

# Legal Protection of the Digital Platform Workers in Indonesia: Lesson Learned From Germany and the United Kingdom

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**ABSTRACT:** This study analyzes labor law arrangements in Indonesia, Germany and the United Kingdom, mainly how these countries protect the digital platform workers. Furthermore, this research evaluates the implementation of such a law to advance Indonesian labor law in protecting digital platforms workers. This research used a normative legal analysis. Moreover, it employed statutory, conceptual, and comparative approaches. The results indicate that the dynamics of new employment status or partnership working relationships and workers' flexibility in the gig economy phenomenon are not only found in Indonesia. Germany and the United Kingdom, have adopted strategies to tackle this phenomenon. Both Germany and the UK have addressed the above employment problems in two approaches: using court decisions and amending or revising relevant legislation. Classifying the status of employment relationships in this new phenomenon is crucial for implementation in Indonesia. In the future, such classification can be used as a reference in developing Indonesian Labor Law. The government should consider the necessary substantive protections for workers, from flexible working arrangements to creating new standards more responsive to the structure of growing organizations and the emergence of algorithmic management.

**KEYWORDS:** Digital Platform, Workers, Work relationships, Legal Protection



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## I. INTRODUCTION

The presence of the digital economy creates an entirely automated situation, which is then called the era of disruption. New patterns in the era of disruption threaten the existence of incumbent companies. The Internet of Things marks this era, Big Data Artificial Intelligence, Human Machine Interface, Robotic and Sensor Technology, and 3D Printing Technology.<sup>1</sup> Changes to new work patterns in the disruption era also impact workers and the labor market, namely the existence of a future world of work full of uncertainties. Popular job fields in this era are the rise of e-commerce, financial technology, and on-demand services (online services). This fact aligns with the World Economic Forum's Future of Jobs Report 2020 report that some jobs will be disrupted. The adoption of digital economy will change workers' tasks, employment, and skills in 2025. In addition, the birth of the digital economy has changed work relations theatrically, resulting in uncertainty over the applicable law.<sup>2</sup> Changes in the working place working place which are full of uncertainties, has gave birth to new employment relations, which are often referred to as “non-standard forms of employment or non-standard employment relations.”

Dramatic changes in work relationships through digital platforms have created new opportunities as well as posed challenges, including adopting new legislation and public policies. Shifts in the labor market and work relationships of this type are called Gig Economy.<sup>3</sup> The gig economy can also be interpreted as conditions where workers prefer to work part-time or do work separately and are not bound by companies' working time. The workers complete their tasks through virtual coordination, and their wages are transferred digitally. Digital platforms and workers scattered in various places characterize this kind of job market connectivity.<sup>4</sup>

Gig economy companies in Indonesia that have succeeded in creating non-standard working relationships using online platforms are Gojek, Grab,

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<sup>1</sup> Perkembangan Ekonomi Digital di Indonesia, Puslitbang Kemenkominfo (2019).

<sup>2</sup> Mansfield N Gabel J, “The Information and Its Impact on The Employment Relationship: an Analysis of The Cyberspace Workplace” 40:2 American Business Law Journal 301–353.

<sup>3</sup> The Hamilton Project : Brookings A Hamilton Project Framing Paper, by Dokko Jane, Mumford Megan, & Diane Whitmore Schanzenbach.

<sup>4</sup> Valerio De Stefano, “The Rise of The (Just-in-Time Workforce): On-Demand Work, Crowdfwork and Labour Protection in The Gig-Economy” in (2016).

and Maxim. In 2018, hundreds of online motorcycle taxi drivers in Indonesia took action against their demands regarding a fair and open partnership agreement, applying the basic tariff for a non-supply-demand transportation mechanism and eliminating the 20% applicator commission.<sup>5</sup> In 2022, there will be another action by online drivers against the government and applicator companies, where the demands are: urging the government to immediately provide regulations as a solution regarding the online transportation business ecosystem in Indonesia in a comprehensive manner and urging the government to agree with tariff adjustments fairly and proportionally.<sup>6</sup>

Cases of worker protection and employment relationships between online drivers and platform service companies were reinforced by this research conducted on three platforms, including Gojek, Grab, and Maxim, which found that the economic distribution and strength in its work relations went instead.<sup>7</sup> The concept of partnership in the gig economy has been claimed by app companies to encourage a working model that gives those in partnership the freedom to determine their working hours and become untethered. In reality, app companies control online drivers in the same way that we often see control in the manufacturing industry with the relationship between laborers and employers.

This unequal relationship is caused by the domination of platform power that makes policies unilaterally, and there is no democratic mechanism, especially in the context of fair distribution of income and work processes. As a result, justice in the distribution of income and work processes, which should be carried out in the economy-sharing philosophy, shows the opposite reality.

The domination of platforms in the gig economy has significant implications for the future, particularly in terms of its impact on the nature of work and employment and as well as algorithmic domination. Here are some specific impacts, for the first nature of work and employment, the rapid growth of the platform economy has provoked scholarly discussion of its

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<sup>5</sup> Demo Ojek Online Grab, Pengemudi Tuntut Ubah Tarif, by Media Tempo (2018).

<sup>6</sup> Dukung Ekosistem Ojol, Pemerintah Diminta Perluas Kebijakan, by Liputan6.

