

LEGAL FORMULATION ON THE PROTECTION OF LABOR SOCIAL SECURITY (JAMSOSTEK) FOR GIG ECONOMY WORKERS

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ABSTRACT

The Gig Economy Era is marked by the use of technology in several business sectors. The gig economy workers are met with their customers through a digital platform. This platform is designed in such a way by the platform provider company to connect workers with customers. In Indonesia, the concept of gig economy workers is mostly carried out with a contractual partnership system that places platform provider companies on an equal position with workers. However, the era of the gig economy has brought new problems, one of which is the design modification of the social security program for workers to be more friendly and open to gig economy workers. The Minister of Manpower Regulation Number 5 of 2021 concerning Procedures for the Implementation of the Work Accident Insurance, Life Insurance and Pension Plan Program categorizes workers with partnership status as workers outside the work relationship or independent workers. BP Jamsostek categorizes workers with contractual partnership status into the category of non-wage participants (BPU). Although the platform company has facilitated the registration of Jamsostek for its partners, in fact the number of BPU participants is still scanty. March 2021, there were a total of 3.25 million participants in the BPU segment, but only 2.7 million active participants. The authors are interested in discussing how the legal relationship between gig economy workers and platform provider companies is and who is actually responsible for paying the Jamsostek dues for gig economy workers. This research uses normative research methods, namely research that aims to find answers to legal problems by using normative legal theory. This study concludes that even though gig economy workers are in a contractual partnership with platform provider company, the position of the two remains unequal. This is evidenced by some of working relationships that arise from the standard contract mechanism. Various central regulations related to work are also mostly dominated by platform provider companies, such as control over tariffs to work targets. For this reason, the ideal formula in regulating Jamsostek for gig economy workers is to involve a platform provider company as a party that also pays the dues as a form of responsibility.

Keywords: Protection, Jamsostek, Gig Economy Workers

INTRODUCTION

Today's online transportation services have become an important need. It not only facilitates mobilization, but also absorbs workers systematically and massively. Transportation service workers certainly do not work alone, they are gathered by online application-based companies which then provide a platform that connects consumers with transportation service providers. The existence of online application-based transportation companies has become a disruptive economy to conventional transportation businesses. Some of the names include Gojek, Grab, Uber (which was later acquired its business in Southeast Asia by Grab), and later a Russian company, Maxim.

The development of technology that has an impact on the world of transportation business has created a new era which is now known as the gig economy era. Optimistic perception of the impact of the Gig Economy emphasizes that gig workers can increase productivity and work flexibility and the ability to save and meet their daily needs.¹⁸⁵ Uniquely, the concept of a gig workers working relationship that is embodied between a platform provider company and a transportation service provider is not an employment relationship as the employer-employee relationship as referred to by Law Number 13 of 2003 concerning Manpower (Labor Law). Online transportation services use the concept of a partnership between a platform provider company and a transportation service provider. The development of this application-based transportation company encourages an increase in the number of "partners" who are invited to work together. These partners, better known as online motorcycle taxis (ojol), are given freedom, especially during working hours. The "free" partner chooses to work at any time and determines whether the work is a freelance job or a permanent job.¹⁸⁶

Law number 3 of 2013 Article 1 paragraph 15 states that an employment relationship is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages, and orders. Changes in the pattern of employment relationships and the wage system in the digital era that have not been adopted in the

¹⁸⁵ Yeni Nuraeni, "Analisis Terhadap Undang Undang Ketenagakerjaan Indonesia Dalam Menghadapi Tantangan Revolusi Industri 4.0", *Jurnal Ketenagakerjaan*, Vol. 15, 1, 2020, hlm. 2.

¹⁸⁶ Oka Halilintarsyah, "Ojek Online, Pekerja atau Mitra?", *Jurnal Persaingan Usaha*, Vol. 2, (Jakarta: Desember 2021), hlm. 64.

Indonesian Manpower Law, such as partnership relationships.¹⁸⁷ This kind of relationship has the potential to cause various problems related to the legal protection of workers in Indonesia. There needs to be a realistic approach to dealing with the digitization of work that could potentially exploit a workforce with obscure legal status and very low wages. Actually, the Manpower Law in Article 56 paragraph 1 recognizes two forms of work agreements, namely an Indefinite Work Agreement and a Specified Time Work Agreement. The Specified Time Work Agreement itself is a form of work agreement that can accommodate freelancers. However, this regulation does not at all reach the gig worker phenomenon which is now increasingly mushrooming with the concept of a partnership relationship.

