.3 (October, 2007): p. 388.



issues are divided into two aspects. First, there is no clear regulatory framework regarding application-based service business. Second, the absence of regulations regarding partnership-based work regulations in the gig economy business model. The research hypothesized that the Regulation of the Minister of Transportation No. 118 of 2018 and Number 12 of 2019 are still lacking online driver benefits. Indeed, PM 12/2019 provides regulations that are quite relevant, but on the other hand, these regulations are not appropriate for vertical conflicts that occur between online drivers and applications (companies) as independent contractors. What happens is that these rules are not designed to guarantee eligibility for online drivers. Instead they provide a red carpet for companies to reduce several burdens.³⁰

Looking at PM 12/2019, which focuses more on discussing transportation without considering the imbalance factor of company relations and online drivers. One other research result, in the title *Politics of President Joko Widodo's Government Policy on Online-Based Transportation 2014-2019*, found that PM 12/2019 actually places greater obligations on online drivers and frees companies from the initial burden of responsibility.³¹

Meanwhile, what is the responsibility of the company as a partner? PM 12/2019 in fact emphasizes that work safety matters for online drivers are not the responsibility of the company. This is stated in Article 16, Chapter V PM 12/2019, which provides protection for the drivers and passengers, where the protection is in the form of safety and security, comfort, certainty of getting service, complaint service, certainty of costs according to the application, as well as compensation in the event of an accident. However, if we read Articles 4 to 8 closely, the majority of passenger protection is the responsibility of the driver, not the application (company). As for the assistance that has been provided, for example, consumption and health discounts. However,

30 Aulia D. Nastiti. "Dijamin Regulasi, Dikontrol Aplikasi: Keterbatasan Kebijakan Transportasi dalam Melindungi Kerja Pengemudi Gig", in Ari Hernawan ed. *Questioning Decent and Fair Work in the Gig Economy in Indonesia*. (Yogyakarta: IGPA Press, 2021): p.21-23.

31 Moh. Hasbi Rofiqi. "Politics of President Joko Widodo's Government Policy on Online-Based Transportation 2014-2019", *Journal of Politics and Democracy Studies* 1, No. 1 (2020): p. 25.

all of these have conditions that must be approved by the company. About this rule, an informant explains, “...*Grab guarantees or provides benefits through Grab Benefit that contains health discounts, for example, operations at certain hospitals, barbershops, coffee, and so on, but with some conditions.*”

Seeing the condition of online drivers today, the Work Rights Centre released a statement elucidating that if someone works with low wages, insecurity at work, and unavailability of safety guarantees are included in the type of work that is vulnerable.³² Therefore, it can be said that until recently, there was a real legal loophole in the partnership model in Indonesia’s regulatory environment. This is concerning because the absence of regulation means no protection is provided to workers in the partnership or the gig economy model. The lack of definition of the partnership model itself is also problematic, as this has led to an unprecedented expansion of the partnership model to many working relationships in many other sectors. Ultimately, the partnership model becomes a covert working relationship, which is used by companies as a strategy to avoid legal requirements and consequences.³³

c. Sociological Review of Online Drivers as a Reflection of Expediency Aspects

The existence of law, for the most part written law, is not sufficient only based on the ideals of law, justice, and legal certainty, but still requires expediency or benefits. The expediency here can also be interpreted as a source of happiness for the community because its legal subjects can avoid sporadic conditions (chaos). In its implementation, the law can provide warnings, sanctions, or instructions for the legal subjects contained therein.

Expediency is always associated with the theory of utilitarianism explained by Jeremy Betham, who gives the fundamental axiom “*the greatest happiness of the greatest number*”. That is, expediency or happiness is always identified by the number of people who feel it,

32 Work Rights Centre. “What is Precarious Work?”, <https://www.workrightscentre.org/what-is-precarious-work> (accessed on 30 January 2023).