<sup>7</sup> A Novianto, AD Wulansari, & A Hernawan, "Riset : Empat Alasan Kemitraan Gojek, Grab, hingga Maxim Merugikan Para Ojol" (2021), online: <<https://theconversation.com/riset-empat-alasan-kemitraan-gojek-grab-hingga-maxim-merugikan-para-ojol-159832>>.

consequences for the nature of work and employment.<sup>8</sup> The domination of platforms can lead to a situation where workers have less control over their working conditions, and they have limited bargaining power. Rising unbundled digital unions and platform cooperatives can have decisive implications for the welfare of workers in the gig economy.<sup>9</sup>

For the second impact is algorithmic domination, the use of algorithms in the gig economy can lead to unequal access to information and decision-making power, which can exacerbate existing inequalities.<sup>10</sup> On-demand platforms continue to rely on the unequal distribution of power between workers and platforms owners. Human bosses are subject to unfair dismissal policies, but algorithms are not.<sup>11</sup>

This unequal relationship requires control from the government to provide a legal in partnership relations with the gig economy phenomenon. Significant regulatory development in Indonesia still needs to be related to partnership relations. The growth of gig economy workers in Indonesia is relatively rapid. Although there has yet to be definitive data, the Fair Work Indonesia report believes there are at least 2.5 million motorcycle-based gig workers, and one-fifth of Indonesia's population has used one of these services.<sup>12</sup>

As a comparison in order to review the provision of a legal umbrella as an evaluation for Indonesian Labor Law, the authors chose Germany and the UK as comparison country because it has several points and aspects suitable for comparison with Indonesia. The Federal Labor Court of Germany (Bundesarbeitsgericht-BAG) on December 1st, 2020, in case No. 9 AZR 102/20 ruled that the court recognized an employment relationship between crowd workers or gig economy workers and platform operators. According to the press release, the court focused on contractual relations and

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<sup>8</sup> Steven Vallas & Juliet B Schor, "What Do Platforms Do? Understanding the Gig Economy" 46 Annual Review of Sociology, online: <<https://doi.org/10.1146/annurev-soc-121919-054857>>.

<sup>9</sup> The Rise of The Platform Economy, by Lucy Colback (Financial Times, 2023).

<sup>10</sup> James Muldoon & Paul Raekstad, "Algorithmic Domination in The Gig Economy" 22:4 Sage Journal, online: <<https://doi.org/10.1177/14748851221082078>>.

<sup>11</sup> James Hickson, "Freedom, Domination and The Gig Economy" (2023) New Political Economy 1–16, online: <<https://www.tandfonline.com/doi/full/10.1080/13563467.2023.2254712>>.

<sup>12</sup> Nabiyla Risfa Izzati, "Disebut 'Mitra' tapi Tak Ada Payung Hukumnya: Pekerja Gig Economy Tidak Terproteksi", The Conversation (2022), online: <<https://theconversation.com/disebut-mitra-tapi-tak-ada-payung-hukumnya-pekerja-gig-economy-tidak-terproteksi-190464>>.

the adequate performance of specific duties. In the end, all the facts of the case lead to the conclusion that the crowd workers must be classified as an employee according to The Federal Labor Court case No. 9AZR 102/20. Another example is the UK Supreme Court in *Uber BV vs. Aslam and Others* on February 19, 2021). The Supreme Court has succeeded in issuing a court decision declaring that Uber drivers or dependent self-employment types of work have received certainty in the employment relationship status defined as workers or employees and obtain rights in the form of a minimum wage and leave as stated in the decision.

Seeing the stance adopted by German and the UK in providing legal certainty and protection for digital platform workers, this study aims to review and analyze both the German's and the UK's policies to evaluate how these countries provide legal protection as a manifestation of the development of Indonesian labor law.

## **II. RESEARCH METHOD**

This research employed a normative legal analysis. This means that the authors examined legal protection for workers in digital platforms and how Indonesian labor law should provide legal protection and certainty for workers. The nature of this research is analytically descriptive in order to give a clear and detailed picture of legal problem.

The approaches used in this study are the statutory, conceptual, and comparative legal approaches. This study compare and analysed the legal protection of digital platforms workers in two countries, Germany and The UK. The author's justification for choosing these two countries are, first, the German's legal system is the same as Indonesia's, namely civil law legal system, where the law is embodied in regulations in the form of statutes and arranged systematically. Second, Even though the UK has a different legal system from Indonesia, a court decision stipulated in the UK can be used as a scientific reference in classifying the worker status. In addition, the UK and Germany both have court decisions that clarify and provide legal certainty regarding the position of the employment relationship and the rights of workers that must protected and fulfilled. Therefore, the British and German court decisions can be compared and, therefore, be used to evaluate the development of labor law in Indonesia.

### III. DIGITAL WORKERS IN INDONESIA: DEVELOPMENT AND CHALLENGES

Until 2023, there is no official definition on the term of non-standard employment relationship. In general, the term refers to job that falls outside the scope of "standard employment relations", which is understood as full-time work or there is an element of time, wages, and work. At the International Labor Organization (ILO) Meeting of Experts on Non-Standard Forms of Employment, the result was that non-standard employment relations consisted of 4 (four), namely: (a) temporary employment; (b) part-time work, (c) temporary agency work and other forms of employment involving multiple parties; and (d) disguised employment relationship and dependent self-employment.<sup>13</sup>

The type of temporary employment relationship has been well-regulated in Indonesia, namely a temporary employment relationship. The Indonesian Labor Law defines this as a Specific Time Work Agreement or *Perjanjian Kerja Waktu Tertentu (PKWT)*. Indonesian labor law, generally, provides the equal ownership between contract workers and permanent workers, except for the rights obtained when the employment relationship is terminated, such as severance pay and long-service pay.

"Part-Time" and "One-Call Work" became a trend in the industrial revolution era, especially for millennial workers. This is because this job emerged during the Industrial Revolution 4.0, where work is mostly done remotely so that more and more people will work only part-time as traditional jobs in general.<sup>14</sup> Quantitatively, part-time workers are defined as workers who work less than 35 hours a week; this refers to Regulation of the Minister of Manpower Number. 1 of 2014, which regulates the normal work standard is 35 hours a week. Meanwhile, on-call work means someone only works when needed and is not tied to a specific time. On the legal and regulatory side, until now, this part-time or one-call work relationship has yet to have adequate legal protection. As an illustration, Indonesia Law No.

