

Gig Workers' Legal Challenges in Indonesia: Employment Status and Collective Rights in the Post-Reformulated Job Creation Law Era

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Abstract

The emergence of the gig economy concept has revolutionized the dynamics of employment relationships while presenting new challenges in the world of labor. The increasing number of gig workers in Indonesia has led to significant legal ambiguity, particularly regarding the fulfillment of workers' collective rights. This ambiguity arises because the labor law framework is still oriented towards conventional employment relationships. As a result, platforms classify workers solely as “partners,” without considering basic employment rights. This condition automatically raises the urgency of a comprehensive discussion on the fulfillment of the rights to organize, and obtain social security, which are explicitly guaranteed by the constitution. Therefore, this article examines the legal challenges faced by gig workers in the era after the reformulation of the Job Creation Law due to the ambiguity of their employment status. The study focuses on the tension between non-standard work arrangements and constitutional guarantees as stipulated in 1945 Constitution. Through a normative legal research method that examines the imbalance between regulations and the implementation of gig workers' rights, this study utilizes an analysis of relevant laws, government regulations, and jurisprudence, and is reinforced by a theoretical foundation regarding the principles of employment relationships and collective rights. The results of this study show that gig workers are still in a legal gray area, not fully recognized as formal workers, have minimal social protection, and are limited in exercising their collective rights. Therefore, this study recommends regulatory changes so that digital platform-based workers can be formally recognized, the right to organize can be expanded, and regulatory instruments can be strengthened to keep pace with developments in the digital economy. These recommendations are expected to provide a clearer legal framework for policymakers while enriching the academic discourse on labor law in the era of digital transformation.

Keywords: Gig economy, Gig workers, Collective rights, Right to organize, Employment.

1. Introduction

The development of technology and information is always accompanied by progress in various aspects of life, one of which is economic advancement that continues to evolve into the digital economy phase, often referred to as the gig economy. The work model in this economic phase has transformed the global employment landscape through an increase in the number of freelance workers who rely on digital platforms as their source of livelihood (Indra & Nawangsari, 2025). In this regard,

Indonesia has become one of the largest suppliers of gig workers in Southeast Asia, across sectors ranging from online transportation to food delivery. The following is the distribution of sectors that the researchers have analyzed:

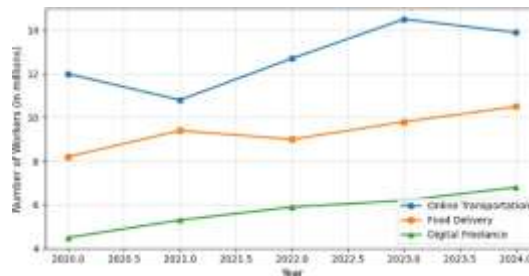


Figure 1. *Trends of Gig Workers in Indonesia by Sector (2020–2024)*

Source: Processed from Statistics Indonesia (BPS) and Fairwork Indonesia Reports (2021–2024)

Although the working methods of gig workers appear flexible, they frequently face income uncertainty, lack of social security, and minimal legal protection. Such uncertainties and barriers render gig workers vulnerable parties in modern labor relations. They are not recognized as permanent employees, which automatically excludes them from basic labor rights such as minimum wages, health benefits, pension guarantees, and paid leave. The uncertainty regarding the legal status and social welfare of gig workers was exemplified by demonstrations conducted by online motorcycle taxi drivers, as part of the gig workforce, demanding the provision of Religious Holiday Allowances (THR) in accordance with Law Number 13 of 2003 on Labor and Minister of Manpower Regulation Number 6 of 2016 (Syahputra, 2023). These demonstrations represented public reactions to the discrepancy between existing policies and actual conditions in the field. THR was not the sole trigger for these demonstrations, as other factors, such as fare regulation and unequal commission distribution, also played significant roles (Rakhmayanti, 2024). Ultimately, this unhealthy fare competition compels gig workers to compromise service quality, consequently adversely affecting service consumers (Stevania & Hosein, 2024).

Worker welfare serves as a key indicator of workers' success in achieving their life goals. Fairwork emphasizes that worker welfare can be measured through several aspects, including adequate income, reasonable working hours, and favorable working conditions. However, the growth in the number of workers in the gig economy has not been accompanied by improvements in worker welfare. Without clear recognition or legal status, partners of Gojek, Grab, Shopee, or Tokopedia—representing gig workers themselves—cannot access various social facilities they should rightfully receive as workers (Sitorus & Kornitasari, 2024). According to the Theory of Maladministration, this phenomenon is a form of administrative negligence that can cause material and/or immaterial losses to the community as the recipients of the policy (Hayati, 2021).

The administrative negligence experienced by gig workers reflects a shift in employment relations that does not fully align with the classical concept of industrial relations, which was previously characterized by a subordinate relationship between workers and employers. Currently, there is increasing complexity where digital platforms act as intermediaries for employers, resulting in gig workers being categorized as "partners" engaged in civil contractual relationships (Dwi Novemyanto

& Nur, 2025). This complexity in the labor landscape, unaccompanied by regulatory amendments, has generated confusion among gig workers themselves regarding whether they fall under the category of workers as stipulated in Law No. 13 of 2003 on Manpower or as independent business operators. This normative vacuum causes the bargaining position of gig workers in digital employment relations to be disproportionate to their income.

