
A Hybrid Regulatory Framework for Gig Workers in Indonesia: Conceptualizing a Staged KPI Scheme through Comparative Legal Analysis

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Abstract

The rapid expansion of Indonesia's digital economy has created a new form of labor relationship known as gig work, in which platform-based workers occupy a precarious socio-economic position. Currently, these relationships rely solely on the principle of freedom of contract under Articles 1320 and 1338 of the Indonesian Civil Code, effectively transferring all operational and social risks to gig workers. The absence of a dedicated regulatory framework has led to legal ambiguity, weak worker protection, and uncertainty for both workers and platform companies. Although jurisdictions such as the United States, the United Kingdom, the European Union, India, and the Philippines have experimented with partial or hybrid regulatory models, Indonesia has yet to develop a legal approach that balances digital flexibility with social justice principles. This gap forms the central research problem addressed in this study. Using a normative juridical method combined with comparative legal analysis and philosophical reasoning grounded in Rawlsian justice theory, this article conceptualizes a Staged Key Performance Indicator (KPI) framework as a hybrid regulatory instrument. The novelty of this research lies in proposing a performance-based hybrid regulation model in which KPI fulfillment progressively entitles gig workers to enhanced social protection and legal rights. Furthermore, the study introduces a normative proposal for a new branch of Indonesia's national social security system BPJS Employment specifically designed for gig workers, allowing benefit distribution without imposing financial burdens on either workers or platform companies. The findings demonstrate that a staged KPI framework could serve as the foundation for a *lex specialis* ensuring minimum social protection from the onset of the partnership, expanding proportionally with worker performance. This model offers an adaptive, progressive, and justice-oriented mechanism that reconciles flexibility in the digital economy with fundamental labor rights. Thus, the study contributes to the evolution of Indonesia's digital labor law paradigm through an innovative and sustainable hybrid regulatory approach.

Keywords: gig economy, freedom of contract, staged KPI, hybrid regulation, comparative law.

1. Introduction

The development of Indonesia's digital economy has significantly transformed the national labor landscape. In recent years, a new form of work has emerged *gig workers* defined as project-based or on-demand labor mediated through digital platforms. This model offers time flexibility and broad

autonomy for workers while providing operational efficiency for platform companies. Data from the Ministry of Manpower indicates that over 30 percent of urban youth workers now depend on platform-based jobs such as online transportation, freelancing, and delivery services (Ministry of Manpower of the Republic of Indonesia, 2023). However, behind these opportunities lies serious social vulnerability: the absence of social security, unstable income, and inadequate legal protection. The core problem in Indonesia's platform-based labor relations lies in the absence of a clear legal classification. Under Articles 1320 and 1338 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), the relationship between platform companies and gig workers is governed by the principle of *freedom of contract*, classifying them as partners rather than employees within the meaning of Law No. 13 of 2003 on Manpower and Law No. 6 of 2023 on Job Creation. Consequently, gig workers are excluded from the scope of formal labor protection, including access to social security schemes such as *BPJS Ketenagakerjaan* (Indonesia's Employment Social Security). As a result, operational, health, and social risks are entirely transferred to individuals (Rahman & Siregar, 2022). This phenomenon exposes a structural contradiction between economic flexibility and the principle of social justice that underpins Indonesia's national legal system. Previous studies on gig workers in Indonesia have primarily focused on the contractual nature and legal status of gig labor, without providing a concrete alternative regulatory model. Existing juridical approaches tend to be dichotomous either classifying gig workers as formal employees or independent contractors. Yet the complexity of digital labor relations requires a more adaptive and transitional regulatory approach a *hybrid framework*. At the same time, existing social protection policies fail to accommodate the non-standard, time-independent nature of gig work, rendering conventional social security systems incompatible. This constitutes the key *research gap*: the absence of a conceptual model capable of bridging the need for social protection with the operational flexibility inherent in Indonesia's digital economy. Globally, various jurisdictions have developed hybrid regulatory models to address similar challenges. The United Kingdom, through the *Taylor Review* (2017), introduced the category of "worker," positioned between full employees and independent contractors. In the United States, California's *Assembly Bill 5 (AB5)* expanded the legal criteria of employment, while the European Union is drafting the *Directive on Platform Work* to strengthen digital labor rights. India and the Philippines have even begun implementing partial social security programs specifically designed for gig workers (ILO, 2023). These comparative experiences demonstrate a global trend toward more flexible and proportional forms of protection, without dismantling the core independence that defines platform work. Drawing upon this gap and comparative insight, this article proposes a *Hybrid Regulatory Framework* based on a *Staged Key Performance Indicator (KPI)* scheme as a new normative model for gig worker protection in Indonesia. Within this framework, the progressive attainment of KPI thresholds would entitle gig workers to increased social security benefits and legal protection while maintaining flexibility in work arrangements. The model also opens the possibility of establishing a specialized *BPJS Employment* scheme for gig workers, where social protection entitlements are granted proportionally based on participation and performance levels rather than formal employment status. The novelty of this article lies in the conceptualization of a *Staged KPI Scheme* as a transitional legal mechanism toward adaptive and equitable social protection in the digital economy. This approach not only fills a conceptual vacuum in Indonesia's labor law scholarship but also offers a practical framework that could serve as the foundation for a *lex specialis*