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<sup>13</sup> Non-standard Employment Around the World : Understanding Challenges, Shaping Prospects., by International Labour Organisation (2015).

<sup>14</sup> Valerio De Stefano, supra note 4.

13 of 2003 concerning Manpower still regulates working hours rigidly by providing limited exceptions.<sup>15</sup>

This type of part-time employment relationship is one of the existence of labor flexibility. The existence of shorter working hours or arranged in a flexible work system (as categorized in one-call work) can provide benefits for the company side.<sup>16</sup> On the other hand, a working system like this also benefits workers because non-full working hours allow workers to get side jobs and different experiences as financial additions. However, the absence of legal regulations in providing work protection for part-time workers can place workers in a position vulnerable to experiencing marginalization in terms of social protection, work positions, and differences in wages with other workers in the same company.<sup>17</sup>

The concept of marginalization in context of safeguarding the rights of workers in the gig economy refers to measures either in the forms of policies or law which directly or indirectly exclude or disadvantage certain groups of workers in the digital labor market. Marginalization can take many forms. The first marginalization is low wages and economic insecurity. The Gig workers at companies like Uber, Lyft, etc are paid low wages and face economic insecurity at high rates.<sup>18</sup> One in five digital platform workers went hungry because they could not afford enough to eat, and nearly one-third of workers were not able to pay the full amount of their utility bills.<sup>19</sup> The second form of marginalization is the lack of employment protections. The digital platform companies treat workers, who perform the service they offer, not as their employees but as independent contractors. This means that digital workers do not have access to basic benefits such as health insurance, sick leave, or workers compensation.<sup>20</sup>

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<sup>15</sup> Nabiyla Risfa Izzati, "Eksistensi Yuridis dan Empiris Hubungan Kerja Non-Standar dalam Hukum Ketenagakerjaan Indonesia" (2021) 50:3 Masalah-Masalah Hukum, online: <<http://creativecommons.org/licenses/by-nc/4.0>>.

<sup>16</sup> KW Triani & IGP Ariara, "Perlindungan Hukum Terhadap Pekerja Paruh Waktu Apabila Terjadi Kecelakaan Kerja" (2014) 01:11 Kertha Semaya 1–5.

<sup>17</sup> Non-Standard Forms of Employment in Some Asian Countries: A Study of Wages and Working Conditions of Temporary Workers, by Huu-Chi Nguyen, Thanh Tam Nguyen-Huu, & Thi-Thuy-Linh Le (2016).

<sup>18</sup> National Survey of Gig Workers Shows Poor Working Conditions and Low Pay, by Economic Policy Institute (2022).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.



The next type of non-standard employment relationship is Temporary Agency Work and Other Forms of Employment Involving Multiple Parties. This type has definition that is employment relationship involving multiple parties which is usually mediated by private employment agencies or other forms of employment service providers (labor brokers or subcontractors) who provide labor to third parties under the supervision of the company or user organizations.<sup>21</sup> In Indonesia, this type of work is commonly called outsourced labor which emerged in 1990 and developed after the passage of the Indonesian Manpower Act in 2003. Furthermore, the passing of the Omnibus Law Number 6 of 2023 on Job Creation (UU Cipta Kerja) in Indonesia has implications for the development of outsourcing and the rights of workers in the gig economy, one of them is increased flexibility for employers and legal uncertainty.<sup>22</sup> There are no official statistics on the development of outsourced labor in Indonesia, although Indonesian trade unions report on this phenomenon. Workers who go through these outsourced companies are more likely to be non-managerial staff, technical and support workers.<sup>23</sup>

The next type of non-standard employment relationship is a disguised employment relationship and has definition that is a situation that occurs when an employer treats someone other than an employee by hiding their actual legal status as an employee. Meanwhile, dependent self-employment is an employment relationship in which the worker performs services for the business under a different contract from the employment contract but depends on one or a small number of clients for their income and receives direct guidance on how the work should be done.

The emergence of the Disguised Employment Relationship in Indonesia can be seen in companies, such as Grab, Gojek, and Maxim. The working relationship created by the three companies is a partnership agreement because it does not fulfill the elements of the employment relationships in the Manpower Act. Such elements are: the aspects of wages,

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<sup>21</sup> Non-standard Employment Around the World : Understanding Challenges, Shaping Prospects., by International Labour Organisation (2015).

<sup>22</sup> Sela Nopela Milinum, "Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja Klaster Ketenagakerjaan" (2022) 3:5 *jhlg* 412–432, online: <<https://ojs.rewangrencang.com/index.php/JHLG/article/view/119>>.

<sup>23</sup> *Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia*, by Indrasari Tjandraningsih et al, AKATIGA (AKATIGA, 2010).

work, and job description. In this case, the digital platform company claims to be a service provider whose position is only as an intermediary between workers and clients, who then need to provide wages and instructions directly. This relationships, empirically, cannot be fully categorized as a partnership because workers are tied to the platform. This type of relationships in the Gig Economy can be classified as dependent self-employment. This type of employment relationship implies that there needs to be clarity in the status of a clear employment relationship because no protection is given to the workers involved.<sup>24</sup>

The emergence of these two types of employment relationships raises essential questions about labor protection. In the gig economy era, workers are almost always classified as independent contractors and thus need access to workers' rights in standard and recognized employment relationships. Another common element is that workers' performance is continuously monitored through reviews or reviews and ratings provided by clients or customers. The content of customer reviews may help maintain the company's name to continue to exist, maintain customer satisfaction, and increase competitiveness. However, this also has significant implications for people's ability to work or earn an income in the future, as workers may be excluded from online platforms or prevented from accessing better-paying jobs. In cases like this, the "review" system may also expose them to discrimination.<sup>25</sup>

#### **IV. WORKERS' DYNAMICS ON DIGITAL PLATFORMS**

##### **A. The Dynamics of Work Relationships on Digital Platforms in Indonesia**

Employment relations in the concept of Indonesian Labor Law were initially only known as standard employment relations. Article 1 paragraph 15 of the Manpower Act defines a working relationship as "a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages, and instructions." Moreover, the development of the digital industry in Indonesia has given rise to a new type

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<sup>24</sup> Nabiyla Risfa Izzati, *supra* note 10.

