

## Legal Relationship Between Platform Service Providers and Online Transportation Driver as Gig Workers (Platform Workers)

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**Abstract:** This research aims to determine the classification of legal relationships between platform service providers and online transportation drivers as gig workers (platform workers). The choice of theme is motivated by the fact that so far the legal relationship that occurs between platform service providers and online transportation drivers is a partnership relationship, but the partnership relationship that occurs does not implement the principles of partnership in its implementation in the business world. This partnership cooperation relationship is not regulated in the Law Number 20 of 2008 regarding Micro, Small, and Medium Enterprises or the Indonesian labour law because the Indonesian labour law only recognizes working relationships, while in the Law Number 20 of 2008 regarding Micro, Small, and Medium Enterprises because the original intent of the partnership in Law No.20/2008 is very different from the partnership relationship that is currently happening between platform service providers and online transportation drivers. Then the writing of this paper uses a normative juridical method with a statutory approach and an analytical approach. The legal material obtained by the author will be analyzed using descriptive analytical analysis techniques, namely a method of analyzing legal material by determining the content or meaning of legal rules in terms of partnership cooperation relationships, as well as the Civil Code. From the results of research with the above methods, the classification of legal relationships between platform service providers and online transportation drivers as gig workers (platform workers) is classified as a partnership relationship based on the Subordinate union of partnership, namely a partnership based on the merger of two or more parties that are subordinately related

**Keywords:** Partnership, Platform Service Providers, Gig Economy

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## INTRODUCTION

The term "partnership relationship" is commonly heard in discussions related to employment in modern times in Indonesia, in line with the proliferation of various gig economy platforms. Generally, these are fast-paced and quickly mediated digital platform jobs that can be divided into two types, namely: a) Crowdwork (*purely internet based*), b) On demand work (*location based*).

Furthermore, amidst these developments, some politicians, academics, and media refer to the future form of the economy as the gig economy. For example, the emergence of the gig economy in Indonesia represents a form of modern employment practice with mechanisms that involve completing short-term tasks through the utilization of digital platforms, as previously mentioned, such as online transportation services like Go-JEK, Grab, Maxim, InDrive, and others. President of Indonesia, Joko Widodo, has even praised the gig economy as a business model in companies like Maxim, Grab, and Gojek, citing it as a pillar of the national economy and a contributor to job creation in Indonesia <sup>1</sup>, particularly in the informal sector.

In its development, app-based transportation companies have been able to increase the number of "partners" <sup>2</sup> they collaborate with. There is a degree of freedom for all these online driver partners, particularly regarding working hours, where partners are free to choose when to work and decide whether to use it as a full-time or freelance job. The characteristic of partnership cooperation between service platform providers and online transportation drivers can be seen in the partnership agreement between them, with details provided by the platform service provider, where the agreement is referred to as a "partnership agreement" <sup>3</sup>

When viewed in terms of its contractual form, based on the partnership agreement, this is already stipulated in the laws of Indonesia under the Indonesian Civil Code (KUH Perdata) Article 1338 in conjunction with Article 1320. In essence, a valid agreement under the law has a fundamental element of

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<sup>1</sup> Ridhwan Mustajab, "Mayoritas Tenaga Kerja RI Dari Sektor Informal Pada Agustus 2022," Data Indonesia, 2023, <https://dataindonesia.id/sektor-riil/detail/mayoritas-tenaga-kerja-ri-dari-sektor-informal-pada-agustus-2022>.

<sup>2</sup> KBBI Daring, "Kamus," 2023. <https://kbbi.web.id/partner>

<sup>3</sup> Gojek, "Perjanjian Kemitraan Untuk Mitra PT. Paket Anak Bangsa," accessed March 6, 2023, <https://www.gojek.com/app/kilat-contract/>, diakses 6/3/2023; Grab, "Terms of service: Transport, delivery, and logistics," <https://www.grab.com/id/en/terms-policies/transport-delivery-logistics/>.



"consent of the parties involved" or, in simpler terms, an agreement between parties on equal terms. Article 1338(1) further explains that "all agreements made in accordance with the law shall have the force of law for those who make them," which is known as the principle of consensuality. Partners have an obligation to adhere to all the policies and terms and conditions in the utilization and use of the application.

Many people assume that the legal relationship between platform companies and online transportation drivers is based on an employment contract, making them subject to labor regulations under Law No. 13 of 2003. In fact, many online drivers do not fully understand the legal relationship because they perceive themselves as employees of the online transportation application companies. International Labour Organization (ILO)<sup>4</sup> categorizes these partnership agreements as Disguised Employment Relationships or Dependant Self-Employment, even though in reality, these "partners" are not purely self-employed. From how partners receive orders, the methods for obtaining orders, penalties, and bonuses, everything is unilaterally determined by the platform service provider. In terms of income, the partners' earnings depend on the amount of bonuses and the rate per kilometer driven, all of which are determined by the platform service provider.

