

Dynamics of Legal Protection of Workers' Rights with Partnership Agreements of Online Motorcycle Taxi Driver

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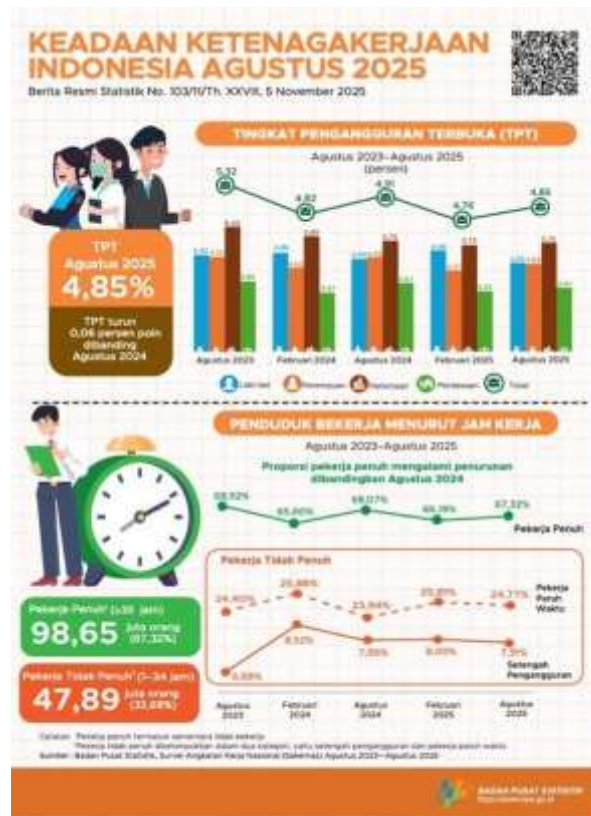
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Abstract

The phenomenon of the technology-based platform economy, known as the gig economy, has grown rapidly, transforming many aspects of life, including the world of work. This has led to the emergence of gig workers in Indonesia. One such worker is online motorcycle taxi drivers. Online motorcycle taxi drivers who have partnership agreements with companies have an impact on workers' rights to legal protection. The novelty of this research lies in its discussion of online motorcycle taxi drivers working under partnership agreements, which are currently emerging. The purpose of this research is to analyze the dynamics of legal protection for the rights of online motorcycle taxi drivers with partnership agreement status. This research is a legal study conducted using qualitative, normative, and logical data analysis methods based on the logic and syllogism of laws and regulations and facts on the ground. In Indonesia, labor law regulates employment relationships through work agreements, which are based on the elements of work, wages, and orders. The partnership relationship pattern excludes the employment relationship contained in labor law regulations. It is known that partnership relationships in labor law are often used as a means to eliminate normative rights that workers should receive. Views on partnership patterns in the gig economy have given rise to diverse opinions regarding the meaning of partnership agreements in the realm of labor law. This research has the benefit of knowing the dynamics of legal protection of workers' rights with partnership agreements and as a recommendation for the formulation of laws and regulations in Indonesia.

Keywords: Legal protection, employment agreement, partnership agreement

1. Introduction



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The Central Statistics Agency (BPS) released the results of the 2024 National Labor Force Survey (Sakernas). The report recorded that the number of informal workers in Indonesia reached 84.2 million. Of that number, 41.6 million are gig workers or freelancers.

One group within the gig worker category is online transportation service partners, such as online motorcycle taxi (ojol) and online taxi (taksol) drivers. According to BPS data, there are approximately 1.8 million people working as ojol and taxi drivers throughout Indonesia.

Legally, the relationship between the driver and the application company is categorized as a partnership relationship, not an employment relationship. This is emphasized in Article 15 Paragraph (1) of the Minister of Transportation Regulation Number 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Public Interest, which states that the relationship between the application company and the driver is a partnership.

With this partnership status, driver partners have the freedom to determine their working hours, accept or decline orders, and work on more than one platform. This differs from formal employment relationships, which stipulate fixed working hours, wages, and instructions from the employer.

On the other hand, according to Artha and Priyanto (2019) in a study entitled "Analysis of the Termination of PT Go-Jek's Partnership Work Contract with Go-Jek Drivers," online motorcycle taxi drivers face various forms of vulnerability due to their relationship with the ride-hailing app company, which is categorized as an independent contractor in a partnership system, not as an employee in a labor-employer relationship. As a result, drivers have not received employment rights such as

minimum wage protection, a 40-hour work week, leave rights, and social security that are usually provided to workers in formal employment relationships.