<sup>25</sup> International Labour Organisation, *supra* note 15.

of employment relationship, namely non-standard or dependent self-employment employment.<sup>26</sup>

The emergence of this type of non-standard employment relationship triggers changes in mindset, work patterns, and human life patterns in various countries. As a result of these changes in multiple ways, the term gig economy emerged, a market term for the labor market whose main characteristics are contract and freelance work relationships by abandoning standard, permanent employment relationships. Such a phenomenon also occurs in Indonesia, where non-standard workers are categorized as informal workers.

One thing that becomes the magnet of the gig economy concept is the flexible working hours for its workers. The gig economy, generally, does not recognize the idea of working hours. Instead, the Gig economy recognizes freelancers, who generally have more freedom to work anytime and however long. Regarding working hours in the gig economy era, there are several terms, namely: a) longer working hours and overtime, increased work intensity, and current job attendance; b) must have multiple jobs, which may or may not result in longer working hours overall; and c) irregular, unpredictable and unusual working hours or work schedules.<sup>27</sup>

Suppose the concept of flexibility in determining working hours is implemented in Indonesia. In that case, it will create several risks with a "domino effect," where one chance will result in the emergence of another threat, which in essence, is the unprotected workers in the employment relationship.<sup>28</sup> The concept of flexibility puts the entrepreneur position as the superordinate, which opens the possibility of the occurrence of the risk of the entrepreneur's aristocracy. The entrepreneur's aristocracy refers to the idea that certain employers or companies have an advantage over others in terms of their ability to attract and retain workers. The logical implication of this aristocracy of employers (is that workers' positions are pushed to the lowest level because they are weak to fight for their rights. In addition, the concept of a flexible labor market will encourage the state to commit state

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Zantermans Rajagukguk, "Pasar Kerja Fleksibel Versus Perlindungan Pekerja di Indonesia" (2010) V:2 Jurnal Kependudukan Indonesia.

crimes. In this condition, the government diverts some of its obligations and responsibilities toward its citizens. As such, it will be against the primary function of the state, which are to protect and guarantee the fulfillment of the human rights of all citizens, including the right to obtain work and livelihood. Protection and guarantee of welfare by the state is a must for humanity as mandated in the constitution.<sup>29</sup>

In addition to workers' flexibility, which is a problem that often occurs in the gig economy, the status of the employment relationships is also an important indicator in protecting the rights of digital platform workers. For example, the level of workers at Gojek, Grab, and Maxim companies in Indonesia raises a partnership work agreement, not a formal one.<sup>30</sup> Even though this relationship in observation cannot be fully categorized as a partnership relationship because workers are very tied to the platform. For example, services provided by workers are continuously monitored by service provider companies through a rating mechanism or ratings by consumers, whereby when work gets a low rating, the service provider company can end the 'partnership relationship' unilaterally.<sup>31</sup>

The emergence of this kind of work relationships in the gig economy era is categorized as dependent self-employment. This type of relationship creates ambiguity in the employment relationship's status, resulting in no protection for the workers involved.<sup>32</sup> One of them The Go-Jek case itself carefully characterizes its platform as a liaison and workers as independent contractors or partners who categorize them as entrepreneurs themselves, and this is outside the reach of the law, significantly the scope of employment.<sup>33</sup>

The employment relationship described in Article 50 of Law Number 13 of 2003 concerning Manpower explains that the employment relationship occurs because of an employment agreement between the entrepreneur and

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<sup>29</sup> Ibid.

<sup>30</sup> Nabiyla Risfa Izzati, "Eksistensi Yuridis dan Empiris Hubungan Kerja Non-Standar dalam Hukum Ketenagakerjaan Indonesia" (2021) 50:3 Masalah-Masalah Hukum, online: <<http://creativecommons.org/licenses/by-nc/4.0>>.

<sup>31</sup> Nabiyla Risfa Izzati, *supra* note 10.

<sup>32</sup> Ibid.

<sup>33</sup> Randi, "Buruh Vs Perusahaan (Studi Kasus Konflik Buruh/Pekerja Driver Go-Jek dengan PT Go-Jek Indonesia)" (2017) 7:2 Social Work Jurnal, online: <<https://jurnal.unpad.ac.id/share/article/view/15680/7383>>.

the worker or laborer. Elements of employment relations in the Manpower Act include work, wages, and orders. There is a lack of clarity on the meaning of the command element in the employment relationship in the Manpower Act, so the only thing that can be protected from dependent self-employed workers, in this case, online motorcycle taxi drivers, is only the aspect of work safety, not the aspect of the work relationship or equality with application companies. So, again, the absence of legal instruments that regulate the meaning of the elements of this order is an obstacle to the implementation of legal protection for dependent self-employed workers in Indonesia.