In a partnership relationship, the type of agreement used is a standard contract. Sutan Remy Sjahdeini stated that a standard agreement is an agreement in which almost all of the clauses have been standardized by the user and the other party basically does not have the opportunity to negotiate or ask for changes.¹⁸⁸ This partnership agreement has previously been made by the platform provider company without involving partners. Partners who will cooperate with platform provider companies only have 2 (two) choices, namely agree and disagree with the partnership agreement. If you disagree, the partner cannot cooperate and use the application provided by the platform provider company. And if you agree then the partner is bound by the partnership agreement. In the perspective of the KUHPerdara, it can be seen in the formulation of Article 138 paragraph (1) which states that "all agreements made legally apply as law for those who make them".¹⁸⁹

The implementation of a partnership relationship, as if to make the platform provider company with partners become balanced. The partnership arrangement is regulated in Article 1 point 4 of Government Regulation Number 17 of 2013 concerning the Implementation of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (hereinafter referred to as PP No. 17 of 2013), it is stated that "Partnership is cooperation in business linkages, either directly or indirectly, on the basis of the principle of mutual need, trust, strengthening, and benefit involving Micro, Small and Medium Enterprises with Large Enterprises." In the

¹⁸⁷ Sonhaji, "Aspek Hukum Layanan Ojek Online Perspektif Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Administrative law & Governance Journal*, 1, 4, November 2018, hlm. 85.

¹⁸⁸H. Salim HS, *Perkembangan Hukum Kontrak di Luar KUH Perdata*, (Jakarta: PT. Raja Grafindo Persada, 2006), hlm. 146.

¹⁸⁹ Rendy Saputra, *Kedudukan Penyalahgunaan Keadaan (Misbruik van Omstandigheden) dalam Hukum Perjanjian Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2016), hlm. 19-20.

partnership there is a principle of mutual need, mutual strengthening and mutual benefit, which will be established because the partners will recognize each other's position of advantages and disadvantages which will have an impact on efficiency and lower production costs. Because the partnership is based on a win win solution partnership (a mutually beneficial cooperation), the partners will have an equal bargaining position based on their respective roles. The characteristics of the partnership are equality of position, no party is harmed and aims to increase mutual benefits through cooperation without mutually exploiting one another and the growth of mutual trust between them.¹⁹⁰ Even though the concept of partnership which is based on a standard agreement is not as beautiful as stated by PP. 17 of 2013. Such standard agreements are often likened to a battle between “David against Goliath”, where two unequal powers face each other, between parties who have strong bargaining power (either because of the mastery of capital/funds, technology, and skills that positioned as Goliath) and the party with weak bargaining power (which is positioned as David). Thus, the party with weak bargaining power simply accepts all the contents of the contract by force (taken for granted) because if he tries to bargain with other alternatives, he will most likely accept the consequences of losing what is needed.¹⁹¹

. Even though it has advantages, this kind of partnership relationship certainly causes serious side effects, including the social security system for the workers' social protection of the partners, which until now has not been maximally fulfilled. The Minister of Manpower Regulation Number 5 of 2021 concerning Procedures for the Implementation of the Work Accident Insurance, Death Benefit and Old Age Security Program (Permen 5/2021) categorizes workers with partnership status as workers outside the employment relationship or independent workers, so that BPJAMSOSTEK (Employment Guarantee Administration Agency) categorizes gig workers in the category of Non-Wage Recipients (BPU) or informal workers. Currently, the number of BPJAMSOSTEK participants in the BPU category is still very minimal. As of March 2021, there are a total of 3.25 million BPU segment participants with only 2.7 million active participants. This number only covers about 4.2 percent of the

¹⁹⁰Ian Linton, *Kemitraan Meraih Keuntungan Bersama*, (Jakarta: Hailarang, 1997), hlm. 10.

¹⁹¹ Hernoko & Agus Yudha, *Asas Proporsionalitas dalam Kontrak Komersial Edisi 1*, (Yogyakarta: Laksbang Mediatama bekerja sama dengan Kantor Advokat “Hufron & Hans Simalea”, 2008), hlm. 2.

total informal workers who dominate the national labor force structure as of February 2021, which is 78.14 million people.¹⁹²

Based on these issues, it is interesting to discuss further about the legal relationship between gig economy workers and platform providers and who is actually responsible for paying the Jamsostek contributions for gig economy workers.

