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## *Legal Protection for Online Transportation Service Drivers as Platform Workers in Indonesia*

### **Perlindungan Hukum untuk Pengemudi Layanan Transportasi Online sebagai Pekerja Platform di Indonesia**

**Dian Hadiati<sup>1</sup>**

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#### **Abstrak**

Mengangkat permasalahan tidak terdapatnya hukum yang meregulasi hubungan kemitraan secara jelas dalam economy gig ini sehingga menjadikan para mitra seperti pengemudi transportasi online ini dimana mereka tidak memiliki alternatif mata pencaharian lainnya yang diakibatkan oleh rentannya pasar ketenagakerjaan yang membuat ketidakpastian kerja mereka dan juga membawa ancaman terhadap kesejahteraan mereka. Penelitian ini bertujuan untuk menemukan alternatif kebijakan yang mewadahi antara pelaku ekonomi dengan mitra pengemudi. Karya tulis ini adalah yuridis normatif, dengan metode penelitian pendekatan perundang-undangan (*Statue Approach*), pendekatan konseptual (*Conceptual Approach*) dan pendekatan perbandingan hukum (*Comparison Approach*). Pada praktiknya perjanjian yang ditemui ialah perjanjian kemitraan namun pada praktiknya tidak menempatkan pengemudi sederajat atau suboordinatif maka hubungan ini perlu diubah dengan kemitraan yang sejati (kemitraan mutualisme) yang tidak merugikan salah satu pihak, meski model kerja sama berdasarkan pada model gig economy, pemerintah perlu menetapkan standart kerja sama kemitraan sebagaimana yang diperjanjikan para pihak, terkait hak kewajiban dan jaminan sosial.

**Kata kunci:** Kemitraan; Transportasi Online; Layanan Transportasi

#### **Abstract**

Lifting the issue of the absence of clear laws regulating partnership relations in this gig economy context, it puts partners like online transportation drivers in a vulnerable position where they lack alternative livelihoods due to the precariousness of the labor market, leading to job uncertainty and threatening their welfare. This research aims to find alternative policies that accommodate economic actors and driver partners. This

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paper is a normative juridical study, utilizing the legislative approach (Statutory Approach), conceptual approach (Conceptual Approach), and comparative legal approach (Comparison Approach). In practice, the agreements encountered are partnership agreements, but in reality, they do not place drivers on equal footing or subordinate terms. Therefore, this relationship needs to be transformed into a true partnership (mutualistic partnership) that does not disadvantage either party, even though the collaboration model is based on the gig economy model. The government needs to establish partnership cooperation standards as agreed upon by the parties, regarding rights, obligations, and social guarantees.

**Keywords:** Partnership; Online Transportation; Transportation Services

## Introduction

The number of transportation vehicles on the roads is not proportional to the growing population. As we enter an era where everything is online, even ordering motorcycle taxis and car taxis can be done online. The business actors of both are often referred to as platform service providers and online drivers. Although this relationship appears dynamic and meets the challenges of the times, equality for online drivers remains unresolved, as it refers to general agreement terms.

Online-based transportation services mark an era where the internet is utilized by creating applications or startups for booking transportation through smartphone apps. These services offer numerous advantages over other available public transport options. Nowadays, many public transport services operate through applications or online platforms such as Grab, Maxim, Go-JEK, In Drive, and others<sup>2</sup> The current transportation innovations can be described as multi-creative breakthroughs that not only contribute to the development of national transportation but also create job opportunities for the Indonesian population.<sup>3</sup> Gregorious Alber's research on legal protection for online transportation drivers facing unilateral termination in partnership agreements highlights a gap in agreements between both parties. This research will focus on a different approach to understanding the gig economy agreement model.

The characteristics of the partnership cooperation between platform service providers and online transportation drivers are evident from the cooperation agreement

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<sup>2</sup> Ony Kurniawati, Handy Aribowo, dan Alexander Wirapraja, "Pengaruh Motivasi Dalam Bekerja dan Technology Acceptance Model Sebagai Mediasi Terhadap Kepuasan Kerja (Studi Komparasi Pada Mitra Go-Jek dan Grab di Surabaya)," *Teknika* 11, no. 1 (18 Maret 2022): 74, <https://doi.org/10.34148/teknika.v11i1.459>.