In response to this normative disparity, the government has attempted to align labor regulations with working models in the digital economy era, as manifested in the reformulation of the Job Creation Law through Law No. 6 of 2023. However, these efforts have yet to provide specific provisions accommodating the characteristics of non-standard employment relations such as gig work. The absence of clear regulations reinforces legal gaps in protecting gig workers regarding legal status recognition, normative rights, and social security that should be inherent to all workers as mandated by Article 27 and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, n.d.). This normative ambiguity also highlights tensions between the principles of digital economic flexibility and the social justice principles embodied in Pancasila, recognized by Indonesian society.

Discourse on the urgency of providing legal certainty and protection has been addressed in prior research, such as the study conducted by Alfin Dwi Novemyanto and Rismawati Nur. In their article titled “Rekognisi Status dan Perlindungan Hukum Pekerja Gig Economy: Tinjauan Tuntutan Kolektif Pengemudi Ojek Online di Indonesia,” the researchers highlight that online motorcycle taxi drivers lack clear legal status, resulting in insufficient protection compared to formal workers (Dwi Novemyanto & Nur, 2025). Through a normative juridical approach, the previous study identified legal vacuums in digital employment governance and recommended the establishment of *lex specialis*, optimization of soft law instruments, and enhancement of state roles in ensuring labor protection in the gig economy sector. Unlike the previous focus, this research deepens understanding of the social dynamics of gig workers by examining actual field conditions. This study not only addresses formal legal aspects but also investigates the dynamics of legal status, forms of income uncertainty, and ideal regulatory reformulation for gig workers. Thus, this research seeks to fill gaps in previous studies by providing a multidimensional perspective that integrates juridical analysis with the social realities of gig workers in Indonesia.

Based on these issues, this article provides a comprehensive analysis of the dynamics of shifting legal status for gig workers within Indonesia's labor system, which consequently prevents several collective rights of gig workers from being fulfilled. Building on these two problematics, this article also attempts to formulate an ideal regulatory reconstruction model to guarantee legal protection for gig workers, particularly in addressing the transformation of non-standard employment relations emerging from digital economic development.

2. Research Method

This article employs a normative juridical research method focusing on the historical examination of labor regulations in Indonesia (Mukti Fajar & Achmad, 2017). The research examines and interprets statutory provisions governing employment relations in the digital economy era, particularly Law No. 13 of 2003 on Manpower, Law No. 6 of 2023 on the Stipulation of the Job Creation Government Regulation, instead of Law into Law, and its implementing regulations concerning flexible employment relations in the digital sector. This study utilizes legal materials comprising academic literature, scientific journals, and previous research findings to strengthen legal arguments (Marzuki, 2005).

The research is descriptive and critically analytical in nature. The descriptive nature is used to explain legal arrangements regarding employment relations, social protection, and collective rights for gig workers following the Job Creation Law (Mukti Fajar & Achmad, 2017). Meanwhile, the critically analytical nature serves to assess the coherence and adequacy of regulations by identifying normative inconsistencies, legal vacuums, and challenges in applying employment relationship principles within digital platforms. The approach employed is the Statute Approach through examination of the hierarchy and substance of relevant regulations (Muhammad, 2004). This aims to assess the extent to which national legal norms provide adequate protection for gig workers, both in terms of employment relationship status and collective rights.

2.1. Theoretical Basis

The theoretical foundation of this article is constructed based on the relevance of theories to each examined problem. The shift in employment relations from traditional patterns to digital platform-based employment demonstrates fundamental changes in the labor system. This phenomenon poses challenges to the effectiveness of positive law, as non-standard employment relations are often not explicitly accommodated within conventional labor law norms. The theoretical foundation becomes essential for assessing the extent to which law can adapt to social changes and economic structures generated by digital technology.

To examine aspects of protection and legal certainty for gig workers, this research employs the Theory of Collective Rights proposed by John Rawls in his theory of social justice and modern industrial relations (John Rawls, 1971). This theory emphasizes that workers possess collective rights including the right to association and organization, the right to collective bargaining, and the right to protection from exploitative practices. This theory serves as the basis for identifying structural disparities resulting from the absence of formal recognition of gig workers' collective rights, and strengthens the argument that legal protection must encompass collective dimensions ensuring equality and social justice.

The research also utilizes Professor Satjipto Rahardjo's Progressive Legal Theory as a normative paradigm for formulating the direction of legal reform (Aulia, 2018). This theory asserts that law must be oriented toward human beings (law for human), not merely toward regulatory texts. In the context of gig workers, this theory is employed to present a regulatory model that guarantees justice, certainty,

and legal utility. Through this theory, the research constructs regulations that not only adapt to digital economic flexibility but also affirm the function of law as a means of protection and empowerment for gig workers in Indonesia.

2.2. Data Analysis Method

This article employs a qualitative analysis method aimed at interpreting legal materials in depth and contextually (Muhammad, 2004). The analysis is conducted by examining the interrelationship between written legal norms and the social realities of gig workers in Indonesia. The researcher considers socio-legal aspects to maintain a balance among the three main objectives of law—justice, certainty, and utility in formulating ideal legal protection for gig workers following the Job Creation Law. Throughout the analytical process, the researcher interprets labor law principles and conducts comparisons with international standards such as ILO Conventions to assess the compatibility of Indonesia's legal system with universal labor protection principles. This method is expected to provide comprehensive understanding and robust normative arguments regarding the urgency of reconstructing legal protection for gig workers in Indonesia.