LITERATURE REVIEW

Based on the literature review that the author did, several studies related to gig economy workers were found. For this reason, in order to ensure the originality of this paper, the differences between this paper and the previous ones will be explained. **First**, the thesis entitled Development of measurement system on Indonesian digital worker characteristics in online gig economy. This thesis discusses the rapid growth of the Online Gig Economy (OGE) in the world which has the potential to reduce the unemployment rate in Indonesia because of the free employment and recruitment system and abundant employment opportunities regardless of national borders. With flexible working hours and systems, OGE can also be an alternative for workers with remote workplaces and restrictive rules. But apart from that, this growth has also caused several negative impacts on both the OGE actors themselves and the wider community. With this, the existence of OGE needs to be measured so that decision makers can be faster in making policies to overcome the negative impacts caused. Unfortunately, the current economic and employment measurement system is still inadequate to detect the distribution of OGE in Indonesia, especially digital workers. This research produces a system that can collect digital worker data from sites that are OGE platforms and classify them based on their field of work. Web crawling and scraping techniques were used to collect data and cosine similarity techniques were used for data classification. With this system, data about workers can be recorded quickly without conducting a field survey.¹⁹³

Second, the journal entitled Legal Protection for Women Drivers in the Gig Economy: Evidence from Tulungagung, East Java, that paper specifically discusses gender-based protection for women who work in the gig economy sector. This article specifies a particular

¹⁹² Kompas, Desain Jamsostek Perlu Dipermudah bagi Pekerja Platform Digital, <https://www.kompas.id/baca/ekonomi/2021/11/03/desain-jamsostek-perlu-dipermudah-bagi-pekerja-platform-digital>, diakses tanggal 11 Juli 2022.

¹⁹³ A. Labib Fardany Faisal, "Pengembangan sistem pengukuran karakteristik pekerja digital Indonesia dalam online gig economy", Tesis Universitas Indonesia, (Jakarta: Universitas Indonesia, 2019), hlm. 1.

company as a sample of his writing, namely Grab. This study discusses the protection of female workers in the gig economy sector from the security aspect to the aspect of social security protection and reveals the double burden of women as things that have not been accommodated by the legal protection system in the context of the gig economy.¹⁹⁴ This research also wants the ratification of ILO Convention No.190 of 2019 concerning the Elimination of Violence and Harassment in the World of Work to protect workers from various forms of violence and harassment and ILO Convention Number 189 of 2011 concerning Decent Work for Domestic Workers to protect women who work in the domestic sector.

Third, the journal with the title; Legal Protection of Online Ojek Partners in Indonesia. This paper focuses on two general protections for online motorcycle taxi workers who can be categorized as gig economy workers, namely preventive legal protection and repressive legal protection. Preventive legal protection is a must as a result of the development of the gig economy phenomenon, namely by regulating in detail the concept of partnership. Meanwhile, repressive protection is aimed at maximizing the functions of judicial institutions in dealing with cases related to gig economy workers. This paper also focuses on one of the platform providers, namely Go-Jek.¹⁹⁵

Fourth, a book with the title Pattern of Legal Relations between Employers and Workers, Partnerships and Agencies. One of the chapters in this book discusses the concept of legal relations in the context of partnerships in the online transportation business which is one of the phenomena in the gig economy. In addition, this book also discusses the legal umbrella from the existence of online transportation to the relationship between agency agreements.¹⁹⁶

METHOD, DATA AND ANALYSIS

This research is a normative juridical research conducted to examine positive legal norms or rules.¹⁹⁷ The library materials used are: (a) primary legal materials consisting of

¹⁹⁴ Ahmad Zulfiyan, "Legal Protection for Women Drivers in the Gig Economy: Evidence from Tulungagung, East Java", *Brawijaya Law Journal, Journal of Legal Studies*, 7, 2, Oktober 2020, hlm. 219-220.

¹⁹⁵ M. Kharis Mawanda dan Adam Muhshi, "Perlindungan Hukum Mitra Ojek Daring di Indonesia", *Lentera Hukum*, 6, 1, April 2019, hlm. 48-49.