<sup>3</sup> Andika Wijaya, *Aspek Hukum Bisnis Transportasi Jalan Online* (Jakarta: Sinar Grafika, 2016), 4.

letter between them. In this agreement, the platform service provider includes a statement labeled as a “partnership agreement.” This document typically outlines the terms and conditions of the partnership, detailing the responsibilities and rights of both parties involved.<sup>4</sup> If this agreement is linked to the specific provisions of Articles 1618-1641 of the Indonesian Civil Code (KUHPerdara), the parties in the partnership have a legal relationship involving “contribution” (inbreng) in the form of “capital.” In this context, the capital refers to the driver's vehicle, either a motorcycle or a car. However, there is a significant fact behind the freedom of this partnership agreement: if the partner (driver) does not work, they do not earn any income. This could be due to various reasons such as accidents, childbirth, pregnancy, illness, or other personal matters. This situation is different from that of a traditional employee who has the right to paid leave, including maternity leave or sick leave, which is covered by the company. This situation is also excluded from the employment regulations in Law Number 13 of 2003, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. Despite the legal relationship being bound by a partnership agreement, which suggests that both parties should have equal standing and balanced rights and obligations, the reality often differs. The partnership agreement implies a voluntary contract constrained by the legality of an agreement or contract.<sup>5</sup>

This research focuses on the classification of the relationship between platform service providers and online transportation drivers as gig workers (platform workers). How can a fair legal protection framework be constructed in the legal relationship between platform service providers and online transportation drivers as gig workers?

The purpose of this research is to explore the classification of the relationship between platform service providers and online transportation drivers as gig workers (platform workers). This classification is crucial because it serves as the starting point

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<sup>4</sup> Gojek.com, “Perjanjian Kemitraan Untuk Mitra PT. Paket Anak Bangsa,” 2023, <https://www.gojek.com/en-id/app/kilat-contract>.

<sup>5</sup> Honorata Ratnawati Dwi Putranti dkk., *Gamification Of Work (Gofw):(Tinjauan Dinamika Kinerja Daperlindungan (Tinjauan Dinamika Kinerja Dan Perlindungan Hukum Bagi Pengemudi Online)* (Yogyakarta: Deepublish, 2021), 7.

for developing a fair legal protection framework in the legal relationship between platform service providers and online transportation drivers as gig workers.

## **Method**

The type of research used in writing this article is normative legal research. This is a scientific research procedure aimed at seeking logical scientific truth based on normative aspects.<sup>6</sup> The approach used is a normative rule, which involves legal literature research conducted by examining secondary data or library materials.

Secondary legal materials include research, scientific works, literature, and workshops related to the main research topic. Additionally, it utilizes rulings from supervisory judges and court decisions. Tertiary legal materials, such as magazines, articles, collections of papers, and dictionaries, are used to supplement primary and secondary legal materials. The approaches used in this research include the comparative approach, the conceptual approach, and the statutory approach, and the data is analyzed using content analysis techniques.

## **Result and Discussion**

### **A. Classification of the Relationship between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform Workers)**

Talking about the classification of the legal relationship between platform service providers and online transportation drivers as gig workers (platform workers), the classification of the legal relationship here means categorizing what kind of legal relationship exists between the platform service providers and the online transportation drivers as gig workers (platform workers), whether it is an employment relationship or a partnership. With the meaning of this classification, the author's expectation here is to achieve the research objective to answer the question about the classification of the legal relationship between platform service providers and online transportation drivers as gig workers (platform workers). Therefore, this section will be divided into two subtitles:

- a. Characteristics of the Partnership Agreement between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform Workers)

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<sup>6</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), 57.

b. Partnership Agreement from the Perspective of the MSME Law and the Labor Law.

From a legal perspective, this new form of the 'gig economy' has disrupted long-standing regulations and policies as well as the scientific understanding of employment, particularly in the transportation industry. Moreover, many aspects of business regulation in online transportation cannot be found in existing regulations and policies in Indonesia. The Indonesian government cannot even classify these online transportation platforms as transportation companies because they claim not to provide transportation services. These platform service providers argue that they are merely intermediaries between drivers and consumers through their applications. Millions of online transportation drivers are not their employees; they are 'independent contractors' or 'partners.'

The rapid growth of the gig economy model is characterized by temporary, non-restrictive work that is based on demand or specific projects (on-demand workers) and is flexible. This condition is seen as an advantage, especially by the millennial generation, because it is considered to offer fresh ideas, flexibility, avoidance of work routines, and a wide network. One of the implementations of the gig economy in the current era is marked by the proliferation of partnerships adopted by companies in Indonesia, particularly those providing services through platform service providers (such as Gojek, Grab, Maxim, InDrive, and others).

The relationship that occurs in the working relationship between platform service providers (Gojek, Grab, Maxim, and others) and online transportation drivers as partners is a Partnership Relationship, which arises based on an agreement they call the Partnership Agreement. This is evident in the agreement letter provided by the platform service providers, where the content states "Partnership Agreement." A legal relationship (*rechtbetrekkingen*) is the relationship between two or more legal subjects concerning rights and obligations on one side facing rights and obligations on the other side.<sup>7</sup>

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<sup>7</sup> R. Soeroso, *pengantar ilmu hukum* (Jakarta: PT RajaGrafindo Persada, 2006), 269.