on platform labor. Ultimately, the article aims to contribute to the development of a balanced relationship between economic efficiency and social justice, in alignment with the principles of *Pancasila* and the 1945 Constitution of the Republic of Indonesia.

2. Research methods

This study employs a normative juridical approach, focusing on the analysis of positive legal norms, legal principles, and justice doctrines relevant to employment relations in the digital economy. This approach is selected because the core issue examined does not concern the empirical application of law, but rather the normative vacuum and the need for new regulatory frameworks for gig workers. As a normative legal research, the primary sources consist of national legislation, international legal instruments, public policy documents, and judicial decisions relevant to non-traditional employment relations. This approach is complemented by comparative legal analysis, examining how various jurisdictions such as the United Kingdom, the United States, the European Union, India, and the Philippines design social protection systems for gig workers (ILO, 2023). The comparative analysis aims to identify general patterns, weaknesses, and potential adaptations suitable for Indonesia's legal and socio-economic context. The selection of these jurisdictions is based on the diversity of their legal approaches from the introduction of a new *worker category* to partial social security systems which provide valuable normative reflections for shaping Indonesia's national regulatory framework. In addition to comparative analysis, this study adopts a normative philosophical approach, grounded in John Rawls's theory of justice (1971) and Aristotle's principle of distributive justice. Through this approach, the research assesses the extent to which Indonesia's current labor law system fulfills the principle of social justice as mandated by *Pancasila* and the 1945 Constitution. The philosophical approach is crucial, as the issue of gig workers is not merely juridical in nature but also involves values of justice, policy morality, and the state's social legitimacy in protecting citizens working in the informal digital sector. Secondary data are collected through library research, encompassing primary legal materials (statutes, government regulations, and court decisions), secondary legal materials (academic journals, ILO, World Bank, and OECD reports), and tertiary legal materials (law dictionaries and legal encyclopedias). The data analysis is conducted qualitatively through three stages:

- (1) identification of applicable legal norms and principles;
- (1) cross-jurisdictional comparison to identify best practices; and
- (1) formulation of a normative model in the form of a Staged Key Performance Indicator (KPI) framework as a hybrid regulatory design for gig workers in Indonesia.

By integrating normative juridical analysis, comparative legal studies, and philosophical reflection, this research not only describes the existing legal conditions but also offers a conceptual innovation that may serve as the foundation for a new *lex specialis* within Indonesia's labor law system. This methodological approach is expected to produce a comprehensive legal argumentation rooted in the principle of justice, contextualized within Indonesian realities, and relevant to the global discourse on digital economy regulatory reform.