When discussing partnership agreements between platform service providers and online transportation drivers, it's important to note that the positions of the parties involved should ideally be equal, and they should have equal rights and responsibilities. However, in practice, many of these partnership agreements are often one-sided, containing clauses that may disadvantage the partners. For example, some agreements may allow the platform service provider to change the terms at any time without discussing or notifying the partners. Partners are often considered to have accepted these changes as long as they continue to use the service. Such practices can raise concerns about the fairness and balance of these agreements, and they may lead to disputes between the platform providers and their partners. Legal and regulatory frameworks may need to evolve to address these issues and ensure that the rights and interests of all parties involved in the gig economy, including platform providers and workers, are adequately protected.

It doesn't seem appropriate to call this a partnership agreement when everything is unilaterally regulated by the platform service provider as the

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<sup>4</sup> International labour organization, "Disguised Employment / Dependent Self-Employment," accessed March 23, 2023, [https://www.ilo.org/global/topics/non-standard-employment/WCMS\\_534833/lang-en/index.htm](https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang-en/index.htm).



employer, as there is no difference from an employment agreement between an employer and an employee as regulated in the Employment Law. Currently, online transportation drivers are classified as "partners" by platform companies, but they do not have the rights typically associated with partners. They are referred to as partners but work within a labor-employer relationship.

Therefore, there is a need for research and studies, especially in the field of labor law. Hence, in line with the previous discussion, I have an interest in conducting research on The Legal Relationship Between Platform Service Providers And Online Transportation Drivers As Gig Workers (Platform Workers).

This written work employs a normative juridical method with a statute approach and an analytical approach. Legal materials obtained by the author will be analyzed using a descriptive-analytical technique, which is a method for analyzing legal materials by determining the content or meaning of legal rules in terms of the Employment Law, the SME Law, as well as the **Civil** Code. Data collection techniques involve the examination of primary, secondary, and tertiary legal materials as the basis for conducting in-depth analyses.

## **THEORETICAL BASIS**

### **Legal Protection Theory**

According to Fitzgerald, as quoted by Satjipto Raharjo, the origin of the emergence of the theory of legal protection is derived from the theory of natural law or the natural law school. This school of thought was pioneered by Plato, Aristotle (a student of Plato), and Zeno (the founder of the Stoic school). According to the natural law school, it is stated that the law originates from God, is universal and eternal, and that law and morality cannot be separated. The adherents of this school of thought view that law and morality are reflections and rules both internally and externally in human life that are realized through law and morality. Fitzgerald explains Salmond's legal protection theory, which states that the law aims to integrate and coordinate various interests in society because, in a traffic of interests, protection of specific interests can only be achieved by limiting other interests. Legal interests involve dealing with human rights and interests, and thus, the law holds the highest authority in determining the interests of humans that need to be regulated and protected. Legal protection must go through stages, with legal protection arising from legal provisions and all legal regulations provided by the community, which fundamentally represent the consensus of the community to govern behavioral relationships among its members and individuals with government seen as representing the interests of the society



In this study, the theory of legal protection will be used as an analytical tool to determine the forms of legal protection for workers who engage in remote working. Satjipto Raharjo explains that legal protection is the shelter provided for human rights that have been infringed upon by others, and this protection is extended to society so that they can enjoy all the rights granted by the law. This notion of legal protection is considered a measure to organize various interests for society, thereby preventing conflicts between interests and ensuring the enjoyment of all rights provided by the law.<sup>5</sup> The inspiration for the concept of legal protection by Satjipto Raharjo is based on the ideas put forth by Fitzgerald regarding the purposes of law, which include coordinating and integrating various interests within society through efforts to limit and safeguard those diverse interests.<sup>6</sup>

Dr. O. Notohamidjojo, SH's opinion regarding the understanding of the meaning of law is that Law is the entirety of written and unwritten regulations, typically coercive in nature, governing human behavior in the state and between states, with an orientation towards two principles: justice and utility, in order to establish order and harmony within society. In law, the definition of legal protection is all conscious efforts made by individuals and both government and private institutions aimed at ensuring the security, control, and fulfillment of the well-being of life in accordance with the fundamental rights as regulated in Law No. 39 of 1999 concerning Human Rights.

### Agreement Theory

The theory of contracts in this study is used as an analytical tool to understand both the form and content of employment agreements that can provide justice and protect the rights of remote working employees. R. Subekti explains that a contract is an event where there is an agreement between one person and another person who mutually promise to perform something.<sup>7</sup> According to Djumadi, an agreement is an event in which one person binds a promise to another individual, or where two or more individuals mutually bind promises in order to achieve a certain purpose.<sup>8</sup> Furthermore, Djumadi states that a new agreement is considered valid if it complies with the legal requirements.<sup>9</sup>

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<sup>5</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012), 19.