The indecisiveness of the command element can be seen from the research that has been carried out regarding the existence of obstacles in the implementation of arrangements for gig economy workers, which here are more specifically dependent self-employed workers, those partner workers who have fulfilled the elements of an employment relationship but are legally not considered as workers because they are bound by a partnership agreement which results in unresolved disputes regarding the status of the employment relationship through mediation at the Manpower Office.<sup>34</sup> The non-fulfillment of direct orders from superiors to subordinates and the absence of direct responsibility are obstacles to the creation of legal protection for partner workers. The non-fulfillment of the elements of the order was due to the validity of the Job Labor Law. The Job Creation Law has yet to accommodate the changing times.

## B. The Dynamics of Labor Relationships of Digital Platforms in Germany

Digital transformation has gained traction in recent years, impacting work relationships more than ever. The emergence of the so-called platform economy in Germany is equally problematic of this development. But new technologies and methods of collaboration must also comply with legal requirements.

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<sup>34</sup> Pranade Mas & Suria Ningsih, "Studi Komparasi Hubungan Kerja Non-Standar Dependent Self Employment dalam Hukum Ketenagakerjaan di Indonesia dan Hukum Inggris Pada Era Gig Economy" (2022) 1:2 Mahdi : Indonesia Journal of Law.

In late 2020, the German Federal Labor Court reversed the platform's business model when a court judge ruled that part-time crowd workers who use the platform's apps are employees. This case is known as the “Crowd workers Case” and attracted attention from various circles because a lower-level court had previously rejected the status of crowd workers as employees. This decision can radically change the business model of platform service providers in Germany.<sup>35</sup>

In this case, the Plaintiff was a crowd worker who, after receiving notification from the Defendant that the Plaintiff filed a claim for unfair dismissal to the German Federal Labor Court. The plaintiffs argue that the underlying contractual relationship is not a contract for casual workers but an employment relationship. The contractual relationship between Plaintiff and Defendant is regulated in a framework agreement which, among other things, states as follows:

1. The contractual relationship between the Plaintiff and the Defendant is not a working relationship;
2. Any order from the Defendant does not bind the defendant;
3. The defendant can freely decide to accept or reject the offer;
4. The defendant may offer service work, but it is not required.

The German labor law system refers to normative laws which serve as the legal basis for decisions in crowd worker cases. There was an amendment to the Labor Code in Germany on 1 April 2017, including a broader definition of an employment contract. The more general description of an employment contract is explained in Article 611a of the BGB (Bürgerliches Gesetzbuch/German Civil Code). This article disciplines work contracts as specific contracts with their characteristics, such as the provisions regarding instructions that employees and some dependencies on the work must follow.<sup>36</sup> Apart from Article 611a as the latest innovation from the BGB or the German Civil Code, the German labor law framework does not have labor norms condensed into one normative regulation or in one regulation considered the primary source of regulations. Every aspect of the employment relationship (working hours, holidays, collective bargaining,

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<sup>35</sup> Julia M Bruck, “Federal Labor Court: Crowdworkers can be Employees”, Lexology (2021), online: <<https://www.lexology.com/library/detail.aspx?g=64550884-4207-4848-8a6a-2fbd030fa447>>.

<sup>36</sup> Platform Work and The Notion of “Employee” Under The German Legal System: Possible Consequences at a Systematic Level, by Elena Gramano & Eric Stolzenberg, 3 (Lavoro Diritti Europa, 2021).

essential elements in the employment contract) is governed by specific regulatory instruments. For example, working hours are regulated in the *Arbeitszeitgesetz* of June 1994, the system of holidays is held in the *Bundesurlaubsgesetz* of January 1963, the Law on the protection against layoffs and guarantees against immoral dismissal is regulated in the *Kündigungsschutzgesetz* of August 1951, *Gesetz über den Nachweis der für ein Arbeitsverhältnis geltenden wesentlichen Bedingungen* promulgated in July 1995 can be understood as a law that regulates the verification of essential conditions to be applied to an employment relationship.<sup>37</sup>

The German Federal Labor Court has issued a judgment of BAG 9 AZR 102/20<sup>38</sup>, which is the expectation that crowd workers, micro tasks, or gig economy workers can be classified as employees under German employment law. But the judge's decision has yet to rank crowd workers status generally. The category continues depending on the overall assessment of a particular situation. However, the court's ruling indicated that the more platform operators provide incentives to accept more orders, the more likely crowd workers will be classified as employees.<sup>39</sup> To achieve this result, an innovative reinterpretation of the job classification criteria and indicators is required.

In classifying a crowd worker as an employee, the Court was in opinion that there is a working relationship between the crowd workers and the service provider platforms. The Court focus on contractual relationships and the adequate performance of specific duties. An overall assessment of a particular case's facts and circumstances leads to the conclusion that crowd workers should be classified as employees.<sup>40</sup>

Many element depends on the classification of crowd workers as employees. For example, social security, leave entitlements, protection for worker safety, or protection against unilateral layoffs. Although in this case, the German Court decided based on one point to another, the court clarified that crowd working could be classified as an employment relationship due to

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<sup>37</sup> Bruna da Penha de Mendonça Coelho, "Work by Digital Platforms in Germany" 5 *Revista Jurídica Trabalho e Desenvolvimento Humano*.

<sup>38</sup> 9 AZR 102/20 Arbeitnehmerstatus eines Crowdworkers, 2020.

<sup>39</sup> Julia M Bruck, "Federal Labor Court: Crowdworkers can be Employees", *Lexology* (2021), online: <<https://www.lexology.com/library/detail.aspx?g=64550884-4207-4848-8a6a-2fbd030fa447>>.

<sup>40</sup> 9 AZR 102/20 Arbeitnehmerstatus eines Crowdworkers, 2020.

several element that include this classification.<sup>41</sup> Therefore, platform service providers should pay close attention to how their service and especially reconsider their relationship with employees and detailed specifications for service delivery.