3. Results and Discussion

3.1. Dynamics of the Shifting Legal Status of Gig Workers in Indonesia's Labor System

The development of digital technology has successfully brought fundamental changes to Indonesia's labor system. The emergence of digital platform-based work models such as online motorcycle taxis, food delivery services, and online freelancing has created new employment relationship characteristics that are flexible and partnership-based (Perdana & Satory, 2025). Unfortunately, these significant changes have not been accompanied by regulatory amendments accommodating protection and legal status for workers in this new and currently trending category. As a response to the non-recognition of legal status for gig workers, various juridical issues have emerged, such as gig workers' failure to meet the criteria of "workers" as stipulated in Article 1 number 15 of Law No. 13 of 2003 on Manpower (Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003). Conversely, gig workers also cannot be categorized as independent contractors. This regulatory ambiguity places the legal position of gig workers in a gray area between workers and business partners.

Normatively, current national regulations in Indonesia have not explicitly governed employment relations with criteria such as gig work. The absence of clear regulations opens gaps for potentially unjust employment relations. The divergence of interests and perspectives between application service provider companies and gig workers regarded as "partners" poses particular challenges in formulating effective policies (Perdana & Satory, 2025). However, if one examines the philosophical definitions of "partner" versus "casual daily worker," a stark contrast emerges. Casual daily workers are entitled to minimum wages, social security, and labor protection, while partners often do not receive equivalent protection. This status ambiguity creates vulnerabilities for gig workers, particularly regarding income certainty, social protection, and access to dispute resolution mechanisms (Santoso et al., 2023).

Various uncertainties in social security automatically prevent gig workers from accessing basic protections such as work accident insurance, old-age security, and unemployment benefits (Stevania & Hoesin, 2024). According to a 2024 Investor Daily report, the independent contribution-based approach has proven ineffective because most gig workers lack a fixed income and struggle to meet routine premium payment obligations (Suhartadi, 2024). This condition provides strong evidence of protection disparities between formal workers and digital workers who actually bear comparable workloads and operational risks.

Conversely, many countries have demonstrated progressive steps in recognizing the existence of gig workers through adaptive legal policies. Singapore, for instance, has enacted the Platform Workers Bill, which stipulates that gig workers are entitled to social security and insurance protection despite their status as platform partners (Indra & Nawangsari, 2025). This law also regulates collective bargaining rights and occupational safety standards that digital platform providers must fulfill. The enactment of such policies should serve as an example for various Southeast Asian countries to strengthen social justice for gig workers who have thus far been marginalized from conventional labor law systems.

Beyond facing challenges from normative aspects, the ambiguity of gig workers' legal status also affects their economic and social welfare. A 2024 Deutsche Welle report notes that most gig workers experience extreme income fluctuations, long working hours, and psychological pressure due to job insecurity (Aditya, n.d.). This phenomenon reinforces the fact that although the gig economy is considered to create new employment opportunities, it also generates new forms of vulnerability unsupported by adequate legal protection. Therefore, the national labor law system must adapt to ensure that fair labour standards remain guaranteed for all forms of work, including digital-based employment (Muhyiddin et al., 2024).

Ultimately, the dynamics of shifting legal status for gig workers in Indonesia have yet to demonstrate a balance between digital socio-economic development and the capacity of positive law to adapt. The state-centric nature of labor law impedes the transformation toward employment relations that are networked and algorithmically managed, where worker control is exercised not through direct commands but through algorithmic systems and data-based evaluation (International Labour Organization (ILO), 2021).

The national legal system's inability to respond to these dynamics risks expanding structural injustice, placing gig workers in a paradoxical position: they bear responsibilities like workers but without the rights attached to worker status. This condition underscores the necessity for regulatory recalibration that not only accommodates new terminology but also expands the meaning of employment relations to encompass platform-based work relationships (Freedland, M. & Kountouris, 2011). This transformative effort can be pursued through interpretive approaches to the elements of "command" and "wages" in Article 1 number 15 and Article 50 of Law No. 13 of 2003, making them more contextual with digital work mechanisms.

Thus, normative recognition of gig workers' existence becomes an essential prerequisite for building inclusive and just labor law. Regulatory reforms toward a hybrid protection system must

integrate labor market flexibility with minimum social security guarantees as a strategic step toward establishing a legal order responsive to changing times (Prassl, 2018). Law must be present not merely as a control instrument but as a mechanism capable of ensuring balance among economic interests, social justice, and human dignity within the digital labor landscape (Satjipto Rahardjo, 2022).

3.2. Limitations in Fulfilling Collective Rights of Gig Workers Following the Reformulation of the Job Creation Law

Digital transformation over the past two decades has altered the global and national economic order, giving rise to digital platform-based work models known as the gig economy. The growth of the gig economy is characterized by short-term, demand-based work facilitated by algorithmic systems that provide operational flexibility for companies. However, behind this lies significant and persistent legal uncertainty, particularly within Indonesia's labor law. This uncertainty stems from the void in Indonesia's labor law system to accommodate and protect new forms of work outside traditional classifications a condition that remains unresolved even following the enactment of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. Researchers highlight three main substantive issues: normative void regarding workers' legal status, weak social protection, and absence of collective rights recognition.