<sup>6</sup> Tedi Sudrajat dan Endra Wijaya, *Perlindungan Hukum Terhadap Tindakan Pemerintahan* (Rawamangun: Sinar Grafiika, 2020). 21

<sup>7</sup> Syahmin, *Hukum Perjanjian Internasional* (Jakarta: PT. Rajagrafindo Persada, 2006). 12

<sup>8</sup> Djumadi, *Hukum Perburuhan Perjanjian Kerja* (Jakarta: Raja Grafindo Persada, 2004). 32

<sup>9</sup> Djumadi.





## RESEARCH METHODS

As is commonly understood, legal research is a scholarly activity grounded in specific methods, systematic approaches, and particular modes of thinking. Its purpose is to study one or more general legal phenomena by means of analysis. In this study, the researcher employs the type of research known as Normative Juridical, involving an examination of legal regulations, legal theories, and jurisprudence related to the issues under investigation.<sup>10</sup> This written work employs a normative juridical method with a statute approach and an analytical approach. Legal materials obtained by the author will be analyzed using a descriptive-analytical technique, which is a method for analyzing legal materials by determining the content or meaning of legal rules in terms of the Employment Law, the SME Law, as well as the Civil Code. Data collection techniques involve the examination of primary, secondary, and tertiary legal materials as the basis for conducting in-depth analyses.

## RESULTS AND DISCUSSION

### **Characteristics of the Partnership Cooperation Agreement Between Platform Service Providers and Online Transportation Drivers as Gig Workers (Platform workers)**

Guy Davidov states in his book that it's almost a cliché to say that labor law is in crisis because labor law always seems to be in crisis. The reason may be the dynamic nature of the labor market itself. With its ever-changing conditions, it is natural for the laws that regulate it to continuously adapt. The 'crisis' of contemporary labor law today is caused by something called the 'gig economy.' According to one definition, the gig economy is "a labor market characterized by the prevalence of short-term contracts or freelance work, as opposed to permanent jobs."

'Gig' is defined as a one-time task or transaction with no further commitment on both sides. Heeks analyzed various terminologies that can be used in this domain and concluded that the key terms from a labor perspective are 'online work' or 'digital gig economy.' This is evidenced by the increasing number of startups establishing online platforms and mobile 'apps' to connect consumers, businesses, and workers, often for jobs that last no more than a few minutes.<sup>11</sup>

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<sup>10</sup> Irwansyah, *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana, 2021). 34

<sup>11</sup> Nabiyla risfa izzati, "Exploring Legal Landscape of Indonesia's on Demand Transportation: Case of Gojek and the Workers Social Protection," 2018, <https://doi.org/http://dx.doi.org/10.2139/ssrn.4146661>.



From a legal perspective, this new form of the 'gig economy' has disrupted long-standing regulations and policies, as well as the scientific understanding of work, especially in the transportation industry. Furthermore, many aspects of regulating online transportation businesses cannot be found in existing regulations and policies in Indonesia. The Indonesian government cannot even classify these online transportation platforms as transportation companies because these platforms claim that they do not provide transportation services. These platform service providers argue that they are merely intermediaries connecting drivers and consumers through their applications. Millions of online transportation drivers are not considered their employees; they are referred to as 'independent contractors' or 'partners,' as these platforms commonly label them.

The rapid growth of the gig economy model is characterized by jobs that are temporary, unlimited, and based on specific demand or projects (on-demand workers), and it offers flexibility. This condition is seen as an advantage, particularly by the millennial generation, because it is considered to provide fresh ideas, flexibility, freedom from work routines, and a broad network. One of the implementations of the gig economy in today's era is marked by the proliferation of partnership collaborations applied by companies in Indonesia, especially those providing services through platform service providers (such as Go-Jek, Grab, Maxim, InDrive, and others).

The relationship that occurs in the working relationship between platform service providers (such as Go-Jek, Grab, Maxim, and others) and online transportation drivers as partners is a partnership relationship, as evident in their agreement documents provided by the platform service providers, often referred to as a "partnership agreement." In the terms and conditions provided for consumers of GO-JEK, for example, which can be accessed on their website, it is clearly stated in Article 5:

"To avoid any ambiguity, we are a technology company, not a transportation or courier company, and we do not provide transportation or courier services. We do not employ Service Providers, and we are not responsible for any actions and/or negligence of the Service Providers. The application is merely a means to facilitate the search for Services. It is up to the Service Providers to offer Services to you, and it is up to you whether to accept their Service offers." <sup>12</sup>

The tangible form of partnership can be agreed upon as a cooperative concept where, in its operationalization, there is no subordinate relationship but