3. Result & Discussion

3.1. The Root Cause: Structural Fragility in Platform-Based Employment Relations in Indonesia

The rise of the gig economy in Indonesia signifies a profound transformation in the national labor structure. According to Statistics Indonesia (BPS, 2023), approximately 5.99 million workers now rely on digital platforms such as Gojek, Grab, Shopee, and Maxim as their primary source of income. However, the legal relationship between these workers and the platforms remains categorized as a *partnership*, rather than an *employment relationship*. Consequently, such relations are governed by the principle of freedom of contract under Articles 1320 and 1338 of the Indonesian Civil Code (KUHPerdata), rather than by the normative labor protections stipulated in Law No. 13 of 2003 on Manpower or Law No. 24 of 2011 on the Social Security Agency (BPJS). As a result, gig workers are excluded from fundamental labor rights such as minimum wage, social security coverage, and protection against unilateral termination. In practice, all economic and social risks including vehicle damage, work-related accidents, or income loss due to account suspension are borne entirely by the workers themselves (Setiawan, 2021). This represents a clear risk-shifting from platforms to individual workers through the use of *standard form contracts*, which theoretically reflect contractual imbalance or structural inequality (Collins, 2019). From the perspective of classical civil law, such contracts remain valid so long as the parties are deemed “free” to consent. Yet within the digital socio-economic context, this freedom is largely illusory, as workers possess no real bargaining power vis-à-vis platform corporations. This reveals a fundamental paradox between freedom of contract and social justice, both of which should form the foundation of Indonesia’s legal development as enshrined in Article 33 of the 1945 Constitution (Sunggono, 2018). The absence of formal recognition of gig workers’ legal status has further led to legal uncertainty. The government has yet to determine whether platform partners should be classified as employees, micro-entrepreneurs, or as a new category of “independent digital workers.” This ambiguity results in ad hoc regulatory measures such as Minister of Manpower Circular No. M/1/HK.04/II/2022 that lack binding force and serve merely as moral guidance. Consequently, the socio-economic position of gig workers remains vulnerable, deprived of concrete legal protection. The root cause of this issue lies in the absence of a hybrid legal framework capable of balancing the operational flexibility demanded by digital platforms with the need for social protection among workers. The current Indonesian legal system remains dichotomous: individuals are either classified as *employees* (subject to labor law) or as *entrepreneurs* (subject to general civil law). The reality of the gig economy, however, calls for a third legal category a hybrid employment relationship that accommodates flexibility while ensuring distributive justice.

3.2. Comparative Analysis: Hybrid Regulatory Frameworks in Other Jurisdictions

Various jurisdictions around the world have experimented with hybrid regulatory models to bridge the gap between legal protection and the flexibility demanded by the digital economy. In the United States, for example, several states such as California and New York have introduced the “*independent contractor plus*” category. Although gig workers are not classified as permanent employees, they are nevertheless entitled to certain minimum protections, including work accident insurance and the right to organize (Prassl, 2018). In the United Kingdom, the landmark case *Uber BV v. Aslam* (2021) marked

a turning point when the Supreme Court ruled that Uber drivers fall within the category of “workers,” a legal status positioned between *employees* and *independent contractors*. This decision paved the way for recognizing rights to minimum wage and paid leave, without eliminating the inherent flexibility of app-based work. A similar approach has been adopted by the European Union through the Directive on Platform Work (2023), which establishes minimum social rights for gig workers and mandates algorithmic transparency in digital management systems. India has taken a distinct path by enacting the Code on Social Security (2020), which recognizes gig and platform workers as a separate legal category. Through a tripartite social fund mechanism involving the government, platforms, and workers, India has developed a model of gradual social protection without altering the contractual status of gig workers. Meanwhile, the Philippines is currently drafting the Digital Workforce Bill, which introduces a *tier-based contribution system* similar to the concept of staged KPIs, where both platform contributions and worker benefits increase progressively according to performance and work duration.