The tangible form of a partnership can be agreed upon as a concept of cooperation where, in its operationalization, there is no subordinative relationship; instead, there is an equal relationship among all parties. This means that the partnership is based on principles that must be understood among the partners and must be upheld in its implementation. According to Wibisono, these principles include:<sup>8</sup>

- a. Equality or balance (equity). The approach is neither Top Down nor Bottom Up, nor is it based solely on power. Rather, it is a relationship of mutual respect, appreciation, and trust. To avoid antagonism, a sense of mutual trust needs to be built. Equality is manifested through the recognition of obligations and commitments.
- b. Transparency, this is necessary to avoid mutual suspicion among partners. Transparency includes the management of information and financial management.
- c. Mutual benefit, a partnership must bring benefits to all parties involved.

Basically, the intent and purpose of the partnership is a "win-win solution partnership." Awareness and mutual benefit do not mean that participants in the partnership must have the same abilities and strengths, but rather that it is more important to have an equal bargaining position based on their respective roles.

The main idea of the partnership relationship is balance and equality of status, both for the company and its workers, as outlined in the partnership work contract. This means that the work pattern with a partnership model must emphasize the principle of mutualism between both parties, which means that the relationship should be based on mutual benefit and equal positions. This differs from the traditional employment relationship where there is a superior and a subordinate. However, what is happening here between the platform service providers and the drivers, who are classified as partners, is that they do not receive their rights as partners, such as elements of equality/balance, transparency, and mutual benefit.

In a partnership agreement, which actually involves three parties, namely:

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<sup>8</sup> Yusuf; Wibisono, *Membedah konsep & aplikasi CSR : corporate social responsibility* (Gresik: Fascho Publishing, 2007), 103.

- a. The first party, which is the company that manages the cooperation with partners and provides operational management services for the partners related to the use of the application.
- b. The second party, which is the company that develops, owns, and manages the application.
- c. The third party, which is the online transportation driver partners.

In such a labor market condition, vulnerability becomes an alternative to unemployment, causing more people to accept any available job, even with very minimal benefits, such as partnership model jobs that do not offer any labor protection. There are three principles contained in the partnership relationship, namely the principle of equality, the principle of transparency, and the principle of mutual benefit. However, none of these principles are fulfilled. From the principle of equality, online transportation drivers as partners do not have an equal bargaining position with the business partners. Changes related to work rules that should be negotiated with the drivers as partners never happen. Changes to the rules are often directly informed by the platform service company to the online transportation drivers through the application without negotiation, let alone approval. In a short time, the online transportation drivers have no choice but to accept these changes in order to keep their application system functioning and to continue receiving orders from passengers under the new conditions.

Furthermore, the principle of transparency is also not fulfilled by the platform service providers. It is known that there are various issues regarding the strategic information gap between the company and the online transportation drivers as their partners. The platform service providers possess more information compared to the drivers, such as changes in rules issued by the company's management that are determined unilaterally, including changes in rates and the methods for evaluating the performance of the online transportation driver partners. From the management side that regulates and controls the work process, there is no transparency about how the algorithms are set and the existence of sanctions as well as unilateral termination of the partnership by the platform

company against the drivers.<sup>9</sup> This dominance impacts the way driver partners' income is calculated, thereby automatically changing the previous application. As a result, they do not receive their rights and do not have the opportunity to discuss company policies, even when it concerns mutual interests.

The third and final principle is the principle of mutual benefit, which is also not fulfilled by the platform service providers. From the beginning, the relationship is unequal, with the platform service providers having more power to set the rules, while the weaker party, the drivers as partners, must comply with these rules even if they feel the rules are not beneficial to them. As a result, these partners often have little choice but to accept whatever tasks are offered. Consequently, it is rare to find workers who truly have the freedom and flexibility regarding how and when they want to perform their work.

In practice, partnerships are not always ideal because they are based on the interests of each partnering party. The relationship between the company's management and online transportation driver partners is unequal. One party has more power to set the rules that the driver partners must follow through the application. Driver partners, as the party in need of work, must comply with the rules set in the company's application, even if they feel the rules are not beneficial to them.

A Focus Group Discussion (FGD) was held in 2017 at the University of Indonesia regarding the phenomenon of partnership among online transportation drivers. One of the topics discussed was the status of the partnership work model, with a key speaker on this issue being a representative from the Ministry of Cooperatives and Small and Medium Enterprises. They stated that the Indonesian Government Regulation No. 44/1997 on Partnerships cannot be used as a reference for the partnership work model applied in the online digital transportation industry, particularly in the gig economy.

According to them, online transportation drivers do not have a platform or location (address) and are not formed as a legal entity (cooperative). Therefore, it can be concluded that the partnership cooperation agreement between the platform

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<sup>9</sup> Yeremias T. Keban, Ari Hermawan, dan Arif Novianto, *Menyoal Kerja Layak Dan Adil Dalam Ekonomi Gig Di Indonesia* (Yogyakarta: IGPA PRESS, 2021), 12.



service provider companies and the drivers as partners still contains ambiguities, leading to a low bargaining position for the drivers because they lack clear legal protection.