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<sup>12</sup> Gojek, "Perjanjian Kemitraan Untuk Mitra PT. Paket Anak Bangsa."



rather an equal relationship among all parties<sup>13</sup> In other words, partnership is based on principles that should be understood and upheld by all partners in its implementation. According to Wibisono, these principles include:<sup>14</sup> (1) Equality or Balance (*equity*), (2) Transparency, (3) Mutually Beneficial

However, the existence of this partnership is nothing more than a myth. It can be seen that none of the three elements inherent in a partnership relationship, namely equality, transparency, and mutual benefit, are fulfilled. In terms of equality, online transportation drivers as partners do not have an equal bargaining position with the platform providers. This is because whenever there are changes related to work rules that should be negotiated with drivers as partners, such negotiations never take place. Rule changes are often directly communicated to online transportation drivers by the platform service providers through the application without any negotiation, let alone consent. In a short period, whether they like it or not, online transportation drivers have to accept these changes to continue using the application system and immediately receive orders from passengers under the new terms.

Furthermore, the second element, transparency, is also not fulfilled by the platform service providers. It is known that there are various issues regarding the strategic information gap between the company and online transportation drivers as their partners.<sup>15</sup> The platform service providers have more information compared to the drivers as partners, such as changes in rules issued unilaterally by the company management, whether related to tariff changes or the assessment of the performance of online transportation driver partners. In terms of management that oversees and controls the work processes, there is no transparency regarding how algorithms are set and the sanctions and unilateral termination of partnership relationships by platform companies against drivers.<sup>16</sup> This dominance affects changes in how partner drivers' earnings are calculated, which automatically alters the previous application. As a result, they do not have rights and do not have the opportunity to discuss company policies, even those related to common interests.

The third and final element, mutual benefit, is also not fulfilled by the platform service providers. In the old version, drivers could freely choose

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<sup>13</sup> Endang yuniastuti, *Pola Kerja Kemitraan Di Era Digital: Perlindungan Sosial Transportasi Online Roda Dua* (Jakarta: PT. Elex media komputindo, 2021).

<sup>14</sup> Yusuf Wibisono, *Membedah Konsep Dan Aplikasi CSR* (Fascho Publishing, 2007). 43

<sup>15</sup> Yusuf Wibisono.

<sup>16</sup> Arif novianto Yeremias T. Keban, Ari hernawan, *Menyoal Kerja Layak Dan Adil Dalam Ekonomi Gig Di Indonesia* (Yogyakarta: IGPA Press, 2021). 31





orders from passengers, and the rate per kilometer was 2,500 rupiahs with a minimum payment of 15,000 (Tariff at that time). This rule was considered to make it easier for drivers to improve their performance. However, the new version's rules significantly limit passenger orders and make it more difficult for drivers to improve their performance and receive bonuses. However, these rules are seen as very beneficial to consumers or passengers. To get a bonus, there is a time limit and a target number of trips that must be completed. Achieving the target number of trips is difficult if the orders received are consistently far away. However, if the orders are not taken, drivers are penalized, and their performance automatically declines. As a result, most of them choose to accept these orders rather than being unable to continue working due to penalties.

In practice, partnerships are not always ideal because they are based on the interests of each party involved in the partnership. The relationship between the company management and online transportation driver partners is not equal. One party has more power to determine the rules that driver partners must adhere to through the application. Driver partners, as individuals seeking employment, are required to comply with the rules set by the company's application, even if they find them unfavorable.

In some cases, platform service providers actually exploit this partnership relationship for their own benefit. It can be observed that platform service providers engage in a practice called "false partnership" (Subordinate union of partnership), which is a political action taken by platform companies to classify workers as 'partners' but without applying the principles of partnership. This false partnership model is proliferating, supported by a significant demographic bonus in Indonesia, where the workforce grows every year, which is imbalanced with the available job opportunities, especially in the formal sector. As a result, many individuals are transitioning to gig economy jobs.

The Subordinate Union of Partnership model is a partnership based on the merging of two or more parties in a subordinate relationship. This type of partnership occurs between two or more parties who have unequal status, abilities, or strengths. Consequently, the relationship that is formed is not balanced; instead, it exists in a hierarchical relationship, with one party being stronger or in a position of authority over the other. Because of this unequal condition, there is a lack of sharing and balanced roles or functions in the partnership.



### **Partnership Cooperation Agreement From The Perspective of The SME LAW**

Obligation and agreement refer to two different things. Obligation is a term for an abstract statement used to refer to a legal relationship in the property of two or more individuals or parties that results in an obligation for one party.<sup>17</sup> An agreement is one of the origins of the birth of an obligation, where an agreement is made in which one or more parties commit to fulfilling the promised obligations.