¹⁹⁶ Willy Farianto, *Pola Hubungan Hukum Pemberi Kerja Kemitraan dan Keagenan*, (Jakarta: Sinar Grafika, 2019), hlm. 116.

¹⁹⁷ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), hlm. 295.

legally binding materials in the form of statutory regulations and decisions of the Constitutional Court; and (b) secondary legal materials that provide primary legal materials in the form of literature, journal articles, and relevant research results.¹⁹⁸ Data collection is done through literature study of relevant legal materials. The analysis of the data that has been collected is carried out in a qualitative descriptive manner in order to answer the formulation of the problem in this study.¹⁹⁹ In accordance with the field of study of Legal Studies, the approach used in this study is normative juridical with an emphasis on literature study to examine the meaning and purpose of the legal relationship between the platform provider company and the service provider (gig economy worker). Data collection techniques using research stages in the form of Library Research (Library Research). Literature research begins with research on articles relating to the legal relationship between platform provider companies and service providers (gig economy workers) and their implementation in practice.

In reviewing this research, the research team used several theories including:²⁰⁰

- a. **Grand Theory:** The principle of justice Labor law was born from the idea of providing justice for the parties involved in labor relations.
- b. **Midle Range Theory:** The principle of balance In the employment relationship, a balance is needed between the employer and the recipient of the work, so that a common goal is achieved.
- c. **Applied Theory:** Protection principle. In order for the purpose of employment to be realized, one way is by protecting the parties, especially workers, through existing legal means, in other words ensuring the fulfillment of the rights of workers in employment.

RESULTS AND DISCUSSION

1. Overview of Employment and Employment Relations

Manpower law is a set of regulations that regulate the legal relationship between workers or worker's organizations and employers or employer's organizations and the

¹⁹⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press, 2006), hlm. 52.

¹⁹⁹ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, (Jakarta: Prenada Media Group, 2017), hlm. 273.

²⁰⁰ Duane R. Monette Thomas J. Sullivan, Cornell R. Dejong, *Aplied Social Research*, (Chicago, San Fransisco: halt, Reinhart and Winston Inc. 1989), hlm.31.

government, including the processes and decisions issued to make this relationship a reality. From this formulation, a conclusion can be drawn that labor law is a set of regulations that regulate legal relations between workers, employers, worker's organizations, employer's organizations, and the government.²⁰¹

According to Moelenar, Manpower Law is part of the applicable law which basically regulates the relationship between workers and employers. According to Mr. G. Lavenbach, Manpower law is law relating to employment relations, where the work is carried out under the leadership and with living conditions that are directly related to the employment relationship. According to Mr. N.E.H. Van Esveld, Manpower law does not only cover employment relationships where the work is under the leadership, but also includes work carried out by workers who carry out work at their own risk. According to Mr. Mok, Manpower law is a law that deals with work carried out under the leadership of another person and with a decent living directly dependent on that work.²⁰²

The characteristic of labor law is the existence of an employment relationship. The definition of an employment relationship in Article 1 number 15 of Law Number 13 of 2003 concerning Manpower (Labor Law) defines that an employment relationship is a relationship between an entrepreneur and a worker/labourer based on a work agreement, which has elements of work, wages, and orders. Judging from this understanding, it means that an employment relationship arises because of a work agreement, not because of a partnership agreement. The partnership agreement itself will only lead to a cooperative relationship. While the work agreement according to Article 1 number 14 of the Manpower Law defines that a work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the working conditions, rights, and obligations of the parties. The elaboration of the elements of orders, work and wages is as follows:²⁰³

a. Orders

Command is identical with the leadership done by others. It is this command element that distinguishes a working relationship on the basis of an agreement from other relationships. Workers/Labourers must obey the orders of the authorities. The element of this order also confirms that the position between workers/labourers is not balanced.

²⁰¹ Darwin Prinst, *Hukum Ketenagakerjaan Indonesia (Buku Pegangan Pekerja Untuk Mempertahankan hak-haknya)*, (Bandung: Citra Aditya Bakti, 1994), hlm. 1.

²⁰² Sedjun H. Manulang, *Pokok-Pokok Ketenagakerjaan Indonesia*, (Jakarta: Rineka Cipta, 1987), hlm. 2.