The decision by the German Labor Court represents a challenge by those wishing to classify work on digital platforms as a profession. First, supposedly the service provider (platform) interprets the legal situation as one of the contracts between the customer and the employee. In that case, such a contractual situation should be ignored because it is artificial and useless to classify the arrangement as one of the employment relationships. Second, older indicators usually focus on substantive questions about subordination, economic dependence, and organizational integration. Therefore, a court decision classifying crowd workers as employees who must rely on new and innovative indicators. Until now, four job characteristics in the gig economy era have played a significant role here:<sup>42</sup>

- 1) Use of specific platform applications, software, and hardware (application-based management and services);
- 2) Evaluation and feedback mechanisms for customer responses;
- 3) Qualifications and division of types of work;
- 4) The economic position of platforms and workers (market access and opportunities).

The indicator above is an innovation used in the classification of labor. They focused more on "indirect control," which was given through means that structured actions and created motivation and commitment to their work, no longer using the old methods such as direct supervision, subordination, and organizational mechanisms directly to the body of workers, during the gig economy. However, although some courts have successfully reinterpreted the classification of employment relations (at least in the case of transport and delivery workers), conceptual challenges such as these have yet to be reflected in labor law theory.

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<sup>41</sup> Julia M Bruck, *supra* note 27.

<sup>42</sup> Eva Kocher, "Reshaping The Legal Categories of Work Digital Labor Platforms at The Borders of Labor Law" (2021) 1:1 WEIZENBAUM JOURNAL OF THE DIGITAL SOCIETY.



Several measures are being planned by the German Ministry of Labor and Social Affairs regarding regulatory plans to protect gig economy workers. Few considerations are being worked out by the German government are mandatory pensions, continued salary payments, maternity leave and holidays, as well as notice periods and a simplified method to clarify their employment status.<sup>43</sup>

### *C. Dynamics Labor Relations of Digital Platforms in the United Kingdom*

A case in the United Kingdom (UK) regarding the gig economy worker phenomenon involves the drivers' union or known as GMB (The General, Municipal, Boilermakers' and Allied Trade Union). The GMB succeeded in filing a lawsuit in one of the most significant cases regarding misclassification of workers against transportation service company "Uber," this relates to a non-standard dependent self-employment employment relationship.<sup>44</sup> Initially, Uber drivers in the UK were considered independent contractors until finally, a final decision was reached through the UK Supreme Court. (UKSC 5 19 February 2021: Uber BV and others v. Aslam and others).

The court in England decided that Uber drivers were included in category (b) of Article 230 (3) of the Employment Rights Act of 1996 with a new classification, namely "dependent contractors," in which case the British Court confirmed that Uber drivers were Own Account Workers. This court decision took place because they were entitled to the benefits they claimed. The Court pointed out that the rights claimed by the Plaintiffs in the case were directly related to the standard minimum wage for work performed. The ruling does not go forward to ascertain whether Uber drivers are "employees." The apparent reason not to classify as an employee or not is that Plaintiff never disputed the term; this means that there is an explicit

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<sup>43</sup> Crowdworkers Can Be Employees in Germany!, by Hendrik Völkerding (2020).

<sup>44</sup> ,”GMB, “GMB Wins Monumental Victory in Employment Case Against Uber”, (2016), online: <<http://www.gmb.org.uk/newsroom/GMB-wins-uber-case>>.

acceptance by Plaintiff that they are not an “employee” in the common law sense.<sup>45</sup>

The decision of the UK Supreme Court UKSC5 19 February 2021 in its case regarding Uber London emphasizes 5 (five) aspects of the findings made by the Employment Tribunal by making them the basis for designating Uber drivers as “workers” and justifying the court's conclusion that Uber drivers work for and under contract with Uber. These five aspects are: first because the services performed must use the Uber application, Uber has the right to set service rates, and then Uber provides compensation to workers or drivers to receive payment for the work performed. Second, the contract services run by the driver are entirely made by Uber without any coordination with the driver. Third, Uber provides an indicator of the number of benefits. Fourth, a significant predictor by Uber is the rating system. Uber services give a rating from a scale of 1 to 5 from the passenger to the driver after the service is carried out. Any driver who fails to achieve a predetermined average rating or achievement of unstable score points, then Uber has the right to terminate his employment. Fifth, Uber provides communication indicators to passengers to a minimum other than the relationship between the service recipient.

By looking at these five indicators, the Uber Company determines and controls the transportation services drivers and passengers perform. In this regard, drivers' position are in a subordinated due to their dependence on service rules made unilaterally by Uber. Therefore drivers have little opportunity to have the ability to improve their economic situation through skill development or entrepreneurship. The only way to improve a driver's financial position is to work longer hours while meeting the Uber company's scoring system indicators.<sup>46</sup>

Common Employment Law in the UK has traditionally distinguished between employees and independent contractors or between contracts of service and contracts for service. The common law of the “master-servant” relationship is still deeply rooted in British employment law. The court applies control tests, integration tests, and economic reality tests in

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<sup>45</sup> Ravi Peiris, “Ramifications of the UK Supreme Court judgement in Uber B V v. Aslam and Others” (2021) III:29 Labour Law Journal, online: <<https://www.crosslandsolicitors.com/site/cases/Uber-BV-v-Aslam-Supreme-Court-gig-economy-workers>>.