33 Nabiyla Risfa Izzati and Mas Muhammad Gibran Sesunan. “‘Misclassified Partnership’ and the Impact of Legal Loophole on Workers”, *Bestuur* 10, No.1 (August, 2022): p.59-61.



so the indicator or the measure of the expediency of a law is based on the quantity. It is from the expediency of the law that a person gets a guarantee for a decent life economically and sociologically.

Adding Jeremy Betham's argument, Utrecht criticizes that legal expediency is a form of guarantee for humans who have mutual interests and cannot be disturbed. The crux of the argument stems from 3 (three) points of view:

- a) There is no room for fair consideration of something considered as concrete.
- b) Seeing something that is considered in the public interest because, in substance, it has benefits.
- c) In its implementation, it is very individualistic, thus contradicts the previous point on public interest.

For Sudikno Mertokusumo, the point of law is to create order. With order, society becomes shipshape, and the practice of legal ideals can be realized in people's lives.³⁴ In the Gig Economy practice, mainly online-based companies, such as Go-Jek and Grab, have offered working freedom to the partners (a company term used in carrying out their work processes) in determining how long they work and is controlled by an algorithm. The algorithm function here has an element of coercion because, in practice, if online drivers want to get good performance, they must work extra.³⁵

On the other hand, for some workers, too flexible working hours will seriously disturb the balance of life. Such as, sleep patterns, activities, or daily life. In the gig economy concept, especially online drivers, working time flexibility is defined as how a person (gig worker) prepares himself. According to Fatimah Fildzha Izzati, workers are faced with 3 (three) sources of problems: intermittent, irregular, and informal. Therefore, Fatimah calls it "flexploitation" or flexible exploitation.³⁶

Even though online drivers have the freedom to choose the

34 Sudikno Mertokusumo. Bunga rampai Ilmu Hukum. (Yogyakarta: Liberty, 1984): p. 25.

35 Nabiyla Risfa Izzati (n 7).

36 Fathimah Fildzah Izzati. "Informalisasi Kerja Dan Kerentanan Para Pekerja Industri Kreatif Indonesia", in Andi Misbahul Pratiwi ed. *Ekonomi Informal Indonesia: Tinjauan Kritis Kebijakan Ketenagakerjaan di Indonesia (Trade Union Rights Centre Flexploitation dan Gig Economy)*. (Jakarta Pusat: Trade Union Rights Centre, 2020): p.71.

working time, that doesn't mean that job security with a fixed salary, benefits, and retirement fund is important in this matter. However, this has a long-term impact: namely there is no longer trust in the online driver profession for employers (companies or applications).³⁷ In addition, people who work under non-standard jobs get reduced benefits and protection that should be attached to conventional and standard workers.

The partnership logic in the gig economy referred to by the companies also experiences such problems. In some pieces of literatures, such a partnership concept is a new type of agreement. However, some criticize that this type of agreement is a form that is quite old, even irrelevant. This concept has existed since the years of the development of capitalism in the 18th century. Initially, it was run by several craftsmen, tailors, and companies engaged in the clothing sector, whose wages were paid based on the quantity of goods deposited. Along with its development, the platform has evolved that was originally controlled directly by humans, now shifting to algorithms, but wrapped with the same concept as before and tends to be exploitative.³⁸ The exploitative assumption here is more toward digital-based service companies in reducing waste by cutting unproductive budgets, such as guaranteeing safety at work.

On the one hand, the utilization of penalties may sound acceptable to prevent unwanted consumer outcomes. In this aspect, Dodi Dermawan *et al.*³⁹ find unequal access to data and information that discriminates against the drivers. In such a form, from the investor's point of view, the money invested in developing the technology serves as a *quid pro quo* for the accumulation of profits.

37 The Investopedia Team. "Gig Economy: Definition, Factors Behind It, Critique & Gig Work", <https://www.investopedia.com/terms/g/gig-economy.asp#toc-criticisms-of-the-gig-economy> (accessed on 1 February 2022)

38 Arif Novianto, Yeremias T. Keban, and Ari Hernawan. "Mendorong Kerja Layak & Adil bagi Pekerja Gig: Kajian Awal tentang Ekonomi Gig di Indonesia", in Ari Hernawan ed. *Menyoal Kerja Layak dan Adil dalam Ekonomi Gig di Indonesia*. (Yogyakarta: IGPA Press, 2021): p.vi-xiii.