The gig economy in Indonesia is pioneered by two main local players: Gojek and Grab. Gojek "employs" 1.5 million drivers, while Grab "employs" 2 million drivers (Grab in Indonesia merged with Uber, which exited the Indonesian market in 2018). Unlike most on-demand platforms in the West, both Gojek and Grab are 'super apps' (one platform providing many services at once: ride-hailing (both motorbike and car), food delivery, courier services, and more). In Indonesia, there is a new platform nearly as large as Gojek and Grab, namely Shopee Food, which focuses solely on logistics and food delivery. Due to Indonesia's high levels of unemployment, informality, and non-permanent workers, gig platforms have become very popular for both male and female workers as they are seen as better opportunities.

However, behind all this, workers in the gig economy must face situations where their employment status is unclear or hidden, with most in Indonesia being bound by partnership arrangements. In most cases, those in partnership relationships, which means they are outside of traditional employment relationships, do not benefit from labor and social protection. The activities of workers in partnership arrangements also tend to be frequently undeclared to national authorities. This clearly has a negative impact on gig workers and their families, but it can also reduce productivity and distort competition, often disadvantaging companies that comply with laws and regulations.<sup>10</sup>

The reluctance to use the term 'employee' or 'worker' in the gig economy can be seen in the 'manufactured' terms chosen by platform service providers to refer to people working as service providers on their applications. Companies even have a list of dos and don'ts about how their 'riders' should communicate with passengers/consumers. Platform service providers use terms designed to deflect claims that drivers are employees, workers, or staff. While Gojek, Grab, and other gig economy platforms like Maxim, AnterAja, or Uber (when it was still operating in

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<sup>10</sup> International Labour Organization (ILO), "Protecting Workers in New Forms of Employment |," 20 Mei 2022, <https://www.ilo.org/publications/protecting-workers-new-forms-employment>.

Indonesia) refer to people working as their service providers as partners, the popularity of the term partnership relationship in Indonesia has increased.<sup>11</sup>

The terms and conditions enforced by several online transportation platforms state that they are matchmakers and drivers are independent contractors or "partners" – essentially categorizing them as their own entrepreneurs, thus placing them beyond the scope of legal regulations, particularly labor regulations. As a result, there are consequences of not having an employment relationship for these online transportation drivers. This means that if the relationship is classified as an employment relationship, it would be protected by labor law regulations. Therefore, if the relationship does not fall within an employment relationship, labor law regulations do not apply, and the aforementioned online transportation drivers fall without labor protection.

Their status as partners does not entitle them to a fixed wage and social insurance from the platform service providers. As a result, partners heavily rely on social insurance distributed by the government or community. Originally, the idea of social security was to provide workers with income assurance during transitions between jobs, periods of illness, disability, childbirth, and retirement, as well as to help compensate for low income and provide access to healthcare. However, it is generally known that many social security systems are designed only for workers bound by "standard" employment relationships. Therefore, workers in the gig economy sector classified as independent contractors or partners are generally not covered by labor law provisions or social security.

In the context of a welfare state, online transportation drivers as gig workers heavily rely on social insurance provided by the state. Since 2014, the Indonesian government has introduced a social protection system for all citizens, known as BPJS. Platform service providers use this scheme to cover the lack of social insurance for partners. They assist partners in registering for the state's social protection scheme, but the insurance premiums are deducted from the drivers' daily income. Because the costs are borne by the drivers, some choose not to enroll in the BPJS

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<sup>11</sup> Nabiyla Risfa Izzati, "Ketidakseimbangan Kewajiban Para Pihak dalam Regulasi Ojek Online: Distorsi Logika Hubungan Kemitraan Ekonomi Gig," *Undang: Jurnal Hukum* 5, no. 2 (30 Desember 2022): 58, <https://doi.org/10.22437/ujh.5.2.325-356>.

Employment program. Only a few register for the program, and many are unaware of its existence. Such a scheme risks being unfair and ineffective because low-income workers, such as online transportation drivers who are vulnerable and have non-linear career paths, are unlikely to enjoy adequate protection, which in turn can exacerbate inequality. In this context, the shortcomings of technology companies are covered by the state, but driver partners will find themselves in a vulnerable position if the state's social protection scheme changes or disappears at any time.

Despite all this, online transportation drivers as platform workers can effectively be covered under the umbrella of social insurance. Ensuring universal social protection throughout the life cycle for all, including workers in all forms of employment, based on sustainable financing, solidarity, and risk-sharing is not only about realizing the human right to social security but also crucial in creating a level playing field and ensuring fair competition among platforms.

**B. Constructing Fair Legal Protection in the Legal Relationship between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform Workers)**

**1. Classification of Partnership Relationships based on Subordinate Union of Partnership (Pseudo-Partnership) between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform Workers)**

The emergence of online platforms in the gig economy has been considered one of the most significant economic changes in recent decades. In the context of the labor market, online platforms in the gig economy are used to match the supply and demand for flexible labor. From a legal perspective, this new form of the 'gig economy' has disrupted long-standing regulations and policies as well as the scientific understanding of employment, particularly in the transportation industry. Furthermore, many aspects of business regulation in online transportation cannot be found in existing regulations and policies in Indonesia.

