



The Challenges for Gig Workers: New Regulation for New Business Transition

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Abstract. This research project explores two important questions: (1) What entitlements should be granted to gig and platform workers as their basic social protection? After having outlined the minimum basic rights that platform workers should have (2) How should countries prioritize and design a decent regulation for gig and platform worker so that their basic social protection can be entitled effectively? This study uses mixed design to explore the basic need of gig and platform workers. Legal research methodology is built to explore and to address the relevant information, analyzes, interpret, and applies them to resolving issues in the development of regulations in the new worlds of work. In addition, the case studies will be used to explore and to sharpen the results of an analysis of regulatory development in the world of work so that can be used as references in decent law-making process.

Keywords: Legal research, platform, workers

1 Introduction

Digital technology have drastically changed many aspects of our lives in the last several years. But the one which gets hit the most is in economic sector. Digital innovations have completely upended the conventional labor market fundamentals. Then without realizing it, the new platform worker has now become an important part of contemporary life. It has created unprecedented opportunities for workers, business, and society. We can arrange rides, order foods, and access various other services simply through our devices. They accomplish this by linking clients or customers with workers who are engaged in these "gigs" or tasks. The last ten years have seen a global growth in "gig workers" or "platform workers," thanks to this massively global innovation. Behind all the conveniences and benefits that come from digital transformation, there is a serious threat for workers to get a decent work. Particularly in the context of having a proper social protection.

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Social protection has been considered as workers' need. At the 2021 International Labor Conference (ILO), the definition of universal social protection agreed upon by the ILO's 187 Member States including governments, employers, and workers. It states clearly in Guiding Principles and Context, Para 3," In order to ensure that everyone has access to comprehensive, adequate, and sustainable protection throughout their life cycle, in accordance with ILO standards, universal social protection entails taking steps to realize the human right to social security by gradually creating and maintaining nationally appropriate social protection systems.". Even in Para 13, with the support of the Organization and in accordance with national circumstances, member should commit with strong political will, establish and maintain fundamental element of social protection systems, etc.

Social protection is intended to address poverty and hardship, but it also requires a sincere commitment from all parties involved. However, it can also be a potent tool for forging more sustainable and inclusive growth paths. In contrary, if universal social protection is not enforced seriously, then consequences will affect to people. Especially the most vulnerable people, will remain in the line of poverty for generations. Yet surprisingly, the ILO reports that 4.1 billion people around the world are still entirely unprotected. When healthcare and sickness benefits are excluded, just 46.9% of the world's population is truly covered by at least one social protection benefit. The new forms of employment such as the gig and platform workers also remain largely remained out of the scope social security. With the ongoing transformations in the nature of work, flexible workspaces, and rapid advancements in digital technologies the number of gig and platform workers is going to grow even faster which would need some form of social protection to protect them from financial vulnerabilities.

Sadly, a number of examples demonstrate that workers in these arrangements do not have sufficient protection. Twenty percent of respondents to an ILO study of twenty thousand platform workers in one hundred countries had access to old age pensions, unemployment insurance, and work accident protection, but just forty percent had health insurance. The majority of platform workers who are eligible for social protection are not covered by their employment on the platform, according to another startling finding of the survey. This study demonstrates how digital platforms refrain from supporting the social protection of laborers who use their services.

2 Methods

In this study, I employ mixed methods analysis. First, I use legal research methodology to find and address the relevant regulations, theories, and legal norm in which to use as a minimum standard for social protection. Since the exact definition about gig and platform workers still on debating, I do not have any clear references to answer the question about what entitlements should be granted to gig and platform workers as their basic social protection in the new world of work? And why digital platform must follow those conventions.