²⁰³ Endah Pujiastuti, *Pengantar Hukum Ketenagakerjaan*, (Semarang: Semarang University Press, 2008), hlm. 15

This is different from the contractual relationship that occurs between a doctor and a patient or between a lawyer and a client.

b. Works

This element then becomes the object of a working relationship. The work must exist and be carried out directly by the worker based on the employer's orders. This work then creates rights and obligations for the parties.

c. Wages

Wage itself is an important element as a result of the existence of work. Wages are workers' rights and obligations for employers which are realized in the form of money. According to Edwin B. Filippo in a paper entitled "Principles of Personal Management" states that what is meant by wages is the price for services that have been received or provided by others for the benefit of a person or legal entity.²⁰⁴

2. Relationship Between Gig Economy Worker and Platform Provider Company

Judging from the definition of an employment relationship, it can be concluded that the existence of an employment relationship arises because of a work agreement, not because of a partnership agreement. The partnership agreement itself will only lead to a cooperative relationship. While the work agreement according to Article 1 number 14 of the Manpower Law defines that a work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the working conditions, rights, and obligations of the parties.

If we examine using the elements of the work agreement that form the basis of the employment relationship, no working relationship is found between the platform provider company and the service provider (gig worker). This is because the partnership agreement has different characteristics from the work agreement. In the partnership agreement, only the elements of work are fulfilled, while the elements of wages and orders are not fulfilled.²⁰⁵

The legal relationship created between gig workers and the platform provider company is a partnership based on a partnership agreement, legal protection for online motorcycle

²⁰⁴ I wayan Nedeng, *Lokakarya Dua Hari: Outsourcing dan PKWT*, (Jakarta: Lembangtek, 2003), hlm2.

²⁰⁵ Willy Farianto, *Op., cit*, hlm. 117.

taxi partners is not protection for workers based on a work agreement, but protection as a party to a partnership agreement. Thus, the Manpower Law cannot be applied in this partnership agreement, but the cooperative relationship that arises in this partnership agreement is an ordinary agreement with a company, namely a general form of a legal relationship between one party and another on the basis of a cooperative relationship, which is subject to on the rules in the KUHPperdata.

Basically a contract starts from a difference of interest between the parties. The formulation of the contractual relationship in general always begins with a negotiation process in which the parties seek to create forms of agreement for mutual benefit or to bring together something they want (interests) through a bargaining process. In short, in general, a contract or agreement often begins with different interests that are tried to be reconciled through the contract negotiation process in the pre-contract phase. Through the negotiation process in the pre-contract phase, various differences and interests of each party are negotiated, then brought together, then framed with a legal instrument called a contract so that it can bind the parties.²⁰⁶

The provisions related to the partnership agreement have actually been regulated in general in article 1338 in conjunction with article 1320 of the KUHPperdata, and specifically in PP No. 44 of 1997 concerning partnerships. The partnership agreement itself is a form of anonymous agreement. Unnamed agreements have been regulated in Article 1319 of the KUHPperdata, namely "All agreements, both those that have a special name and those that are not known by a certain name, are subject to the general rules contained in this chapter and other chapters". Under the pretext of achieving time effectiveness and efficiency, the partnership agreement is embodied in a standard agreement. The first party has previously formulated the agreement that will be implemented between the two parties. Then the second party reviews the agreement that has been made to decide on the next step whether to continue with the agreement or not to hold the agreement.

This is not forbidden, even though the gaining position appears to have not been fulfilled, partners only have two choices, take it or leave it. However, if the parties put forward the principles of trust, justice and balance in the formulation of the partnership

²⁰⁶ Hernoko dan & Agus Yudha, *Loc., cit.*

agreement, then the content and benefits will be in line with the objectives of the parties.²⁰⁷ There are two forms of partnership agreements between platform providers and service providers, namely in written form in the form of a Partnership Certificate and electronic form in the form of a Partnership Agreement contained in the application. A written agreement, the partner who agrees to sign the letter. An electronic agreement is more complete than a written agreement, partners who agree to the agreement agree by clicking on the agreement and then the application can be used. In the partnership agreement clause above, it can be seen that when the partner has agreed to the partnership agreement contained in the application, the previous agreement signed by the platform provider company and service provider has been replaced with the partnership agreement in the application so that the signed written agreement is no longer valid.²⁰⁸ In addition, in the partnership agreement, there are phrases whose formulation does not involve service providers/gig economy workers.