The aspect of interdependence emphasizes that an agreement is a legal act, and the legal act referred to is an act that has legal consequences because of the intentional actions of one or more individuals. The agreement of the parties with good faith is the most important characteristic of a contract. This mutual agreement is not only a part of the agreement but is also crucial as an expression of good faith towards the other party. However, an agreement is a meeting or a mutual agreement of good faith among the parties to the agreement, and it must be aimed at creating legal consequences.<sup>18</sup>

The definition of an agreement is contained in the Indonesian Civil Code in Article 1313, which states that "An agreement or consent is an act by which one or more persons bind themselves to one or more others." This means that an agreement creates obligations for one party and grants the other party the right to the fulfillment of a performance. Within an agreement, there are also several principles, and the Civil Code provides a clear delineation of the principles of an agreement, including:

- (a) Principle of Consensualism
- (b) Principle of Personalia
- (c) Principle of Legal Certainty
- (d) Principle of good faith
- (e) Principle of Freedom of Contract

To determine the validity of an agreement, the benchmark is the conditions for a valid agreement as regulated in Article 1320 of the Indonesian Civil Code in Book III on obligations. Some of its elements include:

- (a) Agreement of the parties involved
- (b) Capacity to enter into an agreement
- (c) A Specific subject matter

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<sup>17</sup> Kartini Muljadi, *Perikatan Yang Lahir Dari Perjanjian* (Jakarta: PT. Raja Grafindo Persada, 2003). 34

<sup>18</sup> H. F. Nurwulan, S., & Siregar, "Aspek Normatif Asas Konsensualisme Dalam Penambahan Klausula Kontrak Tanpa Persetujuan Para Pihak," *Rechtsregel Jurnal Hukum* 2, no. 1 (2019): 497-98.



(d) A Lawful Cause

In the agreements made between platform service providers and drivers as partners, where they use the concept of partnership as the form of their agreement, it turns out to be different from the partnership agreements regulated in Law No. 20 of 2008 concerning SMEs (UMKM). According to the author, the partnership agreements entered into by platform service providers with their partners cannot be included under the regulations of Law No. 20/2008 on SMEs because the original intent of partnerships in Law No. 20/2008 on SMEs is very different from the partnership relationships currently emerging between platform service providers and online transportation drivers.

Partnership, as defined in Article 1, paragraph 13, regulated in the SME Law, is cooperation in business relations, both directly and indirectly, based on the principles of mutual need, trust, strengthening, and mutual benefit, involving Micro, Small, and Medium Enterprises with Large Enterprises. According to Article 26 of Law No. 20 of 2008, in conjunction with Article 11 of Government Regulation No. 17 of 2013, partnerships are implemented with the following patterns:

**A. Inti-plasma**

The implementation of partnership with the nucleus-plasma pattern, as meant, is when a large enterprise serves as the nucleus to nurture and develop micro, small, and medium enterprises (MSMEs), which act as the plasma in:

- a. Providing production facilities
- b. Offering technical production and business management guidance
- c. Acquiring, mastering and enhancing the necessary technology
- d. Financing
- e. Marketing
- f. Guaranteeing
- g. Providing information
- h. And providing other necessary assistance for improving efficiency, productivity, and business insights

**B. Subcontracting**

In the implementation of producing goods and/or services, the Large Enterprise provides support in the form of:

- a. Opportunities to work on part of the production and/or its components
- b. Opportunities to obtain raw materials produced continuously in reasonable quantities and prices



- c. Technical production or management guidance and capabilities
- d. Acquisition, mastery, and improvement of necessary technology
- e. Financing and the arrangement of payment systems that do not harm either party
- f. Efforts to avoid unilateral termination of the relationship

### **C. Waralaba**

Large Enterprises that expand their businesses do so by providing opportunities and prioritizing Micro, Small, and Medium Enterprises with capabilities. Franchisors and franchisees prioritize the use of domestically produced goods and/or materials as long as they meet the quality standards of the goods and services provided and/or sold under the franchise agreement. Franchisors are required to provide continuous guidance in the form of training, operational management guidance, marketing, research, and development to franchisees.

### **D. General Trade**

The implementation of partnerships with the general trade pattern can take the form of marketing collaboration, providing business locations, or accepting supplies from Micro, Small, and Medium Enterprises by Large Enterprises in an open manner. The fulfillment of goods and services needed by Large Enterprises is done by prioritizing the procurement of products from Small or Micro Enterprises as long as they meet the quality standards of the required goods and services. Payment arrangements are made without causing detriment to either party.

### **E. Distribution and Agency**

In the implementation of partnerships with the distribution and agency pattern, Large Enterprises and/or Medium Enterprises grant exclusive rights to market goods and services to Micro Enterprises and/or Small Enterprises.