The Indonesian government cannot even classify these online transportation platforms as transportation companies because they claim not to provide transportation services. These platform service providers argue that they are merely intermediaries between drivers and consumers through their

applications. Millions of online transportation drivers are not their employees; they are 'independent contractors' or 'partners,' as they are commonly referred to.

In a broader framework, work in the gig economy is seen as a trade-off because this employment model provides job opportunities and flexibility for workers, but at the expense of chronic and vulnerable working conditions, potentially contributing to social inequality; for instance, between gig workers and those working in the formal sector. Therefore, concerns about the drawbacks of gig economy work are becoming increasingly widespread, prompting efforts to implement improvements and reforms to directly address the issues or what are considered their root causes.

One of the most crucial issues in the gig economy is the increasing number of workers tied to partnerships, which does not correlate with improved fairness and welfare for gig workers (partners). Most of them are still underpaid, work overtime beyond normal limits, are overworked, lack social protection, do not have guaranteed long-term adequate income, and, most importantly, lack bargaining power and equality. These conditions are accepted without prohibition from the government because most gig workers or partners in Indonesia are classified outside the traditional employer-employee relationship but rather as partnerships or work relationships without formal contracts.

Unlike the employer-employee relationship, which is regulated with various worker rights, in a partnership relationship, work arrangements and profit distribution are all unilaterally determined by the platform service provider company. This condition allows platform companies to pay partners as little as possible, force them to work harder through algorithmic adjustments with working hours exceeding 8 hours per day, and deny them standard worker rights. Consequently, issues such as being underpaid, working overtime, overwork, lack of social protection, and the absence of guaranteed long-term adequate income have indirectly contradicted the claims of platform capitalism

proponents that the gig economy work model can provide flexibility, freedom, and work-life balance for gig workers.<sup>12</sup>

The gig economy is claimed to provide flexibility, free time, alignment with interests, and not restrict gig workers. As stated on Grab's website, they describe their driver partners as "being their own boss," allowing them to gain "flexibility in earning income" because they can independently decide "when, where, and how often" to work.<sup>13</sup> However, in practice, this flexibility and freedom do not materialize and instead become an illusion for gig workers as partners, justifying the vulnerability and injustice they experience.

The implementation of the classification of partnership relationships based on subordinate union of partnership (pseudo-partnership) between platform service providers and drivers as their partners evidently does not result in decent and fair work for the drivers as partners. "The origins of decent work standards lie in the work of the International Labour Organization during the 20th century but crystallized with their 1999 launch of the concept of 'decent work'."<sup>14</sup> This is a concept developed by the International Labour Organization (ILO) and promoted for implementation in formal employment. "Decent work" principles apply not only to employment relationships but to all work arrangements, including work mediated through digital labor platforms,<sup>15</sup> This means that the principles of decent work not only apply to employment relationships but also to all work arrangements, including work mediated through digital labor platforms. Meanwhile, FairWork is a concept developed by the Fairwork Foundation, consisting of 5 indicators, and is used to certify platform companies regarding the fairness of the work conditions received by workers.

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<sup>12</sup> T. Keban, Hermawan, dan Novianto, *Menyoal Kerja Layak Dan Adil Dalam Ekonomi Gig Di Indonesia*, 5.

<sup>13</sup> Grab.com, "Grab: Syarat Dan Ketentuan," Grab, diakses 2 Agustus 2024, <https://www.grab.com/id/>.

<sup>14</sup> Richard Heeks dkk., "Systematic Evaluation of Gig Work against Decent Work Standards: The Development and Application of the Fairwork Framework," *The Information Society* 37, no. 5 (20 Oktober 2021): 269, <https://doi.org/10.1080/01972243.2021.1942356>.

<sup>15</sup> Uma Rani dkk., "World employment and social outlook: the role of digital labour platforms in transforming the world of work," Geneva: *International Labour Organisation*, 2021, <https://www.voced.edu.au/content/ngv:89676>.

Online transportation drivers classified as partners, rather than as employees of the company, means that their fundamental rights to decent work can be neglected by platform companies. Although the concept of decent work is generally used to assess working conditions in formal employment, it remains relevant for analyzing the minimal rights that workers in the gig economy should receive. In some cases, the concept of decent work is even being promoted for application in other forms of work beyond traditional employer-employee relationships, such as partnership relationships in the gig economy.