This pattern of relationships results in an imbalance in position between the platform provider company and the service provider (employee). This is not in line with Article 1 point 4 PP No. 17 of 2013 that business cooperation must be based on equality of position and have the same degree for the parties who are partnering, no party is harmed in a partnership with a common goal of increasing profits or income through business development without mutually exploiting each other and developing a mutual trust between them.

The phenomenon of an imbalance in contracting as mentioned above can be observed in several contract models, especially consumer contracts in the standard form which contain clauses whose contents (tend to be) one-sided. In order for the exchange process in the contract to run fairly, the parties are required to understand the basics of contract law. It should be remembered that the contract made or drafted by the parties is basically a business process pouring into the formulation of legal language (contract). By understanding the legal basis of the contract, it is intended that the parties have guidelines in the preparation of the contract because it provides a legal basis for the contract made,

²⁰⁷ Dahrul Muftadin, "Dasar-Dasar Hukum Perjanjian Syariah Dan Penerapannya Dalam Transaksi Syariah", *Al-'Adl*, 11, 1, 2018, hlm. 100

²⁰⁸ M. Kharis Mawanda dan Adam Muhshi, *Op., cit.*, hlm. 42.

provides a frame or signs or rules of the game in business transactions, and acts as a touchstone or benchmark for the existence of the contract in question.²⁰⁹

Along with the times, the principle of freedom of contract which this principle gives freedom to parties to make or not make an agreement, enter into an agreement with anyone, determine the content of the agreement/implementation and its requirements, determine the form of the agreement in written or oral. The principle of contracting adopted by Indonesian law is inseparable from the open system adopted by Indonesian law. Book III of the KUHPerdata is a complementary law that may be set aside by the parties making the agreement which should be stated in the partnership agreement. Freedom of contract is now no longer limited. The state has made a number of restrictions on freedom of contract, at least influenced by two factors, the increasing influence of the teaching of good faith not only on the implementation of the contract, but also must exist at the time the contract is made, and the growing teaching of abuse of circumstances (*misbruik van omstandigheden atau undue influence*)²¹⁰

3. Social Security of *Gig Economy Worker*

The term social security first appeared in the United States in The Social Security Act of 1935 to solving the problems of unemployment, the elderly, the sick and children due to the economic depression. Although the implementation of social security in developed countries has recently undergone changes, basically the implementation of social security there is essentially understood as a real form of state protection for its people.²¹¹ As explained by Cheyne, O'Brein and Belgrav social security is essentially the exercise of the social function of the state. According to them, what we know as 'social security' is as a system of state financial support that is paid to those persons who are not provided for adequately by the market and as a system of state financial support paid to those persons who are unable to secure adequately.²¹²

²⁰⁹ Hernoko dan & Agus Yudha, *Op., cit.*, hlm. 86

²¹⁰ Ridwan Khairandy, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan (Bagian Pertama)*, (Yogyakarta: FH UII Press, 2013), hlm. 90

²¹¹ Mudiyono, "Jaminan Sosial Di Indonesia: Relevansi Pendekatan Informal", *Jurnal Ilmu Sosial dan Ilmu Politik*, 6, 1, Juli 2002, hlm. 68.

²¹² Christine Cheyne, Mike O'Brien dan Michael Belgrave, *Social Policy in Aotearoa New Zealand: a Critical Introduction*, (Duckland: Oxford University Press, 1988), hlm. 176.

Article 28 H paragraph (1), paragraph (2), paragraph (3) and Article 34 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia have determined the right to social security for all people. In addition, social security is also guaranteed in the United Nations Declaration on Human Rights in 1948. This is also reinforced in the ILO Convention Number 102 of 1952 concerning the Minimum Standards for Social Security which recommends all countries to provide minimum protection to every worker. In order to carry out this mandate, the People's Consultative Assembly stipulates by TAP MPR Number X/MPR/2001 that the President has assigned to establish a National Social Security System in order to provide comprehensive and integrated social protection.

The National Social Security System is a social protection system for all people. Social protection has a strategic role to deal with vulnerabilities caused by natural or economic risks. As it is known that Indonesia is one of the disaster-prone areas and the impact of the disaster has resulted in the need to reallocate the budget to rebuild damaged infrastructure. The disaster has also caused many families to lose property and lives, so this is quite difficult in efforts to improve people's welfare.²¹³

The development of digital platforms globally has increased from 1999-2020. Digital platforms in the delivery sector experienced the highest increase. Not only in the field of delivery, digital platforms in the online web-based field, as well as passenger transportation have also increased (Heaney, 2021). Of course, this development cannot be separated from several factors, such as the qualifications of digital platform workers in the gig economy, which are not as complicated as non-digital work models. In addition, flexibility is also an important point behind the increasing number of workers in this sector.