Currently, Indonesian law recognizes only two types of employment relations: formal employment/labor relations subject to labor law with full protection (based on elements of wages, command, and work), and civil relations between independent contractors or self-employed individuals subject to the Civil Code (Indra & Nawangsari, 2025). Platform-based work models, which combine elements of flexibility with algorithms, do not inherently fit into either category. (Stevania & Hoesin, 2024) This classification legally places such relationships under a civil law regime, thereby exempting companies from labor law obligations such as providing social security and minimum wages. Furthermore, (Tan, 2021) adds that this phenomenon constitutes a form of faux partnership, where the relationship between company and worker appears as an independent partnership, whereas in reality the platform exercises subordinate control. This form of control no longer manifests in direct instructions as in traditional employment relations but is embodied in algorithmic mechanisms governing worker behavior. These mechanisms include fare and incentive determination, performance monitoring, working time supervision, and automatic sanctions such as account deactivation for workers deemed to fail performance standards (Law, 2024). In practice, this system eliminates the contractual freedom that should be inherent to independent contractors, as gig workers are de facto subject to platform control without possessing equal bargaining power. This condition clearly contradicts the principle of freedom of contract, which presupposes equality between parties in legal relations.

The enactment of the Job Creation Law through Law No. 6 of 2023, which should have been a momentum to address this legal vacuum, has failed to provide explicit protection for gig workers (Hukum & Quia, 2024). The absence of specific provisions allows faux partnership practices to continue without effective oversight mechanisms, leaving gig workers in an ambiguous position. Gig workers bear economic risks like independent entrepreneurs yet work under strict control like formal

employees (Sandy, 2025). Thus, legal relations in the gig economy not only create uncertainty but also generate new forms of subordination unrecognized by law, thereby weakening workers' positions in the digital economic system.

This status ambiguity also impacts the weakness of social protection and justice for gig workers. Their status as "partners" causes them to lose basic rights that characterize labor protection, such as rights to minimum wages, leave, religious holiday allowances (THR), and social security. (Stevania & Hoesin, 2024) demonstrate that most gig workers lack access to the Employment Social Security Program (BPJS Ketenagakerjaan) because their status does not meet mandatory participant criteria. Similar findings are presented by (Indra & Nawangsari, 2025), who confirm that most gig workers in Indonesia remain outside the social protection system. Consequently, when work accidents, illness, or income loss due to account deactivation occur, workers must bear all these risks themselves. This shift of risk burden from companies to gig workers constitutes an unjust form of risk transfer that contradicts the worker protection principles that form the essence of labor law.

Furthermore, the absence of social security also impacts the economic instability of gig workers. (Sitorus & Kornitasari, 2024) affirm that algorithmic instability creates income uncertainty, where declining order volumes or unilateral fare policy changes can directly reduce workers' earnings without appropriate compensation mechanisms. In the gig economy context, the economic and legal disparity between platform companies and gig workers produces no benefits for the weaker party. Instead, such relationships strengthen platforms' dominant positions at the expense of workers' basic rights, causing law to fail in fulfilling its function as a means of distributive justice.

Legally, partnership status prevents gig workers from being recognized as part of the industrial relations system, denying them the right to form legitimate labor unions or engage in collective bargaining (Saputra, 2022). Consequently, their collective actions, such as digital strikes or online protests, remain unofficial and are often met with unilateral sanctions from platforms, including account deactivation. Moreover, partnership agreements forming the basis of relations between gig workers and platform companies are generally standard form contracts drafted unilaterally by companies without allowing workers negotiation space. This contradicts the principle of freedom of contract as stipulated in Article 1320 of the Civil Code, which presupposes equal positions between parties.

This disregard for collective rights constitutes a serious violation of the Priority of Basic Liberties principle, which positions freedom of association and bargaining as part of political freedoms that cannot be sacrificed for economic efficiency. Thus, the elimination of collective space for gig workers is not merely an administrative issue but represents structural injustice that erodes individuals' fundamental freedoms. The Job Creation Law and its derivative regulations fail to provide institutional space for recognition of these collective rights, demonstrating that Indonesia's legal orientation still emphasizes formal certainty over substantive justice.

The absence of a legal framework recognizing the collective rights of gig workers not only weakens their bargaining position but also creates further issues in dispute resolution. When conflicts arise between gig workers and platform companies, existing legal mechanisms fail to provide adequate

solutions because the law does not formally acknowledge an employment relationship between the two parties. Under Indonesia's labor law system, the settlement of industrial relations disputes is regulated by Law No. 2 of 2004, which explicitly applies only to parties bound by a formal employment relationship as defined in Law No. 13 of 2003. Consequently, gig workers classified as "partners" under civil agreements lack legal standing to pursue dispute resolution through industrial relations mechanisms (Wibowo & Susanto, 2025).

Research in the *Policy Working Paper on Online Labour* shows that most conflicts in the gig economy end without formal resolution. Gig workers can generally only file complaints through internal grievance features fully controlled by the platform company, with no guarantee of transparency, accountability, or the right to defend themselves (Annazah et al., n.d.). This practice illustrates that dispute resolution in the digital economy is unilateral and opaque, with companies holding full control over data, algorithms, and final decisions that determine workers' access to jobs. In other words, disputes in the gig economy are marked by "digital asymmetry," where one party exercises total control over the infrastructure and information underlying decision-making. This situation reinforces existing structural inequalities, as access to justice depends entirely on corporate policy rather than public legal principles that ensure equality before the law.

