

Employment Relationship of Gig Workers in Indonesia: A Case Study of Ride-Hailing Drivers and App-Based Courier

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Abstract

The rapid growth of the digital economy in Indonesia has given rise to the phenomenon of gig workers, particularly ride-hailing drivers and app-based couriers. While these jobs have expanded employment opportunities and offered flexibility, they also raise complex legal debates concerning the nature of the employment relationship. Indonesia's labor law framework remains grounded in the traditional model of employment, which presupposes formal contracts, fixed wages, and built-in social protection. This raises the question of whether gig workers can be classified as employees under the Manpower Law, or whether they fall solely within the category of independent contractors. This study examines the legal construction of gig workers' employment relationships in Indonesia through case studies of ride-hailing drivers and app-based couriers, while also assessing the implications for fundamental labor rights such as minimum wage, social security, and the right to unionize. Using a normative juridical approach, the research analyzes existing labor regulations, relevant court decisions, and contemporary labor law doctrines. The findings reveal a normative gap that places gig workers in a vulnerable position, underscoring the urgent need for regulatory reforms that are more adaptive to the dynamics of digital labor. This paper thus contributes to the global discourse on the legal protection of gig workers in the digital era while providing policy insights for the Indonesian context.

Keywords: Gig Workers, Employment Relationship, Ride-Hailing, App-Based Couriers, Labor Law

1. Introduction

The rapid advancement of digital technology has transformed the global labor market, giving rise to what is now commonly referred to as the gig economy. In Indonesia, the gig economy has developed rapidly, particularly through the emergence of ride-hailing platforms and app-based courier services such as Gojek, Grab, and ShopeeFood. These platforms have provided flexible job opportunities for millions of Indonesians, contributing to economic growth and reducing unemployment rates. However, behind this apparent flexibility lies a complex legal issue concerning the employment status of gig workers, who often lack formal labor protections (Kässi & Lehdonvirta, 2018; ILO, 2021).

Indonesia's labor law framework, particularly Law No. 13 of 2003 concerning Manpower, is designed around traditional employment relationships characterized by fixed wages, definite working hours, and social protection schemes. This legal framework does not adequately capture the fluid and

technology-mediated nature of gig work. As a result, many gig workers operate in a gray area between employment and self-employment, raising fundamental questions about their rights to minimum wage, occupational safety, social security, and collective bargaining (De Stefano, 2016; Todolí-Signes, 2017; Cherry & Aloisi, 2019).

Several previous studies have explored the challenges of regulating gig work in various jurisdictions. For instance, research in the European Union and the United States has identified similar legal ambiguities, where gig workers are often misclassified as independent contractors despite displaying characteristics of employees (Prassl & Risak, 2016; Stewart & Stanford, 2017). In the Indonesian context, existing literature remains limited, with most studies focusing on the socioeconomic aspects rather than the legal dimensions of gig work. This study seeks to fill that gap by examining the legal construction of gig workers' employment relationships in Indonesia, focusing on ride-hailing drivers and app-based couriers.

Therefore, the main objective of this research is to analyze the legal status of gig workers within Indonesia's labor law framework and to evaluate whether current regulations sufficiently protect their fundamental labor rights. By employing a normative juridical approach and reviewing relevant legal doctrines, this study aims to contribute to the ongoing discourse on labor law reform in the digital era. Furthermore, it highlights the need for adaptive regulatory frameworks that balance flexibility with fairness, ensuring that technological innovation does not come at the expense of workers' welfare (Wood et al., 2019; ILO, 2021).

2. Research method

This study applies a **normative juridical approach** to analyze the legal construction of gig workers' employment relationships in Indonesia. The approach focuses on examining legal norms, principles, and regulations related to labor law and digital platform work. This method is appropriate because the research aims to understand how existing laws classify and protect ride-hailing drivers and app-based couriers within Indonesia's labor framework.

The research uses **secondary data** obtained through **library research** (*studi kepustakaan*). The data sources include **primary legal materials** such as *Law No. 13 of 2003 on Manpower*, *Law No. 11 of 2020 on Job Creation*, and *Government Regulation No. 35 of 2021*, as well as court decisions and ministerial regulations related to employment. **Secondary legal materials** consist of academic books, journal articles, and international labor standards from the International Labour Organization (ILO). **Tertiary materials**, such as legal dictionaries and encyclopedias, are used to clarify legal concepts. The collected legal materials are analyzed using **qualitative descriptive analysis**.