### **The Partnership Cooperation Agreement from the Perspective of The Manpower Law**

In discussions related to employment in Indonesia and globally, especially in the modern era, the term "partnerships" has become a common topic. This is particularly relevant with the proliferation of various "gig economy" platforms that use partnership relationships in their employment arrangements (sometimes referred to as independent contractors, self-employed, freelancers, etc.). In Indonesia, these workers are often referred to as "partners." Generally, the term "gig economy" encompasses a wide range of work arrangements, and various terms are used to refer to this phenomenon.



Some call it collaborative consumption, collaborative economy, sharing economy, peer-to-peer economy, short-term services, or platform economy. However, in specialized literature, the latter term, the "platform economy," has gained more followers. Its primary focus is on the core aspect of these activities, which is that they are conducted using platforms. In this context, the term "gig economy" will be used more frequently.

In 2018, several studies identified 242 platforms with a market revenue value of \$7.1 trillion, with seven of them contributing 69 percent (\$4.9 trillion) of the total market value. In 2022, among the top ten largest companies globally, five are considered platforms according to specialized literature. Identifying 242 platforms with a market revenue value of \$7.1 trillion and a high level of concentration, given that seven of them contribute 69 percent (\$4.9 trillion) of the total market value. Clearly, the number of platforms and their market value appears to continue to grow.

Regarding platforms that provide work, some estimates indicate that their number increased from 142 in 2010 to 777 in 2020. The largest contributor was from the delivery sector, followed by online platforms, then taxi service platforms, and finally hybrid platform services that offer various services, including e-commerce. However, since this is a highly dynamic sector, the number of platforms is likely to continue growing.

The determination of sectors where most platforms can be found will vary depending on how they are defined. For the purposes of this section, a broader definition is used, which includes every type of platform and not just those that provide work. These sectors are as follows:

- 1) It is important, both for their continually growing market share and their impact on regulation in the cities where they operate. These accommodation platforms include those connecting with private individuals to offer accommodation services in homes and platforms connecting individuals with businesses to offer not only homes but also rooms in regulated accommodations. Platforms operating in this field include Airbnb (2008), Couchsurfing (2004), HomeAway (2006), Homestay (2013), and Rumbo (2000).<sup>19</sup>
- 2) Transportation: Here, platforms connect with private individuals seeking transportation services, which are provided either by other individuals or

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<sup>19</sup> International labour organization (ILO), "Decent Work in the Platform Economy," accessed July 1, 2023, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_855048.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_855048.pdf).





licensed professional drivers. There are platforms that connect taxi drivers with their clients, and platforms that connect the demand and supply of rental vehicles driven by drivers. There are also platforms that connect individuals for ride-sharing purposes, but without offering compensation for transportation services. These platforms include <sup>20</sup>, Cabify (201)<sup>21</sup>, Didi (2012) <sup>22</sup>, Grab (2012), Lyft (2012) <sup>23</sup>, MyTaxi (2009), Go-jek (2010), Uber (2009), dan lain-lain.

- 3) Financial Services: Financial services are undergoing significant transformation with the emergence of fintech or financial technology companies, such as platforms for micro payments, currency exchange, peer-to-peer lending, and crowdfunding. Financial service companies using this platform model include Crosslend (2015), Grow.ly (2013), Kickstarter (2009), and Zopa (2005).
- 4) Qualified Professional Services: In this sector, there are platforms offering professional services such as programming, design, translation, legal advice, or accounting services from skilled and highly skilled professionals. Some of these platforms include Catalant (2013), Gerson Lehrman Group (1998), Peopleperhour (2007), and UpWork (1999).
- 5) Care Services: Although they existed before the pandemic, the latter triggered the growth of several platforms related to household work and personal care. Examples include Cuideo (2015), Mypoppins (2016), and Zolvers (2013).
- 6) Delivery and Basic Services: There are also platforms that connect people to perform low-skilled tasks, such as small household repairs or delivery of goods and food, or tasks that require a certain level of planning, such as finding large quantities of items, phone numbers, and checking lists and images. Platforms involved in this type of work include Amazon Mechanical Turk (2005), Amazon Flex (2015), Delivery Hero (2011), Glovo (2015), Instacart (2012), and Taskrabbit (2008).
- 7) Audiovisual Content: These platforms have transformed the creative and audiovisual sector. This sector includes platforms that enable the

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<sup>20</sup> Blablacar, "No Title," accessed July 1, 2023, [www.blablacar.com](http://www.blablacar.com).

<sup>21</sup> Cabify, "No Title," accessed July 1, 2023, <https://cabify.com/en/>.

<sup>22</sup> DiDi, "No Title," accessed July 1, 2023, [tps://web.didiglobal.com/](https://web.didiglobal.com/).

<sup>23</sup> Lyft, "No Title," accessed July 1, 2023, <https://www.lyft.com/>.



consumption of music or audiovisual content online, using content aggregators based on fees, or for rental or purchase. Among the platforms in this sector are Amazon Prime Video (2006), Apple iTunes (2001), Netflix (1997), Spotify (2006), and YouTube (2005).