From these comparative experiences, it becomes evident that most countries are moving toward a model of regulated flexibility the acknowledgment of digital workers’ autonomy balanced with the gradual extension of social protection. This approach is particularly relevant for Indonesia, which seeks to harmonize legal certainty, economic efficiency, and social justice. Accordingly, these comparative lessons provide the conceptual foundation for developing the Staged KPI Scheme as a hybrid regulatory model compatible with Indonesia’s legal and institutional framework.

3.3. Conceptualizing the Staged KPI Scheme as a Hybrid Regulatory Model

The idea of the Staged Key Performance Indicator (KPI) Scheme emerges from the necessity to balance two seemingly conflicting legal principles: economic flexibility and social protection. The first principle reflects *economic liberty* as the foundation of digital partnership relations, while the second requires the state to ensure *social justice* as mandated by Articles 33 and 34 of the 1945 Constitution of the Republic of Indonesia. Within Indonesia’s positive legal framework, these two normative values have not yet been integrated into a single operational regulatory design. The proposed staged KPI scheme serves as a normative instrument that gradually connects the dimensions of freedom and justice. Conceptually, KPIs are utilized not merely as managerial tools for performance measurement, but also as legal indicators to determine *the eligibility threshold* for certain social benefits. Accordingly, KPIs act as a bridge between private contractual relations (*private contract*) and the public protection regime. In the baseline stage, all registered gig workers who meet the basic requirements such as verified identity, minimum working hours, and compliance with the code of conduct would automatically receive basic social protection through an adapted *BPJS Ketenagakerjaan* mechanism. This protection includes work accident insurance and death benefits, co-financed by both the platform and the state through a proportional contribution scheme. The second stage (performance stage) links the achievement of specific KPIs such as transaction volume, user satisfaction ratings, and partnership duration to the expansion of benefits, including old-age security and access to microfinance facilities. Meanwhile, the third stage (loyalty stage) grants full social protection equivalent to that of formal employees, provided that the criteria for partnership

sustainability and social contribution are met. This staged approach possesses two normative advantages. First, it maintains economic efficiency by not immediately imposing heavy social obligations on digital platforms (Rahardjo, 2019). Second, it reaffirms the function of law as a progressive instrument of social engineering a principle first articulated by Band and later developed within the context of Indonesian developmental law (Pound, 1954; Rahardjo, 2006). Furthermore, the staged KPI model reflects the value of proportional justice in Aristotelian thought, where rights and obligations are distributed not equally but according to each party's contribution and capacity. From the standpoint of modern theories of justice, this idea resonates with Rawls's theory of "Justice as Fairness" (1971), particularly the difference principle, which allows inequality only insofar as it benefits the most disadvantaged members of society. In the context of gig work, the flexibility enjoyed by digital platforms can thus be justified only when it contributes to the enhancement of workers' welfare. Consequently, KPIs should no longer be understood merely as corporate performance metrics, but as a regulatory proxy marking the evolutionary stages of social rights. The state does not impose uniformity, but rather regulates justice through dynamic and measurable mechanisms.

3.4. Normative and Institutional Implications for the BPJS Ketenagakerjaan System

The implementation of the Staged KPI Scheme necessitates structural adjustments within Indonesia's national social security system, particularly BPJS Ketenagakerjaan (the Workers Social Security Agency). At present, BPJS recognizes only two categories of participants: wage recipients (formal employees) and non-wage recipients (informal workers). However, gig workers do not fit neatly into either category. They operate under partnership contracts rather than employment relationships, yet lack the full autonomy of entrepreneurs. Accordingly, a new sub-category should be established within BPJS regulations namely, "Independent Digital Workers" placed under a special social protection regime tailored for the platform economy. Social security contributions could be calibrated based on KPI achievements and work frequency, rather than solely on income level. This structure ensures that the cost of social protection does not become a fixed burden for either the platform or the worker. At the institutional level, the state could adopt a dynamic contribution ratio system, whereby BPJS collaborates with digital platforms through automatic data integration. Workers' performance data such as number of completed orders, active hours, and customer ratings would be algorithmically converted into the basis for calculating social security contributions and benefits. Similar mechanisms have been piloted in jurisdictions such as the Philippines and South Korea, yielding positive outcomes in terms of voluntary participation rates (ILO, 2023). From the perspective of constitutional law, this innovation aligns with the principle of *lex specialis derogat legi generali* the necessity of creating specific regulations that respond to emerging social realities. A *lex specialis* governing gig worker protection need not replace existing labor laws; rather, it should function as a complementary framework that fills normative gaps and enhances inclusivity. On a deeper philosophical level, the establishment of a new participant category within BPJS reflects the realization of the fifth principle of Pancasila Social Justice for All the People of Indonesia through concrete legal instruments. In Notonagoro's (1975) conception, social justice is inseparable from the values of humanity and divinity, implying that social policy must be grounded in human dignity, not merely utilitarian calculations. Therefore, the Staged KPI Scheme should not be understood merely as