<sup>46</sup> Uber BV and others (Appellants) v Aslam and others (Respondents), by The Supreme Court (2021).

determining the existence of a contract of service instead of a service contract. Many jurisdictions have been influenced by UK common law in adopting this binding to provide certainty over the existence of an employment relationship.<sup>47</sup> Although no single test can determine the existence of an employment relationship, the absence of one or two of these factors is often sufficient to provide a legal conclusion that the contract is not a contract in employment.<sup>48</sup> Indicator factors that support the discovery of work contracts are:

- 1) The employer's control over the content of the work and how it is carried out;
- 2) The employer agrees to pay wages and accept the business risk of profit and loss;
- 3) Workers are integrated into the organization;
- 4) Entrepreneurs supply capital, raw materials, tools, and equipment;
- 5) Workers are usually asked to do work personally rather than using a substitute
- 6) The business accepts other risk allocations, such as Occupational health and safety responsibilities;

In this case, the Supreme Court demonstrated that the rights claimed by the Petitioners (drivers) in the case are directly related to requests under the 1998 National Minimum Wage Law and associated regulations which provide for the right to be paid at least the national minimum wage for the work performed; rights under the Working Time Regulations 1998.

The law grants all these rights to workers. Therefore, the fundamental question posed by the court is whether the Applicant is included in the definition of Worker under the “limb (b) of section 230 (3) of the UK Employment Rights Act of 1996”. In this section, a person is said to be an employee if an individual has worked under an express or implied employment contract, where the individual undertakes to perform any work or service himself to another party in the agreement whose status is not based on a contract as a client or customer of any profession or business carried out by the individual.

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<sup>47</sup> Ravi Peiris, *supra* note 35.

<sup>48</sup> Hugh Collins, Keith Ewing, & Aileen McColgan, *Labour Law (Second Edition)* (Cambridge: Cambridge University Press).

The Supreme Court explicitly referred to the standard law test that generally establishes the existence of an employer-employee contract as opposed to an agreement in service in holding that Uber Drivers are members of workers under Section 230 (3) of the UK Employment Rights Act. Although it does not always connote subordination, such a business model creates dependence on specific relationships, making individuals vulnerable to exploitation.

The decision of the UK Supreme Court reflects the efforts made by the Courts of England to pay attention to the development of new and modern approaches of doing business, not limited by the concepts of simple and traditional idem of doing business. Technology and other enabling factors, such as entrepreneurial innovation and improving performance, have led to newer, more complex business methods. Laws need to keep pace with social and other developments to be socially and economically relevant. Such efforts can be achieved through both adopting new or revising existing legislation, and using judges' decisions in court, or even through a combination of the two.

## **V. LABOR PROTECTION ON DIGITAL PLATFORMS AS AN EFFORT TO DEVELOPMENT OF LABOR LAW IN INDONESIA**

Legal transplantation is one way to protect crowd workers. Legal transplantation occurs when law makers look across national borders for effective and transferable laws to solve a problem.<sup>49</sup> Legal transplantation as a national legal development policy is a political choice that is by the soul and spirit of Indonesian law, the soul and personality of the Indonesian nation, the ideological-philosophical basis of Pancasila, which is the original paradigmatic value of Indonesian culture and society is a political choice in the activity of making legal norms concrete (basic policy) without ignoring the position and presence of Indonesia in international relations.<sup>50</sup> For example, the government's views the omnibus law method as being considered for application with conditions met through a legal transplant

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<sup>49</sup> Jean-Frédéric Morin & Edward Richard Gold, "An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries" 58:4 *International Studies Quarterly*, online: <<https://www.jstor.org/stable/43868825>>.

<sup>50</sup> Ahmad Ulil, Sakti Lazuardi, & Ditta Chandra Putri, "Arsitektur Penerapan Omnibus Law melalui Transplantasi Hukum Nasional Pembentukan Undang-Undang" (2020) 14:1 *Jurnal Ilmiah Kebijakan Hukum*.

process. The Presence of Law No. 11 of 2020 Concerning Job Creation is an academic text that is paradigm-wise prepared to advance the economic ecosystem, in addition to accelerating the revitalization of the regulatory climate related to the investment climate and improving the economy through the omnibus law or the Job Creation Law to strengthen the economy.<sup>51</sup>

The purpose of implementing the Job Creation Law is to address two issues simultaneously: legal efficiency and legal harmonization. Legal efficiency can be achieved by incorporates many legislation in one law. This method will also encourage the efficiency of the state budget, especially in the procedures of adopting rules .<sup>52</sup> The Omnibus Law approach in Indonesia has become a vigorous discussion. Omnibus Law is usually associated with the common law tradition (Anglo-Saxon) when confronted with the civil law legal system (Continental Europe) might slightly be problematic or unusual. Meanwhile, countries with a tradition of the common law system prioritize cases or court decisions. Court decisions or jurisprudence are the primary sources of law.<sup>53</sup>

The legal protection related to normative labor rights is n crucial and interesting matter to discuss, especially following the enactment of the Job Creation Law. Indonesian Labour Law Act 13 of 2003 is the initial basis for labor regulations in Indonesia which also discusses the protection of the interests of workers against unlimited powers.

The Manpower Law, which is already 17 years old, has few shortcomings; one of which is the lack of legal protection for non-standard workers. It is hoped that The Omnibus Law could shed a light on such protection; however, the Labor Chapter in the new law has not address this problem. The partial revision of the Manpower Law that is included in the Job Creation Law has created new issues that adversely affected the legal protection of workers.

The government needs to provide legal protection and legal certainty for workers. Such protection should be inserted in the Job Creation Law. The

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<sup>51</sup> Ibid.

<sup>52</sup> Wicipto Setiadi, "Simplifikasi Regulasi dengan Menggunakan Metode Pendekatan Omnibus Law" (2020) 9:1 Jurnal Rechtsvinding, online: <<http://www.jdihn.go.id>>.