The absence of a formal legal mechanism for resolving such disputes ultimately deepens the legal uncertainty faced by gig workers. Within the framework of Rawlsian social justice, this situation reveals that the legal system fails to fulfill its moral duty to ensure fair equality of opportunity for the most vulnerable. Hence, the lack of formal dispute resolution reflects the state's inability to deliver substantive justice amid the dynamics of digital labor relations. Consequently, in the face of such inequality, strengthening gig worker communities emerges as an alternative form of representation beyond the formal industrial relations mechanism. Studies show that in some countries, such as Norway, although gig workers are not legally classified as employees, they are nonetheless granted the right to form formal organizations that represent their interests before public authorities (Schultz, M.D., Slee, P., & Rendtorf, 2020). This development highlights a paradigm shift toward recognizing representational rights that no longer depend on the classical legal definition of employment relations.

As (Tronsor William, 2018) the struggle of workers in the gig economy has the potential to give rise to a new form of community-based solidarity, where individuals from different backgrounds unite because they face similar forms of vulnerability. In this context, gig worker communities can be an important means of building collective awareness and fighting for fair working conditions. (Crawford, 1996) explains that communities function as moral public spheres and social capital, enabling their members to uphold the values of justice and solidarity. Similarly, (Chodijah & Fergawan, 2022) draw on Durkheim's theory of social solidarity, which provides a conceptual foundation that mechanical solidarity born from shared experiences and common goals—can become a source of social strength against an unequal economic structure.

Nevertheless, efforts to build such collective awareness face both structural and cultural barriers. (Sphere, 1991) observes that one major obstacle to sustaining a public sphere is the inequality of access to information and media, the strength of government control, and norms that restrict freedom of expression. In the Indonesian context, hierarchical culture and a tendency toward fatalism make many

workers reluctant to voice the injustices they experience. Fatalism—the belief that human destiny is predetermined and unchangeable—often leads gig workers to accept algorithmic exploitation without resistance. Yet, the courage to speak out is a prerequisite for the formation of a critical and democratic public sphere.

Comparative efforts across countries illustrate reform pathways that could inspire Indonesia. The European Union, for example, has enacted the Directive on Improving Working Conditions in Platform Work, which stipulates that if a platform exercises control over wages, working hours, or performance evaluation systems, such a relationship must be classified as formal employment (Rahman et al., 2024). This approach underscores the importance of recognizing the de facto substance of employment relationships rather than adhering to de jure contractual labels. Southeast Asian countries such as Malaysia and Singapore have also developed specific social protection models without altering the legal status of gig workers. Malaysia, through the Self-Employment Social Security Act 2017, provides minimum protections such as work injury insurance and health coverage (Lesmana & Samudra, 2025). Singapore implements a similar scheme through a shared social contribution system between platforms and workers, creating a fairer balance of responsibilities.

Lessons from these international practices underscore the urgency of labor law reform that is more adaptive and responsive to social, economic, and labor market dynamics in Indonesia. (Wibowo & Susanto, 2025) propose the creation of a new category such as “hybrid workers” or “dependent self-employed,” which acknowledges the unique characteristics of gig workers. This category would allow for flexibility in work arrangements while ensuring access to basic social protection. The proposal aligns with Rawls’s view that social structures must be organized to safeguard individuals’ fundamental rights, particularly those in the most disadvantaged positions.

Accordingly, the legal uncertainty experienced by gig workers following the reformulation of the Job Creation Law reflects a structural failure of the legal system to anticipate digital disruption. The absence of clear norms on legal status, the weakness of social protection, and the lack of recognition for collective rights collectively create conditions of injustice that violate Rawlsian principles of distributive justice and the constitutional mandate to achieve social justice for all Indonesians. Although the Job Creation Law aims to provide legal certainty, such certainty remains formalistic and fails to address the substantive dimension of worker protection. Therefore, labor law reform in Indonesia must be directed toward building a system that integrates the principles of social justice, collective rights, and adaptability to digital transformation. Only in this way can the law function as a true instrument of justice rather than merely a tool for market certainty. Such reform is essential to ensure that technological advancement does not culminate in new forms of exploitation or the impoverishment of workers’ fundamental rights.

3.3. Model Ideal Regulatory Reconstruction Model to Ensure Legal Protection for Gig Workers in the Digital Economy Era

In the gig economy concept, digital platforms act as intermediaries between consumers and workers (gig workers) who work flexibly, without a formal employment relationship as referred to in *Article 1 point 15 of Law Number 13 of 2003 concerning Manpower*, which was later refined through

Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Through these provisions, an employment relationship is defined as a relationship between an employer and a worker based on an employment agreement that includes the elements of work, wages, and orders. However, gig workers do not fulfill these elements because the relationship formed is a partnership or civil contract without any subordination, so they are not recognized as workers and are not guaranteed their normative rights such as minimum wage, social security, and occupational safety protection (Perdana & Satory, 2025).

In legal terms, an employment relationship is defined as a relationship between an employer and an employee based on an employment agreement, involving work, wages, and instructions. The legal protections for workers accommodated in labor laws include the following:

- a. Basic rights of workers to negotiate with employers
- b. Occupational safety and health
- c. Special protection for female workers, children, and persons with disabilities; and Protection regarding wages, welfare, and labor guarantees (Nurhalimah, 2017).

Reviewing these aspects, the reality is that gig workers in the constitution cannot be considered as subjects who receive such legal protection because the form of employment is a partnership or civil contract. Legal recognition of gig workers as subjects for employment protection needs to be implemented by the government. Gig workers technically do not have the same rights as regular workers. This is because their status is only as partners or workers who do not have an employment relationship, not as workers who have an employment relationship (Adiwinarto et al., 2023). This situation highlights the state's failure to implement the objectives of the law, which should provide justice, certainty, and benefits. If the public, as the recipients of the policy, cannot experience these three things, then a reformulation of the policy is needed that not only addresses concerns but also accommodates and protects the rights of the public.