The analysis process includes identifying relevant legal norms, interpreting them in the context of gig work, and comparing them with international practices. Interpretation methods include grammatical, systematic, and teleological interpretations to understand the intent and coherence of legal rules. The findings are then evaluated to identify regulatory gaps and propose recommendations for improving worker protection in the digital economy. This research focuses on the **case study of**

ride-hailing drivers and app-based couriers in Indonesia as examples of gig workers who operate under digital platforms. The analysis highlights the mismatch between Indonesia's traditional labor law system and the flexible, technology-based nature of gig work. The results are expected to contribute to the formulation of adaptive labor policies that ensure fair protection for gig workers.

3. Results and Discussion

3.1. The Legal Classification of Gig Workers in Indonesia

The legal position of gig workers in Indonesia remains ambiguous due to the absence of explicit regulation within the **Manpower Law (Law No. 13 of 2003)**. According to Article 1 point 15 of the Manpower Law, an employment relationship is defined as a relationship between an employer and a worker based on a work agreement that includes elements of work, wages, and orders (*perintah*). In the context of ride-hailing and app-based courier platforms such as **Gojek, Grab, and ShopeeFood**, these elements appear partially present—drivers perform work and receive payment, but the existence of direct orders and subordination is contested.

Under **Government Regulation No. 35 of 2021** (a derivative of **Law No. 11 of 2020 on Job Creation**), employment relationships are divided into *permanent* and *fixed-term contracts (PKWT)*. However, gig workers are generally bound by **partnership agreements (perjanjian kemitraan)** rather than employment contracts. These agreements categorize them as *partners (mitra)*, thereby excluding them from employee status and the protections provided under Indonesian labor law. As a result, gig workers are not entitled to statutory benefits such as minimum wage, social security (BPJS), or severance pay.

This legal construction creates a **normative gap**, as noted by several legal scholars. According to (De Stefano, 2016), the global trend of “platform work” blurs the line between employment and self-employment, leaving workers in a vulnerable “grey zone.” Similarly, (Cherry & Aloisi, 2019) argue that platform workers perform economically dependent labor, which meets the substantive criteria of employment even when formal legal classification denies them employee status. These perspectives align with Indonesia's current condition, where the law's formalistic interpretation neglects the reality of dependence and control in digital labor relations.

3.2 Indicators of Employment Relationship: Control and Dependency

A key criterion in determining an employment relationship under Indonesian labor law is **subordination (hubungan perintah)**. In practice, gig platforms exercise a significant degree of control over drivers and couriers through algorithmic management systems. These systems determine work assignments, performance evaluations, and even sanctions through app-based monitoring. Despite the contractual language of “partnership,” the nature of work execution shows that gig workers are subject to continuous supervision and performance-based rewards or penalties.

This is consistent with international research showing that **algorithmic control** effectively reproduces traditional managerial power structures. (Wood, Graham, Lehdonvirta, & Hjorth, 2019)

found that platform workers' autonomy is constrained by data-driven systems that determine access to tasks and income levels. The existence of such control mechanisms supports the argument that gig workers in Indonesia meet the substantive indicators of an employment relationship, even if not formally recognized by law.

From a legal perspective, the **principle of factual subordination** should prevail over formal contractual terminology. The **Supreme Court Decision No. 31 K/Pdt.Sus-PHI/2020**, for example, emphasized that the existence of work, wages, and orders determines an employment relationship regardless of the label used by the parties. Thus, gig workers could be legally considered employees if it can be proven that their work performance is controlled by the platform.

Under **Indonesian labor law**, the determination of an employment relationship (*hubungan kerja*) is fundamentally based on three key elements as defined in **Article 1 point 15 of Law No. 13 of 2003 on Manpower**:

1. The existence of **work** (*pekerjaan*),
2. The provision of **wages** (*upah*), and
3. The presence of **orders or subordination** (*perintah*).