- 8) New and Used Product Trading: This is one of the most common and successful platform models, encompassing used and new products, deals, seasonal products, and platforms for digital products. These platforms can connect businesses with customers or serve as a trading platform between individuals. They include Amazon (1994), Apple App Store (2008), eBay (1995), Google Play Store (2008), Rakuten (1997), Vinted (2008), Wallapop (2013), and Tokopedia (2009).
- 9) Food and Catering: Platforms in this sector can connect suppliers and demand for food and catering services, such as restaurant bookings and availability management, home chef assistance, or homemade meal preparation. Platforms in this field include EatWith (2012), Chefly (2013), ElTenedor (2006), and ShareTheMeal (2014).

Gig economy in Indonesia is initiated by two major local players: Gojek and Grab. Gojek "employs" 1.5 million drivers, while Grab "employs" 2 million drivers (Grab merged with Uber, which exited the Indonesian market in 2018). Unlike most on-demand platforms in the West, both Gojek and Grab are "super apps" (a single platform that provides multiple services simultaneously: ride-hailing for both motorcycles and cars, food delivery, courier services, etc.). In Indonesia, there is a new platform, ShopeeFood, which is almost as large as Gojek and Grab, but it focuses solely on logistics and food delivery. Due to Indonesia's high levels of unemployment, informality, and non-permanent employment, gig platforms have become very popular for both male and female workers as they are seen as better opportunities.

However, behind all of this, workers in the gig economy often find themselves in a situation where the status of their employment is unclear or hidden, mostly tied to partnership arrangements in Indonesia. In most cases, those in partnership relationships, meaning they are outside of the employment relationship, do not benefit from labor and social protections. The activities of these workers in partnership arrangements also tend to go unreported to national authorities. This clearly has negative consequences for the workers and



their families, but it can also reduce productivity and distort competition, often harming companies that comply with laws and regulations.<sup>24</sup>

The reluctance to use the terms 'employee' or 'worker' in the gig economy can be seen in the term 'partner' chosen by platform service providers to refer to people working as service providers on their apps. These companies even have lists of what is allowed and not allowed in terms of how to communicate with passengers/consumers by their 'drivers'. Platform service providers use terminology designed to deflect claims that drivers are employees or staff. While Go-Jek, Grab, and other gig economy platforms like Maxim, AnterAja, or Uber (when it was still operating in Indonesia) refer to people working as service providers as their partners, hence the popularity of the term partnership in Indonesia has increased.<sup>25</sup>

If viewed from the perspective of labor relations, Indonesian labor law does not recognize the term 'partnership' at all. This regulation does not recognize the term partnership because the basis of the Labor Law is an employment relationship. The Labor Law defines an employment relationship as the relationship between employers and workers based on an employment agreement that contains elements of work, wages, and work orders. Meanwhile, the employment agreement itself is defined as an agreement between workers and employers that contains the terms of work, the rights, and obligations of the parties. Therefore, in Indonesian labor law, the existence of an employment agreement is essential to determine whether a legal relationship can be categorized as an employment relationship or not. More specifically, Article 50 of the Labor Law stipulates that an employment relationship arises from an employment agreement between employers and workers.

In the regulations of the Indonesian Labor Law, to be considered an employment agreement, the legal document binding two parties must have at least three elements, which are: a) Wage Element, b) Command Element, c) Work Element

The platform service providers argue that they only provide jobs, meaning that by understanding the recruitment pattern carried out by platform service providers through online forms for online transportation drivers, it is difficult for online transportation drivers to transfer their work to others. Platform service providers limit a transportation driver to register for only 1

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<sup>24</sup> International labour organization (ILO), "Protecting Workers in New Forms of Employment," accessed July 2, 2023, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_845714.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_845714.pdf).

<sup>25</sup> Mas muhammad gibran sesunan Nabiyla risfa izzati, "Misclassified Partnership and the Impact of Legal Loophole on Workers," *Bestuur* 10 (2022): 58.



account and are not allowed to have more than 1 account. This is because the pattern of the relationship between drivers as partners with platform service providers is individual. Based on this, the activities of drivers as partners can be categorized as work elements.