Through a progressive legal theoretical approach, the state can reinterpret the concept of "worker" in the *Job Creation Law*. This approach allows the government to implement responsive *labor law reform*, with an expanded definition of employment relationships to include digital partnerships, and the formation of *Government Regulations* that specifically regulate the rights, obligations, and protections for gig workers. Legal recognition of the status of gig workers can be a fundamental basis for determining special categories of workers, such as platform-based workers and independent workers. This implementation requires legislators to have the courage to broaden the interpretation of employment relationships by considering the substance of the employment relationship based on the reality of work, not just the form of the contract and the human and socio-economic aspects of digital work.

Legal reformulation also needs to regulate the formulation of guidelines for standardizing employment contracts for gig workers. Employment contract standards are necessary to ensure equality between workers and platforms. In this case, the government, together with platform associations and workers, is drafting a gig economy employment contract format with a mutual agreement that accommodates the rights and obligations of the parties in accordance with the mandate

of labor law. This contract covers leave entitlements, protection guarantees, and transparent dispute resolution mechanisms (Widianyani et al., 2025).

Progressive labor law reforms will ensure that the principle of *lex specialis derogat lex generalis* can be applied to create specific legal instruments that provide comprehensive protection for gig workers, without compromising the flexibility of the digital economy. This reformulation not only supports the realization of social justice as mandated by Pancasila and the 1945 Constitution, but also becomes a form of actualization of the function of law as a tool of social engineering in facing changes in the modern work structure in Indonesia.

3.3.1. Protection for Social Security

Through a progressive legal theoretical approach, the state can reinterpret the concept of "worker" in the *Job Creation Law*. This approach allows the government to implement responsive *labor law reformulation*, with an expanded definition of employment relationships to include digital partnerships, and the formation of *Government Regulations* that specifically regulate the rights, obligations, and protections for gig workers. Legal recognition of the status of gig workers can become a fundamental basis for determining special categories of workers, such as platform-based workers and independent workers. This implementation requires legislators to have the courage to broaden the interpretation of employment relationships by considering the substance of the employment relationship based on the reality of work, not just the form of the contract and the human and socio-economic aspects of digital technology.

The social security provisions in the current labor law do not yet provide a firm legal basis for protecting gig workers. The regulation only regulates formal employment relationships characterized by subordination between workers and employers. Article 35 paragraph (3) of the Labor Law states that employers are obliged to provide protection that covers the welfare, safety, and mental and physical health of their workers. However, this norm does not explicitly cover *gig workers*, as they are categorized as partners in a *partnership*, not as workers in an employment relationship. As a result, normative rights such as social security, leave, and minimum wage do not automatically apply to their status.

Legal reformulation is also necessary for every derivative of labor laws, such as Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS). Both laws emphasize that every worker is entitled to protection through the social security system, whether in the form of work accident insurance, old age insurance, pension insurance, or death insurance. From these regulations, it can be interpreted that every employer is obliged to register their workers in the BPJS Employment program. However, because *gig workers* are not recognized as formal workers in positive law, the responsibility for social security registration is not borne by the platform company, but by the workers themselves.

As a first step, the policy reformulation process can begin by expanding the definition of workers in Article 1 point 15 of the Manpower Law to include individuals who work through digital partnership systems and application-based jobs. This expansion of meaning is important so that all workers, both

permanent and non-permanent, receive social protection as guaranteed by Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia regarding the right to social security.

Furthermore, the Job Creation Law should include norms that require digital platform companies to participate in employment social security programs in accordance with the provisions of Articles 13 and 15 of Law Number 24 of 2011 concerning BPJS. In this case, without state intervention requiring digital platforms to be part of the social security system, there will continue to be a lack of protection for workers operating in the technology-based informal sector (Fadhlulloh et al., 2025). Therefore, companies must register their partners as participants in the BPJS Employment program, at least for the Work Accident Insurance (JKK) and Death Insurance (JKM) programs, so that the responsibility for social protection is not entirely borne by the workers.

To make the protection mechanism more adaptive, the government needs to develop a special social security scheme for platform and informal workers by revising Government Regulation No. 44 of 2015 concerning the Implementation of the Work Accident Insurance and Death Insurance Programs. The scheme can be designed to be flexible with contribution amounts adjusted based on the number of jobs or transaction value (task-based contribution), in line with the principle of social justice in Article 3 of Law Number 40 of 2004 concerning the National Social Security System (SJSN). Therefore, social protection for gig workers must consider the fluctuating nature of work and the legal characteristics of partnerships that are not yet fully accommodated in national regulations (Dananjaya et al., 2023).

To ensure its effectiveness, the implementation of new regulations must be balanced with strengthened supervision and law enforcement through the revision of Minister of Manpower Regulation No. 5 of 2021 by adding provisions regarding digital workers. The imposition of administrative sanctions on platform companies that fail to register their workers, such as fines or license suspensions, can be a form of progressive law enforcement that is not only punitive but also fosters corporate social responsibility.