These three cumulative elements distinguish an employee (*pekerja/buruh*) from an independent contractor (*pekerja mandiri*). In the context of the **gig economy**, especially for **ride-hailing drivers** (e.g., Gojek, Grab) and **app-based couriers** (e.g., ShopeeFood, Tokopedia, Lazada), the first two elements—work and wages—are clearly fulfilled. Gig workers perform specific labor (transporting passengers or delivering goods) and receive monetary compensation per completed task. The main controversy, therefore, lies in the **third element—control or subordination**—which determines whether these workers can be classified as employees under the law.

Unlike conventional employers who give direct verbal or written orders, digital platforms control gig workers through **algorithmic management systems**. The app determines the assignment of tasks, work routes, customer ratings, and even penalties or suspensions based on performance data. Drivers or couriers cannot freely negotiate the terms of work, set their own prices, or choose their customers. Their “autonomy” is thus limited by the platform’s automated decision-making mechanisms.

This **pattern of algorithmic control** effectively mirrors the traditional employer-employee hierarchy, where the platform acts as a digital manager that supervises, evaluates, and disciplines workers. (Wood, Graham, Lehdonvirta, & Hjorth, 2019) explain that despite the appearance of flexibility, platform workers are subject to intensive data-driven monitoring that dictates their work rhythm and income potential. Similarly, (Rosenblat & Stark, 2016) found that Uber’s algorithms act as “invisible managers,” exerting behavioral control through incentive structures and information asymmetry.

In Indonesia, these algorithmic systems constitute a **de facto form of supervision and control**, satisfying the legal element of *perintah* (orders) under **Article 1 point 15 of the Manpower Law**. Thus, even if the contract is labeled a “partnership agreement” (*perjanjian kemitraan*), the factual condition of subordination indicates the presence of an employment relationship.

Another important element is **economic dependency**, which reflects whether workers rely primarily on one platform for their income. Most gig workers in Indonesia depend heavily on a single platform for daily earnings, making them **economically subordinate**, even if not legally recognized as employees. This dependency aligns with the concept of “**dependent contractors**” found in **comparative** labor law, where individuals are formally self-employed but functionally dependent on a single economic entity (Cherry & Aloisi, 2019); (Prassl & Risak, 2016)).

In Indonesian jurisprudence, **Supreme Court Decision No. 31 K/Pdt.Sus-PHI/2020** reinforces this substantive approach by stating that the classification of an employment relationship depends on factual **working** conditions, not solely on the contract’s wording. If a worker performs work under supervision and receives remuneration from one party, the relationship should be legally regarded as employment. Applying this reasoning to gig work implies that drivers and couriers—though formally “partners”—should be recognized as employees if they work exclusively under a platform’s economic and managerial control.

The **combined** effect of algorithmic control and economic dependency places gig workers in a **position of structural vulnerability**. They carry entrepreneurial risks (fuel, vehicle maintenance, insurance) without enjoying employment protections (minimum wage, paid leave, or social security). This condition contradicts the **principles of decent work** and **social justice** guaranteed under **Article 27 paragraph (2)** and **Article 28D paragraph (2) of the 1945 Constitution**, which affirm every citizen’s right to fair and proper employment.

Furthermore, the **Manpower Law** mandates that every employment relationship involving wages and orders must guarantee basic protections, including occupational safety and social security. However, because gig workers are contractually classified as partners, platforms evade these obligations. This situation is legally inconsistent with **Law No. 24 of 2011 on Social Security**, which envisions universal labor protection regardless of employment form.

Comparatively, countries such as Spain and the United Kingdom have started to legally recognize certain gig **workers** as employees following judicial precedents like the **UK Supreme Court Decision in Uber BV v Aslam (2021)**. This case established that Uber drivers are “workers” entitled to minimum wage and paid holidays because the company exercised significant control over their work. Such global precedents offer valuable insights for Indonesia in redefining employment relationships within the platform economy.

Legally, the **principle of factual subordination (subordinasi faktual)** should guide courts and policymakers in interpreting gig work arrangements. Instead of focusing on formal contractual labels, the assessment should consider the actual nature of work performance and dependence. The **teleological interpretation** of labor law—aimed at protecting the weaker party—requires extending employment protections to those who are functionally employees, regardless of their contractual status (De Stefano, 2016).

Therefore, Indonesian policymakers should consider introducing a **special employment category** for gig workers—**similar** to the “dependent contractor” model in Europe—to bridge the legal gap

between formal employment and independent contracting. This would ensure equitable treatment and protection while maintaining the operational flexibility that platforms require.