The digital-based gig economy has also experienced significant development in Indonesia, this development has also increased during the COVID-19 pandemic. The digital platform is a solution for many people during the pandemic to order food, consult with doctors, to take courses and study activities. Even the gig economy in Indonesia is seen as a form of economic resilience that creates many jobs and business opportunities. Not only that, the flexibility in the gig economy makes it one of the solutions for workers who have been laid off during the pandemic.

In general, the social security system is regulated in Law Number 40 of 2004 concerning the National Social Security System (UU SJSN). The philosophy of social

²¹³ Zaelani, "Komitmen Pemerintah Dalam Penyelenggaraan Jaminan Sosial Nasional (Government Commitment in The Implementation of National Social Security)", *Jurnal Legislasi Indonesia*, 9,2, Juli 2021, hlm. 192.

security as referred to in Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS) is rooted in the capitalist system because social security is interpreted as a strategy of providing reserve funds to overcome economic risks that arise globally. Systemic in the economic cycle of capitalism (crisis).²¹⁴ After the ratification of ILO Convention 102, Indonesia has at least organized a National Health Insurance which is under the auspices of the Social Security Administering Body (BPJS) for Health and has implemented an Employment Security program which includes: Work Accident Insurance, Death Insurance, Old Age Security, and Pension Security which are currently This is regulated in Law Number 24 of 2011 concerning the Social Security Administering Body.

Gig workers who do not meet the elements of an employment relationship, through Article 1 number 15 of Ministerial Regulation 5/2021 are categorized as workers with partnership status as workers outside the employment relationship or independent workers, so that BPJAMSOSTEK categorizes gig workers in the category of Non-Wage Recipients (BPU) or informal workers. This means that gig workers are fully and independently responsible for all employment guarantees, Work Accident Insurance, Death Security, Old Age Security, and Pension Security.

CONCLUSIONS AND RECOMMENDATIONS

The gig worker in fact does not have a working relationship with the platform provider company, the concept of the relationship between the two is expressed in the form of a partnership relationship based on a partnership agreement. This partnership agreement does not fulfill the elements of a work agreement as referred to in the Manpower Act. A partnership relationship is actually a business cooperation agreement that must be based on an equal position and have the same degree for the parties who are partnering, no party is harmed in a partnership with a common goal of increasing profits or income through business development without mutually exploiting each other and develop mutual trust between them. However, in fact, platform provider companies use a standard contract model in their partnership process with online service providers (gig workers). The non-fulfillment of the principle of freedom of contract which demands the role of the parties in determining the contents of the agreement, makes the position of the two unequal.

²¹⁴ Rudy Hendra Pakpahan dan Eka Nam Sihombing, "Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial (Responsibility State in The Implementation of Sosial Security)", *Jurnal Legislasi*, 9, 2, Juli 2021, hlm. 169.

Online service provider workers (gig workers) are also categorized as Non-Wage Recipients due to the non-fulfillment of the working relationship in the concept of a partnership agreement. As a result, gig workers are considered as independent workers who work in the informal sector. This results in gig workers having to fulfill their own assurance.

This should be the government's attention. The ineffectiveness of the implementation of the employment guarantee which is the responsibility of the gig worker is an unavoidable fact. The large number of informal sector workers, especially gig workers who have not registered and are active as users of employment insurance, is clear evidence of the weak position of gig workers in a partnership agreement, although it is undeniable that psychological factors in the form of awareness and responsibility for personal safety also affect. BPJAMSOSTEK seems to need to collaborate with platform providers to ensure access to social security for gig workers.

Contribution payment schemes should also be a concern. It seems that demanding gig workers to become formal sector workers is an excessive demand. However, the employment social security program can be expanded by proportionally dividing the amount of contributions paid. This proportional amount will certainly be wiser if it is regulated by the government as a party present to protect gig workers whose position is in fact unequal to the platform provider companies. This proportional distribution is also a form of partnership relationship that wants equality and mutual benefit.

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