Meanwhile, from the perspective of fair work as conceptualized by the Fair Work Foundation, fair working conditions for online transportation drivers have not yet been implemented by platform service providers. According to the five principles of fair work—pay, conditions, contracts, management, and representation—none are adequately fulfilled by them. Regarding pay, many drivers as partners still earn below the minimum wage plus the cost of production resources they incur. Secondly, concerning working conditions, the risk of accidents is very high, with the majority of partners having experienced illness due to their work (one of which is due to accidents on the road while working), and most of them also lack health insurance. Regarding work contracts, they are classified as ‘partners,’ but the platform service providers do not apply partnership principles in practice, which include equity, transparency, and mutual benefit. From the management side, which regulates and controls the work process, there is no transparency about how algorithms are set, and there are unilateral sanctions and termination of partnerships by the platform service providers against partners. Lastly, from the representation side, there are no recognized gig worker unions involved in the work arrangement process.

The two forms of classification previously explained, namely decent work and fair work, can serve as benchmarks for the minimum rights of online transportation drivers as partners. However, these two classifications will be problematic if used as minimal requirements for the long term. For example, the classification of decent work has limitations because it places wage employment as the final category. The implication is that work processes

outside of wage employment are considered inadequate or placed in a negative space, deemed necessary to be improved by commodifying work.

Meanwhile, the concept of fair work has limitations like those in the concept of decent work, which is viewing the minimum wage in a region as a representation of fair and decent income for workers. Generally, this claim is certainly inaccurate, because, in the case of Indonesia, the determination of the minimum wage does not fully correspond to the cost-of-living components in each region.<sup>16</sup> However, despite these limitations, the two concepts above still have benefits as minimal prerequisites for the rights of workers that need to be secured in the short term.

The imbalance of obligations, which is a significant issue in Permenhub 12/2019, cannot be separated from the fact that the issue of online transportation business has much broader dimensions than just public transportation, such as the exploitative relationship between drivers and platform service providers. The problem is that this complex issue cannot be accommodated within a sectoral regulation like Permenhub 12/2019. This regulation is even considered to exacerbate the imbalance between online transportation drivers and platform service providers by imposing various additional obligations on drivers. Article 15, paragraph 1 states that "the relationship between the application company and the driver is a partnership relationship." This means that this article once again confirms that it is not an employment relationship, but a partnership. Interestingly, the following paragraph, paragraph 2, states that "the arrangement regarding the partnership relationship as stipulated in paragraph (1) is regulated in accordance with the provisions of the legislation." This raises the question of which regulations are actually referenced by this article.

Starting from such a condition, it means that the partnership relationship mentioned in Article 15 can be said to lack a clear legal basis. This is why the current partnership agreements do not reflect the proper partnership, because

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<sup>16</sup> Anindya Dessi Wulansari, "Indonesia's Cheap Wages Regime: The Political Economy of Minimum Wages Policy under Jokowi Presidency," *Fudan Journal of the Humanities and Social Sciences* 14, no. 3 (September 2021): 436, <https://doi.org/10.1007/s40647-021-00324-8>.

there are no clear regulations governing it and no oversight guidance from the government.

**2. Analysis of Legal Protection for the Classification of Partnership Relationships Based on Subordinate Union of Partnership (Pseudo-Partnership) between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform Workers)**

The terms and conditions enforced by several online transportation platforms describe them as intermediaries and drivers as independent contractors or "partners" – essentially categorizing drivers as their own entrepreneurs, placing them beyond the scope of legal regulations, particularly labor regulations. Consequently, there is no employment relationship for these online transportation drivers. This means that if the relationship were classified as an employment relationship, it would be protected by labor law regulations. Therefore, if the relationship does not fall within an employment relationship, labor law regulations do not apply to it, leaving the online transportation drivers without labor protection.

Their status as partners does not entitle them to a fixed wage and social insurance from platform service providers. As a result, partners heavily rely on social insurance distributed by the government or community. Originally, the idea of social security was to provide workers with income assurance during transitions between jobs, periods of illness, disability, childbirth, and retirement, as well as to help compensate for low income and provide access to healthcare. However, it is generally known that many social security systems are designed only for workers bound by "standard" employment relationships.

Therefore, workers in the gig economy sector classified as independent contractors or partners are generally not covered by labor law provisions or social security. In this regard, social security law in Indonesia is actually a step ahead. Based on Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS), social security for workers in Indonesia is handled by the BPJS Employment. The BPJS Employment program, as referred to in Article 5 paragraph (2) letter b of Law Number 24 of 2011 concerning the Social Security Administering Body, organizes universal social security programs for Indonesian workers, which include pension programs, old-age benefits, work



accident insurance, and death benefits. This program is intended for 'everyone', regardless of their type of work, whether in the informal or formal sector.

It is important to understand that social security law plays a crucial role in protecting the basic rights of workers. According to legal doctrine, the concept of social protection is based on the principles of solidarity, welfare, and equality. Solidarity emphasizes the importance of cooperation and reciprocal assistance among members of society, while welfare focuses on meeting basic needs and improving quality of life. Equality, on the other hand, stresses the recognition and protection of the rights of every individual without discrimination.