3.3. Implications for Fundamental Labor Rights

The classification of gig workers as “partners” (*mitra kerja*) rather than “employees” (*pekerja/buruh*) has profound implications for the realization of **fundamental labor rights** in Indonesia. Despite performing work under substantive control and economic dependence, gig workers are systematically excluded from the statutory protections afforded to employees under **Law No. 13 of 2003 on Manpower** and its derivative regulations. This exclusion affects three core dimensions of labor rights: **minimum wage, social security, and the right to unionize**. Because gig workers are categorized as *partners*, they are **excluded from key labor protections**, including:

1. **Right to Minimum Wage** According to **Article 88C paragraph (1) of Law No. 13 of 2003**, every worker has the right to receive a wage that meets a decent standard of living (*penghidupan yang layak bagi kemanusiaan*). Further, **Government Regulation No. 36 of 2021 on Wages** mandates employers to pay at least the regional minimum wage (*Upah Minimum Provinsi/Kabupaten/Kota*) for workers with employment relationships. However, since gig workers are not legally recognized as employees, their income is determined by the number of completed orders and fluctuates with market demand and algorithmic distribution. This creates a condition of **income instability** and **wage insecurity**, where workers’ earnings can fall below minimum living standards. Studies show that gig workers often experience “pay penalties” due to algorithmic pricing and competition (ILO, 2021). Similarly, (Todoli-Signes, 2017) argues that such flexibility shifts economic risk from employers to workers, violating the protective purpose of labor law.

In practice, the lack of minimum wage protection contradicts **Article 27(2) of the 1945 Constitution**, which guarantees the right of every citizen to employment and livelihood in humane conditions. This constitutional guarantee, interpreted teleologically, imposes a state obligation to ensure fair remuneration for all forms of labor, including platform-based work.

2. **Right to Social Security** The right to social security is a fundamental aspect of labor protection in Indonesia, established under **Law No. 24 of 2011 on the Social Security Administering Body (BPJS)** and **Law No. 40 of 2004 on the National Social Security System (SJSN)**. Under these laws, employers are required to register their employees in social security programs covering health, employment accidents, pensions, and old-age benefits.

However, platform companies classify gig workers as **independent partners**, thereby transferring the obligation of registration and contribution to the workers themselves. This creates a **coverage gap**, leaving many drivers and couriers without access to occupational safety or health insurance. Field studies conducted by the ILO (2021) and Indonesian researchers (Heryanto, 2022) show that only a small fraction of ride-hailing drivers are enrolled in BPJS Ketenagakerjaan, primarily due to the voluntary and self-funded nature of their participation.

From a normative standpoint, this situation contradicts **Article 99 paragraph (1) of the Manpower Law**, which mandates the government to ensure protection for workers in the event

of workplace accidents, sickness, or death. Furthermore, **Article 34(2) of the 1945 Constitution** stipulates that the state must develop a social security system for all citizens. Hence, excluding gig workers from BPJS protection undermines both statutory and constitutional principles of social welfare and equality before the law.

Comparative legal developments further emphasize this issue. In Spain, for instance, the **Riders Law (Royal Decree-Law 9/2021)** explicitly recognizes food delivery riders as employees entitled to full social protection, citing their dependency on digital platforms. This international precedent demonstrates that algorithmically managed workers can be integrated into national social security systems without undermining business flexibility.

3. **Right to Unionize and Collective Bargaining** The **right to form and join trade unions** is guaranteed under **Article 104 of Law No. 13 of 2003** and **Law No. 21 of 2000 on Trade Unions**. This right is also enshrined in **ILO Convention No. 87** (Freedom of Association) and **ILO Convention No. 98** (Right to Organize and Collective Bargaining), both ratified by Indonesia. In practice, however, the classification of gig workers as partners prevents them from exercising collective rights because trade unions under current law can only be formed by *workers* who are in employment relationships.

As a result, gig workers' attempts to form associations, such as **Persaudaraan Pekerja Muslim Indonesia (PPMI)** or **Serikat Pekerja Gojek, Grab, dan Kurir Online Indonesia (SPGKU)**, face difficulties obtaining formal recognition. Platforms often consider these associations informal because their members are not legally defined as employees. This situation weakens the collective bargaining power of gig workers and perpetuates **asymmetric industrial relations** in which platforms unilaterally determine working conditions.