The next element that is not met in this relationship is the wage element. In the partnership cooperation agreement between online transportation drivers and platform service providers, they provide daily and monthly bonuses to online transportation drivers if they meet certain criteria. The bonuses received by these online transportation drivers cannot be classified as compensation for the work they do. The fixed income of online transportation drivers for their work is provided directly by passengers in cash or through online payment systems (such as go-pay, ovo, etc.) after being divided by the percentage that the platform is entitled to as agreed in the partnership agreement. Therefore, the wage element in the platform's partnership agreement with drivers is not fulfilled.<sup>26</sup>

The last element is the element of control, and in understanding the presence of this element in the partnership cooperation agreement, one can look at the obligations of online transportation drivers to the platform service provider in the partnership agreement. This element is considered not fulfilled because when online transportation drivers receive orders sent by the platform service provider's server to the nearest driver and displayed in the application for 10 seconds, it means that when the driver sees the order, they can either accept or reject it. Thus, the element of control in the partnership cooperation agreement between the platform service provider and online transportation drivers is not met because it is not subordination but coordination.

Based on the above explanation regarding the three elements of an employment contract in relation to the partnership cooperation between online transportation drivers and the platform service provider, it can be concluded that the partnership cooperation agreement only fulfills the work element, while the wage element and the command element are not met. Therefore, since these elements are not fulfilled, online transportation drivers cannot be considered employees. Thus, the partnership cooperation relationship between online transportation drivers and the platform service provider is not an employment relationship.

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<sup>26</sup> Academia, "Hukum Ketenagakerjaan Dan Teknologi," accessed July 4, 2023, [https://www.academia.edu/53037633/HUKUM\\_KETENAGAKERJAAN\\_DAN\\_TEKNOLOGI](https://www.academia.edu/53037633/HUKUM_KETENAGAKERJAAN_DAN_TEKNOLOGI).



So, thus, the classification of the legal relationship between the platform service provider and online transportation drivers as gig workers (platform workers) falls under the category of partnership based on Subordinate union of partnership, which is a partnership based on the combination of two or more parties who are subordinate in their relationship.

Such partnerships occur between two or more parties who have unequal status, abilities, or power. Therefore, the relationship formed is not on an equal footing but rather exists in a top-down, strong-weak relationship. Because of this condition, there is a lack of sharing and a balanced distribution of roles or functions. The partnership operated by the platform service provider company is considered by the author as misleading/artificial because:

- (a) Important decisions in the work process are within the authority of the platform service provider company
- (b) The company controls the work process of online transportation drivers;
- (c) There is a monopoly on access to information and data by the platform service provider company;
- (d) The partnership relationship operated is in violation of Indonesian laws regarding partnership principles; and
- (e) The four factors mentioned at the beginning contribute to vulnerability and income uncertainty for partners.

Legal certainty takes tangible form through the enforcement and implementation of laws, regardless of the enforcer. Through legal certainty, individuals can anticipate what might happen. When you take a legal action, there must be certainty about it happening. Justice is closely related to this, and certainty is a characteristic closely associated with written legal provisions. Law without definite validity loses its meaning because it cannot serve as a reference for societal behavior.<sup>27</sup>

When connected to the theory of legal certainty, providing certainty about the legal classification of the relationship between platform service providers and online transportation drivers as gig workers (platform workers) is important. From the perspective of the SME Law (UU UMKM) and Employment Law (UU Ketenagakerjaan), they cannot be categorized as SME entrepreneurs because the concept of partnership in the SME Law differs from the partnership in the gig economy. Moreover, the Employment Law recognizes employment relationships but not partnership relationships, which adds to the uncertainty in classifying the legal relationship between platform service

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<sup>27</sup> Cst Kansil, *Kamus Istilah Hukum* (Jakarta: Gramedia Pustaka Tama, 2009). 51





providers and online transportation drivers as gig workers. By applying Lon L. Fuller's theory of legal certainty, it is hoped that this theory can provide legal certainty and clarity in classifying the legal relationship between platform service providers and online transportation drivers as gig workers (platform workers)

## CONCLUSION

The term "partnership" has become common in discussions related to employment in modern times in Indonesia, especially with the proliferation of various gig economy platforms. In general, the gig economy refers to fast-paced, digitally mediated work. The characteristic of a partnership between platform service providers and online transportation drivers can be seen in the partnership agreement between them, which is typically labeled as a "partnership agreement" by the platform service provider.

Looking at the characteristics of the partnership agreement between platform service providers and online transportation drivers in the gig economy, which is often labeled as a "partnership agreement," it is clear that none of the partnership principles in business are met. These principles include equity, transparency, and mutual benefit. Furthermore, from the perspective of the Micro, Small, and Medium-sized Enterprises (UMKM) Law, it doesn't align because the original intent of partnerships under Law No. 20/2008 on UMKM is quite different from the partnership relationships emerging between platform service providers and online transportation drivers. Lastly, in terms of the Employment Law (UU Ketenagakerjaan), this law does not recognize the term "partnership" because its foundation is based on the employment relationship.

So, therefore, the classification of the legal relationship between platform service providers and online transportation drivers as gig workers (platform workers) falls into the category of a partnership based on a Subordinate Union of Partnership, which is a partnership based on the combination of two or more parties in a subordinate relationship.

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