3.3.2. Legal Protection of Collective Rights

The right to organize and collective bargaining are fundamental principles in labor relations established by the International Labor Organization (ILO). Since Indonesia ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize through Presidential Decree No. 83 of 1998, as well as ILO Convention No. 98 on the Right to Collective Bargaining through Law No. 18 of 1956, the state has a constitutional and international obligation to guarantee the fulfillment of these collective rights. However, after the enactment of Law No. 6 of 2023 on the Stipulation of the Job Creation Perpu into Law, the implementation of these rights faces serious challenges amid the development of the gig economy. Thousands of platform workers in Indonesia do not have a strong legal position in accessing collective rights such as freedom of association, collective bargaining, or obtaining employment social security as guaranteed in the constitution and international instruments (Rahmawati & Suryanto, 2023).

From a progressive legal perspective, this condition shows that positive law has lost its function as an instrument of social justice (Aulia, 2018; Satjipto Rahardjo, 2022). Therefore, legal reformulation

that prioritizes progressive law can become an ideological foundation for the state to move from a "formal protection" paradigm to "substantive protection."

Normatively, the Job Creation Law and its derivative regulations do not yet regulate collective representation for informal digital workers. Regulations are still oriented towards conventional employment relationships with written employment agreements, while gig workers are considered "business partners" rather than "workers." As a consequence, collective rights such as forming labor unions, collective bargaining, and collective action have no explicit legal basis and are often considered a violation of the terms of partnership contracts made unilaterally by the platform. This lack of regulation creates a "collective representation gap" (Finkint, 1999), a legal loophole that hinders digital workers from fighting for fair working conditions and places them as vulnerable workers who are completely dependent on algorithmic systems without access to fair negotiation mechanisms (Wood & Hjorth, 2019).

Implicitly, the reformulation of labor laws after the Job Creation Law needs to be directed at two main dimensions. First, the juridical-structural dimension, namely by recognizing platform-based employment relationships as a separate category of employment relationship (*sui generis*), which allows for the granting of the right to organize and collective bargaining without having to fulfill all the elements of traditional employment relationships. This step can be taken through amendments or additions to derivative regulations under the Job Creation Law, as proposed by the ILO regarding the regulation of digital workers in Southeast Asia. *Second*, the institutional-participatory dimension, namely strengthening collective representation mechanisms through forums such as digital labor unions, online professional associations, or *platform councils* that can function as forums for social dialogue between companies, workers, and the government (Muhyiddin et al., 2024).

There is a determinative and reciprocal relationship between the absence of collective rights for gig workers and the deadlock in the labor dispute resolution mechanism they face in Indonesia. This condition reflects a global challenge where the legal framework in Indonesia has failed to adapt to the platform economy business model (Kaine & Josserand, 2019). In fact, the absence of formal legal recognition of collective rights for gig workers in Indonesia is due to their classification as "partners" under civil law (KUHPerdata), whereas their status as "workers" is the root of the problem that results in their lack of access to transparent, fair, and effective labor dispute resolution mechanisms.

The categorization of gig workers as partners is a strategic misclassification aimed at avoiding responsibility as an employer (De Stefano, 2016). The current Indonesian labor law system, which is reinforced by the Job Creation Law, has created a rigid "binary divide" covering formal labor disputes (industrial relations disputes) that have an "employment relationship" that can only be resolved through bipartite mechanisms, mediation, and litigation through industrial relations courts. Furthermore, the status of gig workers as "partners" *de jure* does not constitute an employment relationship, so all dispute resolution channels regulated in labor law are closed to them (Gaonnon et al., n.d.).

This situation creates two major impasses. *First*, the disputes experienced by gig workers are collective and systemic, being the product of algorithmic management that executes managerial decisions automatically and *en masse*. However, the law forces them to resolve disputes individually

through civil lawsuits on the basis of breach of contract (violation of the partnership contract) in the District Court. This puts gig workers in a very weak bargaining position against global platform corporations, reflecting an inherent asymmetry of power. *Second*, the absence of formal recognition of collective rights means that collective action by gig workers is considered illegal. These collective actions are not accommodated by Law No. 6/2023, and from the perspective of partnership contracts, this vital form of resistance by platform workers is considered a breach of contract by their "partners." As a result, without a space for dispute resolution dialogue, platforms have legal justification to impose sanctions such as suspension or termination of partnership (Meijerink et al., 2021).

Thus, gig workers' efforts to form communities as a form of de facto collective rights are motivated by their shared experience of facing systemic collective disputes without clear channels for resolution. However, on the other hand, the Job Creation Law negates the de jure recognition of these communities as "labor unions" because they are not part of the "worker" status. This formal rejection means that their disputes cannot be resolved through joint negotiations or mediation by the state in a legal manner. The phenomenon of "lack of voice and collective representation" established by this law directly paralyzes any opportunity for gig workers to resolve their labor disputes in a fair, proportional, and legally binding manner (Budiyo, 2021). The phenomenon of "lack of voice and collective representation" established by law ultimately directly paralyzes any opportunity for gig workers to resolve their labor disputes fairly, proportionally, and with permanent legal force.

Based on the researcher's analysis of various related regulations, it shows that instead of resolving ambiguities in the gray zone for gig workers, the regulations actually perpetuate the status quo by strengthening labor market flexibility and leaving gig workers without access to formal dispute resolution forums like "workers" through mediation by the Manpower Office and the Industrial Relations Court (Budiyo, 2021). Instead of resolving the ambiguity in the gray zone for gig workers, regulations actually perpetuate the status quo by strengthening labor market flexibility and leaving gig workers without access to formal dispute resolution mechanisms similar to those available to "workers" through mediation by the Manpower Office and the Industrial Relations Court (Aulia, 2018). Satjipto Rahardjo, in his book "Progressive Law," asserts that law exists for humans in the form of substantive justice, not humans for law. The application of the concept of progressive law in this issue requires the law not to be deceived by the status of "partner" in the contract, but to adopt the principle of international labor law, namely the primacy of substance over form. Judges must assess the factual substance of the power relations, algorithmic control, and economic dependence, not just the formal form.