3 Results and Discussion

3.1 The phenomenon of Gig and New Platform Workers

In the 1930s, the music industry coined the term "gig" to refer to "an engagement to perform at a party for only one evening." In the end, the word's meaning changed to encompass any contract or temporary employment. The broad definition of the "gig economy" is a working subset in which workers or entrepreneurs find employment using an online platform that connects them with clients who are looking for their skills. James (2007). The gig economy is a byproduct of the digital economy, which is defined as the practice of obtaining temporary (short-term) employment by using a digital platform that the employer provides and may be accessible through apps or websites. Digital intermediation apparatuses are instruments in the gig economy, not in the sense of individual emancipation, but rather in support of the reconfiguration of the labor system. On the other hand, it is the application of well-trod capitalist reasoning. Vincent (2019).

The gig economy phenomena is exemplified by a case study in which an employee (gigworker) selects work that is more flexible, independent, and offers a shorter time period as opposed to the typical employment structure of working full-time in an office inside one organization, as well as contract labor for different employers (businesses). There are three main components to the gig economy: an employee is someone who finds a gig (a project or assignment) and gets paid for it; a consumer is someone who needs a certain activity done by an employee; and corporations facilitate the connection between employees and consumers. Through the use of application-based technology platforms on smartphones and personal computers, mobile computing technology enables businesses to connect with gig workers and customers. These digital networks also facilitate gig workers' employment searches. The gig economy is made up of several little jobs and projects, ranging from grocery shopping to offering advice for a personal retirement fund, because gig workers are paid to accomplish specific tasks or projects. Gig workers are generally free to set their own hours and don't have to work eight hours a day. In the gig economy, an employee might take on gigs to supplement their primary income or work multiple gigs to establish a flexible full-time workweek. The gig economy offers transient work involvement, which is the primary distinction between regular and gig employment systems. Technology has made it easier for people to communicate with one another, which has led to a rise in the gig economy worldwide. An expanding number of businesses are serving as middlemen, including Uber, Etsy, Lyft, eBay, and Airbnb, while an increasing number of people are choosing short-term contract labor. As a result, the gig economy is expanding throughout various nations in the world. It is projected that there will be 430,000 gig workers in Indonesia in 2019. In the transportation industry, there are 280 thousand gig workers that work as courier services, food delivery drivers, and online motorbike taxi drivers (example: Grab and Gojek). However, there are also 150 thousand gig workers in other service sectors, such as this one. Examples of gig workers include software engineers who use gig applications like Upwork to work remotely, domestic helpers who use gig applications like Klik and Clean to do

housework, and independent teachers who use gig applications like Ruang Guru to teach. Regretfully, there is currently no way for the BPS (Badan Pusat Statistik) to distinguish between gig workers who provide their services online and those who are based in a specific location. Yoga (2023).

3.2 Regulation for Protecting Gig and New Platform Workers

Given the sharp increase in gig workers, it is imperative to address the issue of gig worker protection. The idea of an employee in the legal system predates the development of the Internet. The advent of the digital age has fundamentally altered the nature of employment relationships and created a great deal of legal confusion over the application of certain standards. These companies carry out fundamental business development and manage internet marketplaces where prospective clients can locate laborers to complete their job requests. They rely only on employees who fall under the category of independent contractors or self-employed people. These new prospects may be the result of a process known as "the escape from labor laws," which started several years ago and is made possible by technology. Apart from the self-employed/independent contractor classification, there is also the employee classification, which grants access to all labor benefits for workers and associated obligations for businesses. Adrian (2010). Extreme litigation have been triggered by the labor practices of these modern businesses. The primary focus of this discussion is the fundamental theological question of whether the workers are considered independent contractors or employees. Reliable multifactor examinations of the work arrangement's facts are used to evaluate whether a worker is an employee or an independent contractor/self-employed. An employee's status is determined by a number of factors, including the employer's ability to set the necessary work hours, mentor the employee, and take the initiative in how the work is completed. On the other hand, highly trained labor, employees who purchase their own tools, autonomy over scheduling, and getting paid for each task completed as opposed to on a project-by-project basis are characteristics that lean more in favor of the independent contractor classification. Under the alternative test, judges determine whether an employee exhibits entrepreneurial behavior or whether they are a financially dependable source of income for their employer by examining the economic facts of the employment contract. Miriam (2011).