From a labor rights perspective, this exclusion represents **a regression in collective freedoms**, contrary to the spirit of **Article 28E paragraph (3)** of the 1945 Constitution, which guarantees the right to association. According to (De Stefano, 2016), denying collective rights to gig workers is incompatible with the evolving nature of work and undermines international labor standards advocating inclusive representation for all forms of labor.

4. **Legal and Policy Evaluation** The absence of explicit recognition for gig workers in Indonesia's labor framework reveals a **regulatory lag** between technological innovation and legal adaptation. While **Law No. 11 of 2020 on Job Creation** and its derivative regulations attempted to simplify labor arrangements, they did not address digital platform work. As a result, millions of Indonesian gig workers remain outside formal protection mechanisms despite contributing significantly to the national economy.

To resolve this gap, Indonesia can adopt two policy strategies:

1. **Legal Recognition Model:** Amend the Manpower Law to recognize "dependent workers" as a distinct employment category entitled to limited labor protections, as suggested by (Prassl & Risak, 2016).
2. **Hybrid Protection Model:** Establish a government regulation mandating platforms to contribute to BPJS and guarantee minimum income standards, following international precedents such as Spain's Riders Law or the UK's Uber decision.

Both models uphold the **constitutional principle of social justice (Article 28D(2) of the 1945 Constitution)** and the **ILO's Decent Work Agenda**, ensuring that digital transformation does not erode workers' fundamental rights.

3.4 Discussion: The Need for Adaptive Legal Reform

The above findings reveal that Indonesia's labor regulatory framework is **not yet adaptive** to the dynamics of digital labor. The traditional dichotomy between "employees" and "independent contractors" no longer reflects the reality of gig work. Scholars argue for an **intermediate employment category**, such as "dependent contractors," as adopted in some European countries (Prassl & Risak, 2016; Stewart & Stanford, 2017). Such a category could extend key protections—such as minimum wage and social security—without imposing full employer obligations on platforms.

In the Indonesian context, this reform could take the form of amendments to the **Manpower Law** or the issuance of a **Government Regulation on Digital Work** to define gig workers' rights and obligations clearly. Regulatory innovation is essential to ensure **social justice (Pasal 28D ayat 2 UUD 1945)**, which guarantees every worker the right to fair and proper employment conditions.

4. Conclusion and Recommendations

This study concludes that the legal construction of gig workers' employment relationships in Indonesia remains unclear and inadequate to protect fundamental labor rights. Although ride-hailing drivers and app-based couriers perform work that fulfills the elements of employment—*work, wages, and orders*—as defined in **Law No. 13 of 2003 on Manpower**, they are classified as partners under *partnership agreements* rather than employees. This formal classification excludes them from key protections such as minimum wage, social security, and the right to unionize. In practice, however, digital platforms exercise significant control through algorithmic management systems, while workers remain economically dependent on a single platform. These conditions meet the substantive indicators of an employment relationship under Indonesian labor principles. The lack of explicit legal recognition for gig workers contradicts constitutional guarantees under **Article 27(2)** and **Article 28D(2)** of the **1945 Constitution**, which ensure fair and proper employment conditions, as well as Indonesia's commitments under **ILO Conventions No. 87 and 98** on freedom of association and collective bargaining. It also highlights the gap between Indonesia's traditional labor framework and the realities of digital platform work. Therefore, Indonesia must adopt adaptive legal reforms to bridge this regulatory gap. The government should recognize gig workers as **dependent workers**, entitled to basic protections such as minimum wage, social security, and collective rights, while maintaining work flexibility. A **specific regulation on digital labor** should also be issued under **Law No. 11 of 2020 on Job Creation** to define employment indicators, regulate algorithmic control, and require platforms to register workers in BPJS programs. Furthermore, courts should apply a **factual interpretation** of employment—prioritizing evidence of control and dependency over contractual labels—to ensure fair outcomes for platform workers. Strengthening transparency in algorithmic management and enabling the formation of gig worker associations would further align Indonesia's labor system with the

constitutional principle of social justice. In essence, protecting gig workers in the digital era requires rethinking labor law based on **substance rather than form**. Through adaptive regulation and equitable enforcement, Indonesia can build a fair and inclusive labor framework that balances innovation with workers' dignity and rights.

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