2. Research Method

2.1. Method

This research is a legal research. According to Peter Mahmud Marzuki, legal research (*rechtsonderzoek*) is a scientific activity aimed at finding solutions to emerging legal problems, with the aim of providing recommendations or guidance on what should be done according to the law. conducted using the qualitative data analysis method of normative logic based on the logic and syllogism of statutory regulations (drawing existing conclusions) combined with practical law in society called the Empirical Normative Legal Research Method. This research uses the empirical normative legal research method, namely a research method that in this case combines normative legal elements which are then supported by additional data or empirical elements in actions in each specific legal event that occurs in a society.

This is done as a consequence of the view that law is an autonomous institution unrelated to other social institutions. Therefore, law as a system has the ability to survive, grow, and develop within its own system. Therefore, if research is recognized as a (scientific) way to solve existing problems, then the problems seen in research using this approach are limited to problems within the legal system itself."

2.2. Data and Analysis

The procedure for collecting legal materials in this study begins with collecting primary legal materials and secondary legal materials, then reading and understanding both legal materials such as laws and regulations, legal literature, legal journals, and the opinions of legal experts related to the problem raised, then continued by conducting interviews with informants to classify them based on the problems raised.

3. Results and Discussion

3.1. Online Motor Cycle Taxi Driver

Online motorcycle taxis are a popular mode of public transportation in the gig economy nowadays. Like conventional motorcycle taxis, online motorcycle taxis utilize motorcycles, but their advantage lies in their use of modern technology. With internet- based applications on mobile phones, users can easily order online motorcycle taxis whenever they need them. In addition to passenger transportation, online motorcycle taxis also offer goods delivery, food purchases, and direct delivery of orders to customers. The presence of online motorcycle taxis in Kediri City is very helpful for busy communities, as these services leverage technological advances to provide convenience and efficiency in daily mobility.

3.2. Work relationship

According to Law Number 13 of 2003 Article 1 Paragraph (15) an employment relationship is a relationship between an employer and a worker/laborer based on an employment agreement that contains elements of work, wages and orders. Based on the explanation of the article above, an employment relationship arises after there is an agreement regarding an employment agreement between the worker and the employer.

a. Work (arbeid)

From a work perspective, orders placed by app users for transportation, delivery, or other services are placed through the app system, where the distribution of orders is entirely controlled by the app company using a specific algorithm. While online motorcycle taxi drivers have the right to reject orders, they have no control over which orders are accepted through the app. Therefore, the work element is actually fulfilled because the driver partners only carry out tasks that have been determined and distributed by the company through the app system.

b. Wages (loon)

Based on Law Number 13 of 2003 Article 1 Paragraph (30) states that wages are the rights of workers/laborers which are received and stated in the form of money as compensation from the employer or employer to workers/laborers which is determined and paid according to a work agreement, agreement or statutory regulations, including allowances for workers/laborers and their families for work and/or services which have been or will be performed.

In this case, the wages of online motorcycle taxi drivers come from payments made by service users, either in cash or via electronic money within the application. The funds paid by passengers are then divided based on an agreement between the application company and the driver partner. Generally, the division is 20 percent for the application company and 80 percent for the driver. This provision refers to Ministerial Decree Number KP 667 of 2022 concerning Guidelines for Calculating Motorcycle Usage Service Fees for the Public Interest Carried Out by Application , which in the eighth point states that the application company applies indirect costs in the form of application usage rental fees of a maximum of 15% (fifteen percent) and/or the application company can apply supporting costs in the form of driver partner welfare support costs of a maximum of 5% (five percent) in the form of:

- 1) Additional safety insurance;
- 2) Provision of service facilities for driver partners;
- 3) Information center support;
- 4) Operational cost assistance; and/or
- 5) Other assistance;

c. Command (gezag verhouding).

The element of an order indicates an instruction from a company to a worker or laborer to carry out a task. Meanwhile, the element of work is the object of the agreement between the worker or laborer and the employer or employer. In the context of the employment

relationship between an app company and an online motorcycle taxi driver, the driver does not receive direct orders from the company but merely carries out orders received through the app system. The app company indirectly instructs the online motorcycle taxi driver to carry out delivery tasks through the platform.

Under Indonesian labor laws and regulations, employment relationships are essentially created through an employment agreement between an employer and employee. Law No. 13 of 2003 concerning Manpower distinguishes between two types of employment agreements: Fixed-Term Employment Agreements (PKWT) and Indefinite-Term Employment Agreements (PKWTT). A PKWT is an employment relationship established for a specific period of time or for temporary work, with the proviso that it cannot be used for permanent, ongoing work. Meanwhile, a PKWTT is a permanent, ongoing employment relationship, where the worker retains the status of a permanent employee with stronger employment rights.