a performance measurement tool but as an expression of the state's moral and legal responsibility to bridge market law and social law within a single, human-centered hybrid regulatory system.

4. Conclusion and Recommendations

Indonesia's digital economic growth has fundamentally transformed the national employment landscape. Digital platforms have created new forms of work that resist traditional legal classification neither fully constituting employment relationships nor entirely representing independent business arrangements. This situation produces a state of legal liminality, positioning gig workers in a zone of vulnerability without social protection, legal security, or clear employment status (Setiawan, 2021). This article demonstrates that the root of the problem lies not merely in a legal vacuum, but in a dualistic regulatory paradigm that separates freedom of contract from social protection. Bridging these two requires what Rahardjo (2019) calls regulatory imagination the intellectual and normative courage to design a legal system adaptive to digital realities. The proposed Staged Key Performance Indicator (KPI) Scheme serves as a hybrid regulatory model that integrates the principles of *freedom of contract* and *social justice* through a gradual mechanism. In this framework, KPI is not merely a managerial instrument but a normative indicator determining proportional social security entitlements. By linking performance to benefits, law becomes dynamic rather than static, responsive to the fluid nature of digital labor. Normatively, this model reflects Aristotle's distributive justice and Rawls's (1971) Justice as Fairness. It allows differentiated social entitlements based on contribution and capacity, while ensuring minimum protection for all. Institutionally, the model calls for the establishment of a *lex specialis* on gig workers and the modification of the BPJS Ketenagakerjaan framework through the addition of a new category: Independent Digital Workers. Such regulation could implement a performance-based contribution scheme, wherein platforms, workers, and the state jointly finance social security in proportion to participation and productivity. The integration of performance data between BPJS and platforms would enable automated and transparent implementation, minimizing administrative burdens for all parties. This approach preserves economic flexibility while simultaneously strengthening the state's social legitimacy in ensuring justice for all working citizens. Accordingly, this study concludes three key points:

- (1) Conceptually, employment relations within the gig economy require a new legal paradigm grounded in hybrid regulation.
- (2) Normatively, the Staged KPI Scheme functions as an instrument of proportional justice, bridging private and public law domains.
- (3) Institutionally, the establishment of a *lex specialis* and a new BPJS participant category represents a concrete step toward an inclusive and adaptive social protection system.

Looking ahead, the success of this model will depend on the synergy among government, platform companies, and worker organizations. Future research should explore the technical feasibility of performance-data integration, proportional contribution formulas, and the socio-economic impacts of this model on the welfare of Indonesian gig workers. By constructing a legal framework grounded in both justice and flexibility, Indonesia has the potential to become a regional pioneer in Southeast Asia, advancing a gig economy regulatory model that is not only efficient but profoundly human-centered.

Acknowledgement

The authors wish to express their deepest appreciation to the Faculty of Law, Parahyangan Catholic University for their academic and institutional support, which has enabled the successful completion of this research. Gratitude is also extended to colleagues and academic supervisors who have provided valuable insights throughout the development of the conceptual framework and the writing of this article. The authors further acknowledge the contributions of gig workers and policy practitioners, whose participation in informal discussions and provision of public data has greatly enriched the understanding of the socio-legal realities of Indonesia's digital labor ecosystem.

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