Reformulation can be done by expanding the Absolute Jurisdiction of the Industrial Relations Court, which is currently limited by Law No. 2 of 2004. The revision of the PPHI Law or the delegation from the Job Creation Law needs to expand the definition of its jurisdiction to include "disputes arising from digital partnership relationships that substantively have elements of an employment relationship." Through this locus standi, PHI judges can apply a "rebuttable presumption of an employment relationship," which shifts the burden of proof to the platform to prove that the worker is truly independent.

Another alternative is the establishment of a "Platform Worker Dispute Resolution Tribunal" through a *lex specialis* Government Regulation (PP). This reformulation is in line with the concept of Responsive Law (Asa et al., 2021), economy. Quasi-judicial models such as the Consumer Dispute Resolution Agency can be used as a reference. This tripartite plus tribunal involves workers, platforms, the government, and experts with the authority to resolve disputes quickly through final and binding decisions. Thus, the reformulation of the Job Creation Law must shift from merely looking at the "contract text" to the "work context," creating a clear framework both through the Industrial Relations Court and the establishment of a special tribunal.

4. Conclusion and Recommendations

This study concludes that gig workers in Indonesia face three fundamental problems following the reformulation of the Job Creation Law, namely legal ambiguity that places them in a gray area between formal workers and independent business partners, limited access to social security and basic labor protection due to their partnership status, and a lack of recognition of collective rights that prevents them from forming labor unions and accessing formal dispute resolution mechanisms. Although Law No. 6 of 2023 is expected to address this legal vacuum, this regulation still fails to provide explicit protection for gig workers. This condition reflects the structural failure of Indonesia's labor law system in anticipating digital disruption and adapting to non-standard work models, where the legal orientation still emphasizes formal certainty rather than substantive justice.

Based on these findings, this study recommends several urgent legal reforms. First, the government needs to expand the definition of "worker" in Article 1 point 15 of the Labor Law by adopting the principle of primacy of substance over form, or by creating a new legal category such as "dependent self-employed" that accommodates the unique characteristics of gig workers. Second, revise Government Regulation No. 44 of 2015 and Minister of Manpower Regulation No. 5 of 2021 to require platforms to register their partners with the Employment Social Security Agency (BPJS Ketenagakerjaan) under a flexible contribution scheme based on transaction value (task-based contribution), accompanied by administrative sanctions for negligent platforms. Third, explicit recognition of the right to unionize and collective bargaining for gig workers through amendments to the Job Creation Law or the establishment of derivative regulations in line with ILO Conventions No. 87 and 98. Fourth, the establishment of a "Platform Worker Dispute Resolution Tribunal" as a quasi-judicial body with a tripartite plus composition, or the expansion of the jurisdiction of the Industrial Relations Court through the revision of Law No. 2 of 2004 to cover digital partnership disputes that substantively contain elements of an employment relationship. Fifth, the formulation of minimum partnership contract standards that include minimum rates, transparency in performance evaluations, leave entitlements, and fair dispute resolution mechanisms. These reforms must be based on a progressive legal paradigm that places humans as the main subject (law for humans), integrates the principles of social justice, collective rights, and adaptation to digital transformation to ensure that technological progress does not lead to the exploitation and impoverishment of workers' basic rights.

Acknowledgement

The author would like to thank all parties who have provided support and contributions in completing this research. Special appreciation is given to gig workers who have shared their experiences and perspectives, thereby providing a deep understanding of the reality of work in the digital economy era. Thanks are also extended to Sui Iuris Law Office for providing support in the form of facilities and a conducive research environment. Finally, the author would like to express his appreciation to the reviewers and editors of the Journal of Employment for their valuable constructive input in improving this article. It is hoped that the results of this study will make a real contribution to efforts to protect the rights of gig workers in Indonesia and encourage more equitable labor law reforms.

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tegas mengkritik kemunculan Perppu 2 / 2022 karena dianggap tidak memenuhi syarat kegentingan memaksa yang dapat dijadikan alasan untuk menerbitkan Perppu . 1 Isi Perppu yang secara umum sama dengan UU 11 / 2020 , membuat para ahli merasa bahwa Perppu ini hanya merupakan manuver pemerintah untuk melanggengkan Undang-Undang Cipta Kerja tanpa melewati prosedur revisi undang-undang yang seyogyanya melalui legislasi . 2 Diluar perdebatan tentang kegentingan memaksa , serta argumentasi bahwa pemerintah telah melangkahi Mahkamah Konstitusi dengan disahkannya Perppu 2 / 2022 3 , Dewan Perwakilan Rakyat telah mengundang Perppu 2 / 2022 menjadi Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang (UU 6 / 2023). Permasalahannya , isi dari UU 6 / 2023 yang tidak ketenagakerjaan di UU 6 / 2023 . 4 Pemerintah berdalih bahwa keberadaan UU 6 / 2023 untuk menjamin kepastian hukum . 5 Menteri Koordinator Bidang Perekonomian , menyebut bahwa beleid ini dibuat untuk memberikan kepastian hukum bagi. 31(September), 384–407.

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