Whether someone is an employee or self-employed/independent contractors often have threshold issues that need to be clarified by conducting legal tests to confirm their classification.

Regarding these elements, Sa-rah (2016) is the legal standard by which to evaluate and ascertain employee status:

- a. the type and extent of the business's control over its employees;
- b. the worker's opportunity to gain or lose;
- c. labor costs for necessary tools or supplies to finish the job;
- d. whether the service performed by the worker requires certain things skill;
- e. degree of permanence and continuity of work connection;

- f. the degree to which the offered service is a fundamental part of the purported company's operations;
- g. the employee's obligation to work only for the employer; and
- h. working hours provisions.

Legal assessments have determined that gig workers in Indonesia are actually self-employed or independent contractors. First, rankings, uniforms, and safety rules are the only types of authority that employers can use to control gig workers. Companies may not even follow these rules in certain situations. Gig workers may potentially benefit or lose from circumstances that lead to unemployment. Furthermore, gig workers who supply fuel and transportation report that they are unemployed despite the fact that the company provides helmets and uniforms (in certain instances, drivers purchase custom-made uniforms as well). In Indonesia, gig workers lack permanent employment since client demand drives job creation. Gig workers' services are also not a necessary part of the accused company's operations, which involve acting as a platform or middleman between drivers and consumer requests. works as an employee of another company or performs freelance work for rival businesses (sometimes referred to as "multi-platform"). Finally, there are no clauses addressing the accused company's working hours. Jafar Hafisah defines a partnership as a business approach used by two or more parties to use the principles of mutual need and mutual encouragement in order to attain mutual benefits within a specific time frame.

In fact, a partnership is a cooperative relationship based on the concepts of mutual need, trust, strengthening, and benefit that exists between those involved in business dealings, whether directly or indirectly Ananda (2019). Because it will outline the legal connection between gig workers, this partnership agreement is significant. Companies are therefore not required to abide by rules regarding maximum working hours, rest periods, annual leave, paid sick leave, as well as other rights like overtime, social security, and severance pay if the relationship ends. This is because it is up to the employer to decide whether an employment relationship has been formed. Because the current employment law does not specify any obligations, rights, or protections for this new sort of semi-informal working relationship in the current internet transportation business, gig workers will not receive any protection from Law No. 13 of 2003 Governing Employment. Nevertheless, a clear legislative framework controlling the interaction between gig workers and their employers has not yet been established by the Indonesian government. According to the Minister of Transportation's 2019 Decree No. KP 348 of Hanifah, the extent of their restrictions is now restricted to those pertaining to private motorcycle rentals for the general public. in terms of pay. Employees are paid by profit sharing depending on orders, the timing and quantity of which are subject to change, rather than pay. The money earned under this profit-sharing plan could not be the same as it was in the past. This type of partnership agreement is typically categorized as a civil agreement rather than an employment relationship because Law Number 13 of 2003 concerning Employment does not regulate this type of scheme (this element is fulfilled if the employee receives compensation in the form of a certain amount of money as wages within a certain period). In fact, it is frequently observed that employers hire people without giving them the

legal right to a specific number of of working hours, paid sick leave or annual leave, and notification in the event of layoffs Antonio (2016).

As regulators around the world try to figure out how to adapt the gig economy into their respective legal structures. Alternatively, work that is paid based on tasks completed (in the gig economy) can be considered ‘non-scalable’. Indonesian laws and courts classifying these workers as independent contractors have had a tremendous impact on these workers. In addition to receiving inconsistently lower pay and benefits from most employers, workers classified as independent contractors are exempt from labor and employment laws.

4 Conclusion

1. Rather than suggesting that gig workers and end users (customers) start their relationship on an equal footing, we should acknowledge the "dependent" character of gig workers on the platform. Workers have rights, and discrimination against them should not occur, regardless of their status.
2. We need to recalibrate Indonesia's labor laws (or at least some related laws). so that the relationship between worker status and disturbing phenomena; The ‘gig economy’ can be answered fairly.

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