39 Dodi Dermawan, Khusnul Ashar, Iswan Noor, and Asfi Manzilati. "Asymmetric Information of Sharing Economy", *Proceedings of the 23rd Asian Forum of Business Education (AFBE 2019)*, *Advances in Economics, Business and Management Research* 144, (9 June 2020): p.29.



2. Comparison of Gig Worker Arrangements between United Kingdom and Indonesia

The gig economy business model is initially a reform of the economic management system, which aims to create a pattern of fair and beneficial working relations for both workers and employers. The partnership concept given has the aim of balancing or equalizing the position between workers and employers. So that there is no discrimination of workers by the employers.

In Indonesia, the practice of non-standard employment relationships or dependent self-employment can be seen from the work relationships practiced by the drivers from online transportation such as Gojek, Grab which use a partnership system working relationship, which is a new type of agreement, a non-standard agreement/dependent self-employment. The concept of a cannot be classified into a working relationship in general because it is alleged that it does not fulfill the elements of a working relationship. Application or platform companies argue only as service providers to connect consumers with their drivers with a view that they cannot be categorized as direct order and wage providers.⁴⁰

Article 1(15) of the Indonesian Labor Law covers the concept of employment, which states that a person can be identified as the subject of an employment/employee relationship if he fulfills the elements of an employment relationship, namely wages, orders, and jobs. In comparison to this employment relationship concept, in the United Kingdom, a person can be identified as a worker in accordance with sub-chapter 230 Employment Rights Act 1996 UK an individual who has worked or signed a work contract or other contract in implied or express form, either oral or written, in which the contract contains an agreement to perform any work or service for other parties personally and its status as a client or customer of a profession or the running business.⁴¹

40 Nabiyla Risfa Izzati. "Eksistensi Yuridis Dan Empiris Hubungan Kerja Non-Standar Dalam Hukum Ketenagakerjaan Indonesia", *Jurnal Masalah-Masalah Hukum* 50, No. 3, (2021): p.297-298.

41 Employment Rights Act 1996 UK sub-chapter 230.



To find out more about the concept of partnership relations in Indonesia, this study will analyze the legal relationship between the drivers as gig workers with PT Application Karya Anak Bangsa, which is familiarly known as Gojek, and PT Grab Technology Indonesia, which is called Grab, which both are the most prominent online transportation service/provider in Indonesia.⁴² As previously mentioned that Article 1(15) of Labor Law sets the elements for one to be a subject of an employment, this study will analyze every element of the drivers working relationship that exists in Gojek and Grab, as follows:

a) The element of work

The working relationship between online drivers and application provider companies already contains elements of work. Evidently, the drivers are only allowed to register with only 1 (one) account and are not allowed to register with more than 1 (one) account, making it difficult for drivers to transfer or represent the obligations that have been agreed upon because of individual work relationship patterns. Therefore, the working relationship among online drivers can be said to have fulfilled the element of work because work cannot be transferred and is individual.⁴³

b) The element of command

Subordination in the element of command becomes the basis for assessing a work relationship because it will define the position of superior and subordinate. The working relationship between online drivers and application companies (Grab and Gojek) which are said to use a partnership scheme, but in reality, online drivers are under control and managed by the application provider company.

The driver is forced to submit and must follow the rules applied by the application provider company. Starting from the points that have been targeted to the performance that must be maintained. Online drivers receive limited choices when they are assumed to be undisciplined or refusing orders. In circumstances when they have appropriate reasons—

42 Indonesia Internet Service Provider Association, Internet Survey Report APJII 2019 – 2020 (Q2), (June, 2020), <https://apjii.or.id/gudang-data/hasil-survei> (accessed on 30 January 2023), p.126.