Through Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Changing of Law No. 2 of 2022 concerning Job Creation, which became Law, the government adjusted the regulations on PKWT and PKWTT to better adapt to the needs of the modern labor market. In this law, the provisions regarding PKWT are more flexible, where the term and renewal of the agreement can be adjusted to the type and nature of the work in accordance with the implementing regulations of Government Regulation Number 35 of 2021, namely regulations on Fixed-Term Employment Agreements (PKWT), Outsourcing, Working Hours and Rest Hours, and Termination of Employment. Nevertheless, the main principle of the employment relationship remains based on the elements of work, wages, and orders, as emphasized in Article 1 number 15 of Law 13 of 2003. Thus, in both Law 13 of 2003 and Law 6 of 2023, PKWT and PKWTT remain the basis of employment relationships in Indonesia, but with regulatory improvements to provide a balance between the business world and the protection of workers' rights.

3.3 Partnership Agreement

Based on Article 1 paragraph 13 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (MSMEs), what is meant by Partnership is cooperation in business relations, both directly and indirectly, based on the principle of mutual need, trust, strengthening and benefit involving Micro, Small and Medium Enterprises with Large Enterprises.

When entering into a partnership agreement, the principles of equality and equal legal standing must be prioritized between the two parties. Furthermore, the partnership agreement must adhere to the basic principles of independence for Micro, Small, and Medium Enterprises and must not create dependence on large enterprises.

Furthermore, the partnership between online drivers and the app provider has its own unique characteristics. Formally, both parties are considered equal, as stipulated in Article 36 of Law Number 20 of 2008. However, in social and economic realities, online drivers tend to be in a weaker position than the app provider.

And then, provisions regarding partnership relationships are regulated in more depth in Government Regulation Number 7 of 2021 concerning the Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (hereinafter referred to as PP No. 7 of 2021). In this regulation, partnerships are defined as agreements that place the parties on equal footing, and outline various partnership patterns, drafting procedures, and provisions regarding the contents of partnership agreements. In addition to providing incentives to encourage partnerships in the MSME sector, the government also plays a supervisory, protective, and law enforcement role to ensure that partnership relationships are implemented fairly and mutually beneficial in accordance with proper partnership principles.

Table 1. Comparison between Partnership Agreement and Employment Agreement

Elements of Differentiation	Partnership Agreement	Employment agreement
Legal basis	Law Number 20 of 2008	Law Number 13 of 2003
Position of the parties	Equivalent	Superiors and Subordinates
Agreement pattern	Partnership relationships are regulated by a Partnership Agreement	Employment relationship with a Certain Time Work Agreement or an Indefinite Time Work Agreement
Elements of work, wages and orders	Only the work elements are fulfilled, there are no wage and order elements.	There is
Protection against overtime pay, rest periods, maximum working hours, social security	Not regulated	Clearly regulated
Contents of the agreement	Name of business activity, rights and obligations of each party, form of development, time period and dispute resolution	Name, company address and type of business; name, gender, age and address of the worker/laborer; position or type of work; place of work; the amount of wages and the method of payment; work conditions which contain the rights and obligations of employers and workers/laborers; start and term of validity of the

Elements of Differentiation	Partnership Agreement	Employment agreement
		employment agreement; place and date the employment agreement was made; and signatures of the parties in the employment agreement.

3.4 Legal Protection

According to Philipus M. Hadjon (1987) , legal protection is an effort to protect human dignity and honor, and guarantee recognition of human rights inherent in every legal subject, in order to avoid arbitrary actions. Furthermore, Hadjon differentiates legal protection into two forms based on the means used, namely preventive protection and repressive protection . Preventive protection provides an opportunity for the public to express opinions or objections before the government makes a final decision, with the aim of preventing the emergence of disputes.

Meanwhile, repressive protection serves as a resolution mechanism when a dispute arises. Thus, legal protection is a guarantee provided by the state to every individual so that they can exercise and defend their legal rights and interests as legal subjects.

In employment law , what is meant by legal protection is protection for workers —both physically, socially and economically —so that they can work safely, prosperously and have their rights respected as human beings and as workers.

This protection includes:

1. Protection of workers' normative rights , such as wages, working hours, rest periods and social security.
2. Occupational safety and health (K3) protection to ensure a safe and decent working environment.
3. Social and economic protection , so that workers receive guarantees in facing risks such as termination of employment and retirement.
4. Protection of human morals and dignity , by preventing discriminatory acts, harassment or unfair treatment in the workplace.