According to labor law doctrine, an employment relationship is usually defined by elements such as subordination, wages, and working time provisions. However, in the case of the gig economy, employment relationships are often more flexible and less structured, leading to legal uncertainty for gig workers. Therefore, there is a need for adaptation within the legal framework to accommodate the unique characteristics of gig economy employment relationships.<sup>17</sup>

Legal experts argue that labor law must evolve to accommodate new forms of work arising from technological developments and changes in the labor market. This includes recognizing the need for social security that covers all types of workers, including gig workers. In this regard, the doctrine of progressive law argues that the law must be responsive to social and economic changes and be able to provide adequate protection for all workers.

Professor Guy Davidov from the Hebrew University of Jerusalem states that progressive labor law argues that the law must be responsive to social and economic changes and be able to provide adequate protection for all workers, including those in the gig economy sector.<sup>18</sup> Efforts to provide fair legal protection for online transportation drivers as platform workers require policies that ensure their access to social security equivalent to that of workers in the

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<sup>17</sup> Katherine VW Stone, *From widgets to digits: Employment regulation for the changing workplace* (Cambridge University Press, 2004), 5.

<sup>18</sup> Guy Davidov, *A purposive approach to labour law* (United Kingdom: Oxford University Press, 2016), 16.

formal sector. This will not only improve their welfare but also provide stability and security in their employment relationships.

Recent research highlights the importance of stronger legal protection for gig workers. For instance, a study by Hoang emphasizes the legal and social challenges faced by gig workers in various countries, including issues of job insecurity and lack of access to social security.<sup>19</sup> Another study by Prassl suggests the need for labor law reform to recognize and protect the rights of gig workers as part of a more inclusive employment system.<sup>20</sup>

Strengthening the social protection system requires a combination of contributions (primarily social insurance) and non-contributory social protection mechanisms not funded by taxes. Although there is no "one-size-fits-all" solution, social protection can be extended to platform workers by adapting policy, legal, and administrative frameworks. Some countries have introduced innovations to enhance coverage across various forms of work, including those with complex and unclear contractual relationships.

Ilyas Lubis, Director of Membership Expansion and Inter-Institutional Relations at BPJS Ketenagakerjaan, stated that this cooperation aims to provide social security for occupational accidents and death with affordable contributions for workers in the informal sector, such as online transport drivers. As workers in the gig economy, categorized as self-employed, drivers as partners are required to pay the full social insurance contributions themselves. With this, drivers as partners can receive various benefits such as protection from work-related risks, unlimited medical care, death benefits, and more.<sup>21</sup>

One area that illustrates the stakes involved is occupational accidents. When a partner is an employee of the platform, the platform is often required in many jurisdictions to pay social insurance contributions or, if such coverage is absent, insurance premiums for personal injury compensation that cover the

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<sup>19</sup> Lyn Hoang, Grant Blank, dan Anabel Quan-Haase, "The Winners and the Losers of the Platform Economy: Who Participates?," *Information, Communication & Society* 23, no. 5 (15 April 2020): 681, <https://doi.org/10.1080/1369118X.2020.1720771>.

<sup>20</sup> Jeremias Prassl, *Humans as a service: The promise and perils of work in the gig economy* (United Kingdom: Oxford University Press, 2018), 11.

<sup>21</sup> Izzati, "Ketidakseimbangan Kewajiban Para Pihak dalam Regulasi Ojek Online," 11.

partner. However, where workers cannot establish an employment relationship, they may be required to insure themselves.

In welfare states, online transportation drivers as gig workers heavily depend on social insurance provided by the government. Since 2014, the Indonesian government has introduced a social protection system for all segments of society, known as BPJS. Platform providers utilize this scheme to cover the gaps in social insurance for their partners.<sup>22</sup> They assist partners in registering for the social protection scheme provided by the state; however, the insurance premiums are charged against the drivers' daily earnings. Because the cost is borne by the drivers, some choose not to enroll in the BPJS Employment program. Only a few have signed up for the program, and many others are unaware of its existence. This scheme poses risks of being unfair and ineffective, as low-income workers like online transportation drivers, who are vulnerable and have non-linear career paths, may not receive adequate protection, potentially exacerbating inequality.<sup>23</sup> In this context, the shortcomings of technology companies are covered by the state; however, driver partners remain in a vulnerable position if the state's social protection scheme changes or disappears.

Despite all of this, online transport drivers as platform workers can effectively be covered under social protection. Ensuring universal social protection throughout the life cycle for everyone, including workers in all forms of employment, based on sustainable financing, solidarity, and continuous risk-sharing, is not only about fulfilling human rights to social security but also crucial for creating a level playing field and ensuring fair competition among platforms.<sup>24</sup>

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<sup>22</sup> James Hickson, "Freedom, Domination and the Gig Economy," *New Political Economy*, 6 September 2023, 322, <https://doi.org/10.1080/13563467.2023.2254712>.

<sup>23</sup> Laureen Snider, "Enabling Exploitation: Law in the Gig Economy," *Critical Criminology* 26, no. 4 (Desember 2018): 567, <https://doi.org/10.1007/s10612-018-9416-9>.