43 *Ibid.*



like taking a rest or sickness—they may lose their income due to the sanctions they should receive, or even worse, the partnership can be terminated.

From here, it can be assumed that the application company has controlled online drivers with all regulations, such as point, mission, targeted, and likeness through the algorithm system. This implicitly leads to fulfilling the element of *xommand*.⁴⁴

c) The element of wage

The system used in the application company's partnership agreement with online drivers is profit-sharing. Application companies do not pay wages to drivers right because drivers get wages directly from consumers after providing their services.⁴⁵ Despite implementing the profit-sharing system, application companies set service rates solely, and the drivers do not participate in determining the nominal rates. This policy can be seen in the contents of the contract agreement between the driver and the Gojek.

Similar to this, in the contract between the drivers and Grab, the unilateral service rates/tariff also contained, which states that when a driver receives an order, every tariff that appears in the application is the rate that has been approved by the driver and will be offered to consumers. As all tariffs or service rates have been determined by the application company, the drivers are unable to negotiate the payment value that the driver receives.

Besides that, application companies also use a reward/incentive mechanism system with a customer management scheme by directly involving consumers through rating, which will have an impact on the value of services and affect driver incentives. So indirectly, the application companies take refuge behind calculations of consumer ratings, points, ratings, and performance to avoid demands or driver's requisite to get more decent wages and claim that the application companies are only

44 Anggalih Bayu, Muh. Kamim and M. Rusmul Khandiq. "Gojek dan Kerja Digital: Kerentanan dan Ilusi Kesejahteraan yang Dialami Oleh Mitra Pengemudi Dalam Kerja Berbasis Platform Digital", *Jurnal Studi Pemuda* 8, No. 1, (2019): p.63.

45 Sonhaji. "Aspek Hukum Layanan Ojek Online Perspektif Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan", *Administrative Law & Governance Journal* 1, No. 4 (2018): p.381.



intermediaries between drivers and consumers. However, on that basis, the element of wages has indirectly been fulfilled.

The results displays that workers in the gig economy, particularly online drivers, can be categorized as workers in general because they have fulfilled the three elements: work, command, and wage. Therefore, the important thing is that online drivers should have the same rights as workers earn, such as the right to paid leave, the right to get insurance, the right to social security, and many more benefits.

In the United Kingdom, drivers on the Uber app are not much different from those in Indonesia, where an independent contractor is not tied to an employment contract. However, in 2018, Yaseen Aslam et al., who are Uber drivers in the United Kingdom, filed a lawsuit against the Employment Tribunal, UK Employment Court Through Decision Number [2021] UKSC5 on 19 February 2021, UK Supreme Court emphasized the 5 (five) aspects of the employment court's findings that justified its conclusion that the plaintiff (Uber drivers) worked for and under a contract with Uber:⁴⁶

1. Where a ride is booked through the Uber app, it sets the fare, and drivers are not permitted to charge more than the fare calculated by the Uber app. [94].
2. The contract terms on which drivers perform their services are imposed by Uber, and drivers have no say in them [95].
3. Once a driver has logged onto the Uber app, the driver's choice about whether to accept requests for rides is constrained by Uber [96]. This is visible by monitoring the driver's rate of acceptance (and cancellation) of trip requests and imposing what amounts to a penalty if too many trip requests are declined or canceled by automatically logging the driver off the Uber app for ten minutes, thereby preventing the driver from working until allowed to log back on [97].
4. Uber also exercises significant control over how drivers deliver their services. One of several methods mentioned in the judgment

46 The Supreme Court. "Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5 On appeal from: [2018] EWCA Civ 2748".



is using a rating system whereby passengers are asked to rate the driver on a scale of 1 to 5 after each trip. Any driver who fails to maintain a required average rating will receive a series of warnings and, if their average rating does not improve, eventually have their relationship with Uber terminated [98 - 99].

5. A significant factor is that Uber restricts communications between passenger and driver to the minimum necessary to perform the trip and takes active steps to prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride [100].