In general, the aim of legal protection in employment is to guarantee the fulfillment of workers' rights and prevent arbitrary actions by employers , as mandated in Law Number 13 of 2003 concerning Employment and its derivative regulations.

The legal relationship between online motorcycle taxi drivers as a gig worker and app companies is formally established through a partnership agreement that positions both as business partners. However, in practice, the relationship is more like that of an employer and an employee. Therefore,

online motorcycle taxi drivers can be classified as workers in the informal sector who should be entitled to legal protection, including normative worker rights such as wages, working hours and rest periods, social security, occupational safety and health protection, protection against the risk of termination of employment and pensions, and protection of morals and human dignity.

According to Ari Hermawan, the sharing economy philosophy in the gig economy does not occur in the relationship between service providers and online drivers, so it is just a myth. The classification of partnership relationships to define the legal relationship between service providers and online drivers is inappropriate, because it does not apply the principles of partnership and the existence of control of decisions by service providers which causes ojol drivers to be forced to work under control with the consequence of a lack of orders until the partner is terminated for their violations.

Meanwhile, according to M. Kharis Mawanda and Adam Muhsi, there is still an imbalance, injustice, and bias in the agreement between Gojek and its partners. This causes the party with the weaker bargaining power, namely the prospective partner, to only accept the contents of the agreement by force (taken for granted). If they try to negotiate with other alternatives, they are likely to lose what they need. Legal efforts to protect partners can be carried out through preventive and repressive legal protection. Preventive legal protection can be attempted by the government through the issuance of laws and regulations, for example by regulating legal protection for parties in a profit-sharing partnership agreement, as is done in the franchise partnership pattern. Meanwhile, repressive legal protection applies when a dispute or disagreement occurs, and the government needs to create regulations that guarantee the ease of online motorcycle taxi operations and regulate the profit-sharing partnership pattern.

The government places significant emphasis on the implementation of partnerships in the MSME sector, from providing incentives and various facilities in the initial stages, through to mentoring during implementation, to providing legal services and oversight when issues arise in partnership relationships. The comprehensive provisions contained in Government Regulation No. 7 of 2021 demonstrate the government's awareness that partnerships require legal certainty, serving not only to encourage partnership formation but also to protect the interests of the parties involved. Thus, the government is not simply encouraging partnerships but also providing a clear legal basis for them to operate fairly and effectively.

Some of the weaknesses and challenges of protection with Partnership Agreements

- 1) Inequality of bargaining position: Drivers tend to lose position when they have to deal with large companies.
- 2) Risks and Liabilities: Drivers bear most of the risks and operational costs, while the app company profits from the platform.
- 3) Lack of direct control and orders: Drivers are considered to work based on user requests, not company orders, so the employment relationship criteria are not met.

4. Conclusion and Recommendations

4.1 Conclusion

1. The relationship between online motorcycle taxi drivers in the gig economy nowadays and app companies is formally categorized as a partnership , not an employment relationship. However, in practice, the relationship exhibits characteristics of an employment relationship, as it includes elements of work, compensation (wages), and instructions provided through the app system.
2. The partnership status applied means that drivers do not receive full employment legal protection , such as the right to minimum wages, working hours, social security, and protection against termination of employment.
3. The partnership model stipulated in Law No. 20 of 2008 and Government Regulation No. 7 of 2021 emphasizes the principles of equality and mutual benefit. However, in practice, the relationship between drivers and app companies still exhibits significant unequal bargaining power, making the principle of legal equality difficult to achieve.
4. The government has demonstrated its commitment to protecting partnerships, including through comprehensive regulations. However, the implementation of legal protection for online motorcycle taxi driver partners has not been optimal , necessitating a clearer legal mechanism to guarantee their rights.

4.2 Recommendation

1. Revisions or updates to employment and partnership regulations need to be made to cover workers in the gig economy sector, including online motorcycle taxi drivers, taking into account the characteristics of platform-based work.
2. The government needs to develop a hybrid legal protection mechanism that accommodates partnership relationships while still providing basic employment protections, such as social security, occupational safety, and protection against unilateral termination of partnerships.
3. Application companies are expected to review the contents of partnership agreements to ensure they meet the principles of fair partnership , transparency, and accountability, and do not create dependency or exploitation of driver partners.
4. The Ministry of Manpower needs to enhance its supervisory and mediation role to address reports or disputes between app companies and driver partners quickly, fairly, and in a manner that supports the protection of workers' human rights.
5. Further research is needed to examine the effectiveness of partnership regulations and their impact on driver welfare, so that the results can form the basis for formulating public policies that are more adaptive to the development of the digital economy.

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