<sup>24</sup> Brett Smith dkk., "Consumer 'App-Etite' for Workers' Rights in the Australian 'Gig' Economy," *Journal of Choice Modelling* 38 (Maret 2021): 42, <https://doi.org/10.1016/j.jocm.2020.100254>.

**3. The construction of fair legal protection in subordinate union of partnership (pseudo-partnership) relationships between platform providers and online transport drivers as gig workers (platform workers).**

In the Indonesian context, online transport drivers as platform workers are labeled as partners due to claims that this type of work is performed independently, with flexible working hours and no coercive commands. This logic is used to assert that the relationship between them and the platform providers is merely a partnership where both parties are considered equal and not detrimental to each other. However, the reality is quite the opposite. Despite claims of flexibility, the ability to manage one's work schedule to achieve work-life balance is one of the main reasons for choosing to work on the platform. This implies that online transport drivers as platform workers are free to work as much and whenever they want.<sup>25</sup> However, there are consequences if partners work freely under this model of flexibility, because:

1. The claim that gig workers can freely choose how much and when to work is, in reality, not accurate. In practice, partners often have to work longer hours with high intensity to earn a sufficient income. As a result, it is rare to find partners who genuinely have the freedom and flexibility to decide how and when they want to perform their work.
2. Although the work is described as being done independently, in reality, workers are not entirely autonomous because they are dependent on the platform's algorithms. Platform providers use digital technology and algorithms to place partners into a "gamification of work" pattern, where they must act as players in a business whose rules are entirely controlled by the platform providers.
3. The claim that there are no coercive commands also seems inaccurate. While drivers as partners are not forced to accept job orders, they are free to decline or accept incoming orders. However, if they are perceived by the platform provider as undisciplined or reject too many orders, their income

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<sup>25</sup> Magnus Andersen dkk., "At Your Service: The Mobilities, Rhythms and Everyday Lives of Migrant Labour in the Gig Economy," *Journal of Ethnic and Migration Studies*, 25 Juli 2024, 14, <https://doi.org/10.1080/1369183X.2024.2379641>.

may suffer due to reduced orders, and in certain conditions, this could lead to severe consequences such as termination of their partnership (PM).

From the explanation above, the author concludes that the widespread use of the Subordinate Union of Partnership (pseudo-partnership) model between platform providers and online transportation drivers as gig workers is due to a legal gap within the partnership itself. This, combined with the urgent need for employment amidst high unemployment and informality, as well as the lack of government oversight, has allowed the Subordinate Union of Partnership model to proliferate and persist to this day.<sup>26</sup>

To address and improve the subordinated nature of these partnership relationships, Indonesia could implement the concepts of decent work and fair work promoted by the ILO. These concepts can serve as benchmarks for the minimum rights of platform workers in the short term. Thus, the ILO's decent work and fair work concepts should be harmonized with national law in Indonesia. According to Indonesian national law, a fair legal protection framework for the relationship between platform providers and online transportation drivers as gig workers would involve comprehensively regulating the partnership relationship in a separate law. Given the current balance of national and international regulations, Indonesia could temporarily adopt the ILO concepts of decent work and fair work in the absence of comprehensive national regulations governing partnerships.<sup>27</sup>

In the short term, Indonesia can utilize the ILO's decent work and fair work concepts as benchmarks for platform worker rights. For long-term fair legal protection, Indonesia could address the challenges of the "pseudo-partnership" model by implementing four strategies to improve working conditions in the gig economy. These strategies involve various stakeholders

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<sup>26</sup> Shireen Suliman, Muhammad Zafar Iqbal, dan Karen D. Könings, "It Is Not about the Destination but the Journey: A Dive into Student–Staff Partnership Processes," *Medical Teacher* 45, no. 12 (2 Desember 2023): 1320, <https://doi.org/10.1080/0142159X.2023.2206538>.

<sup>27</sup> Monica Santana dan Manuel J. Cobo, "What Is the Future of Work? A Science Mapping Analysis," *European Management Journal* 38, no. 6 (Desember 2020): 847, <https://doi.org/10.1016/j.emj.2020.04.010>.

and include: market-based strategies, labour rights strategies, regulatory strategies, and reconsiderations of the digital means of production.

## **Conclusion**

The classification of the legal relationship between platform providers and online transport drivers as gig workers is categorized as a "partnership" relationship. This categorization is indicated by: (a) An agreement provided by the platform provider that is labeled as a "partnership agreement." (b) The absence of elements typically found in employment contracts, such as wage, job duties, and orders, with only the job element being present. (c) The platform provider uses the term "partner" to refer to their workers, rather than calling them employees.

## **Suggestion**

The importance of the state's role in clearly regulating the partnership relationship in the gig economy between platform providers and online transport drivers as partners is crucial. If this working relationship remains as a partnership, it is essential to ensure that it becomes a genuine partnership (mutualistic partnership) that does not disadvantage either party.

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