Based on these findings, the UK Supreme Court considered that the Uber driver was strictly controlled, which placed the driver in a subordinated position who had dependence on Uber. Thus, the UK Supreme Court concluded that the Uber driver was considered a “worker” who was entitled to employee rights, as per The Working Time Regulations 1998 and The National Minimum Wage Regulations.

The recognition of Uber drivers in the UK as workers, the elements of justice, legal certainty, and expediency, as meant by Gustav Radbruch, can be said to have been fulfilled. From the aspect of justice, the clarity of rights and obligations between the parties provides a balance between the parties that creates order. In terms of legal certainty, this decision clarifies the definition of Uber’s working relationship with a transportation company to prevent bias in interpreting this relationship. Finally, from the aspect of expediency, where the measure is economically and sociologically decent living conditions, it can be said that it is fulfilled with the right to leave, the right to a minimum wage, and the right to health security.

As a lesson learned from what happened in the UK, there shall be an ideal and specific decision or regulation that categorizes online drivers as workers so that they have the same rights of labor protection. This condition can be created by reflecting on what Uber drivers did in the UK. Looking at the situation in Indonesia, online drivers, through their association, can fight for their right to law formation. This method can be done by consulting with the House of Representatives of the Republic of Indonesia or related ministries to revise the labor law or even make new regulations



that regulate specifically by considering the uniqueness of the system or the relationship pattern between the gig worker and the application company.

Indonesia does not yet have a clear and specific judge's decision or regulation that categorizes online drivers, such as Gojek or Grab, as having the right to labor protection. This is due to the collision with regulations related to employment, which results in the relationship between online drivers and application companies not being classified as a working relationship. The absence of regulations creates conflicts that have a clear impact on online drivers in Indonesia and is related to 2 (two) aspects: the absence of a clear and specific regulatory framework governing the business model of digital intermediary services, such as those run by Gojek and Grab, *and* there are no specific rules regarding partnership-based working relationships that underlie the business model.⁴⁷ Yet, according to Arif Novianto's research,⁴⁸ from March 2020 to March 2022, there were 71 protests involving approximately 132,960 online drivers throughout Indonesia in order to create a space for discussion to provide legal certainty.

D. Conclusion

This paper shows that in Indonesia, there are no specific rules regarding partnerships in the form of the gig economy, especially the partnership model for transportation services and online drivers, such as Grab and Go-Jek. There are also PM 12 of 2019 regulations that directly regulate online drivers. But substantially, it only reinforces the online driver's partnership with transportation service companies. In addition, the design of these rules does not discuss the rights and obligations of companies as partners for online drivers.

On the other hand, elements of justice, legal certainty, and expediency in partnership practices between companies and drivers have not been reflected. The drivers have found various inequalities that are not realized, one of which is flexibility (flexible-exploitative), which implies that the company provides lure of bonuses but with burdensome conditions to the online drivers. In other cases, for example, the UK Supreme Court

47 Aulia D. Nastiti (n 30): p.22.

48 Arif Novianto. "Riset: Aksi Protes Jadi Acara Pengemudi Online Bersuara di Tengah Kemitraan Semu dan 'Pembungkaman'", <https://theconversation.com/riset-aksi-prot-es-jadi-cara-pengemudi-online-bersuara-di-tengah-kemitraan-semu-dan-pembungkaman-187693> (accessed on 3 January 2023).



decided that Uber online drivers, based on five fundamental provisions, clearly fell into the worker category, which gives them rights to receive the same rights as workers in general, such as guarantees and job security.

The absence of regulation on partnerships in the gig economy creates a heavy burden to the online drivers. Online drivers in Indonesia, through their association, need to contend their right to law formation that categorizes online drivers as workers so that they have the same rights of labor protection. To respond to this, the government must immediately issue specific derivative regulations governing the implementation of the gig economy concept in Indonesia to guarantee elements of justice, legal certainty, and benefits for online drivers.