<sup>53</sup> Nurul Qomar, *Perbandingan Sistem Hukum dan Peradilan Civil Law System dan Common Law System* (Makasar: Pustaka Refleksi, 2010).

protection may include efforts to deregulate labor laws through the Job Creation Law will enable the labor market to be more flexible, then make the workforce more vulnerable.<sup>54</sup> The interpretation of vulnerability here is that much unemployment means that more people are willing to accept whatever jobs are available, even with reduced benefits, such as partnership jobs that offer no labor protection. Even though the hope is that with the presence of Law of Republic Indonesia No.11 of 2020 on Job Creation (UU Cipta Kerja), it is hoped it will be able to provide external protection, such as regulations that governing gig economy workers and a partnership model between service providers and gig economy workers.<sup>55</sup> Problems such as the dynamics of new employment status or partnership work relations and worker flexibility in the gig economy phenomenon are not limited to Indonesia alone. Several countries have adopted measures to deal with it. In general, the state can deal with the above employment problems in two ways: through court decisions and by enacting revisions to laws and regulations. The court judgment model has been widely used, especially in countries with common law tradition, such as the United Kingdom, which eventually classified Uber drivers as “employees.” Consequently, drivers should be a guaranteed the national minimum wage bound by UK working time regulations.

As until this study is conducted, Indonesia does not provide maximum legal protection for this type of workers. Based on the current development that shows more people prefer to work in the digital platform, adopting policies to classify and include the characteristics of working relationships in the digital platform into Indonesian Labour law. Indonesia may adopt the classification that has been taken by the UK, that accommodates technological development in the field of employment law. The law needs to keep pace with the development of digital platforms to be socially and economically relevant. One of these indicators is that all driver and passenger activities are determined and fully controlled by the platform provider company. The UK Common employment law has traditionally distinguished between a contract of service and a contract for service. The common law of the “master-servant” relationship is still deeply rooted in UK employment

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<sup>54</sup> Valeria Pulignano, *Work in Deregulated Labour Markets: a Research Agenda for Precariousness* (2019).

<sup>55</sup> Nabiyla Risfa Izzati & Mas Muhammad Gibran Sesunan, “‘Misclassified Partnership’ and the Impact of Legal Loophole on Workers” 10:1 *Bestuur* 56–57.

law.<sup>56</sup> The court applies control tests, integration tests, and economic reality tests in determining the existence of a contract of service instead of a service contract. Many jurisdictions have been influenced by the UK common law in adopting this approach to provide certainty over the existence of an employment relationships.

Another example is shown in The German Federal Labor Court decision. The Court has also provided legal protection for digital platform workers that is also classified as employees under the German Labor Law. The court acknowledged that there is a working relationship between the crowd workers and service provider platforms. The Courts focused on contractual relationships and the adequate performance of specific duties. An overall assessment of a particular case's facts and circumstances leads to the conclusion that crowd workers should be classified as employees. The Courts must rely on new and innovative indicators to classify crowd workers as employees. These indicators are first, application-based management and services; assessment and feedback mechanism on customer response; third, qualifications and division of types of work; fourth, platform and worker economic position (market access and opportunities).

Whereas Indonesia still use the old indicators in classifying workers on digital platforms, namely the existence of a working relationship with the elements of a working relationship listed in the Labor Law, namely work, wages, and orders. Meanwhile, platform companies often argue that they only act as intermediaries between workers and consumers or passengers; therefore, companies do not give orders to workers directly. Therefore, the working relationships between the two parties is a partnership agreement, and not a work agreement. In the author's analysis, the government needs to formulate innovative indicators to classify the status of employment relations as an effort to protect Indonesian workers.

Although the government's efforts to provide protection and legal certainty for the employment phenomenon through the 2020 Job Creation Law, such a law still need to be adequately reconsidered. According to the author from the decision of the Constitutional Court at number 91.PUU-XVIII/2020 states that the Law of Republic Indonesia No.11 of 2020 on Job

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<sup>56</sup> Ravi Peiris, "Ramifications of the UK Supreme Court judgement in Uber B V v. Aslam and Others" (2021) III:29 Labour Law Journal, online: <<https://www.crosslandsolicitors.com/site/cases/Uber-BV-v-Aslam-Supreme-Court-gig-economy-workers>>.

Creation concerning Job Creation is formally flawed, and thus the Job Creation Law is declared conditionally unconstitutional. The Constitutional Court stated that the Job Creation Law was conditionally unconstitutional because the Constitutional Court wanted to avoid legal uncertainty and the more significant impact that would arise, as well as consider balancing the requirements for forming a law that must fulfill all elements, such as legal certainty, benefits, justice and also assess the purpose of creating the Job Creation Law.

In reality, the Law of Republic Indonesia No. 6 of 2023 still needs to address the issue of gig economy workers, which means that there still need to be regulatory provisions, court decisions or government regulation on the classification of gig economy workers as workers, partners, or self-employed even though the author's analysis is that the classification of workers is essential to be determined seeing that it will have an impact on labor legal certainty to develop labor law in Indonesia.

After a series of ongoing problems, the German state is considered the author to be able to continue to provide sound legal guarantees to gig economy workers. Reflection on the country can be seen from the legal framework for judicial disputes regarding the categorization of employment relationships between gig workers and service provider companies.

We can analyse the legal framework in Germany, the UK, and Indonesia. The first precaution for possible approximations between different legal systems involves understanding that law is not limited to the most immediately visible formalizations; in other words, it is impossible to understand a legal system in its complexity simply by reading normative instruments and the judge's decision on the case. The expression of the legal system itself shows the need to understand the dynamics of interaction between the elements that make up this system, meaning that it is not a matter of static understanding.

Regarding the framework of labor law, the socio-historical formation of Indonesian labor law differs from Germany and the UK. The main framework of Indonesian labor law is to protect workers in social, economic, and technical protection aspects,<sup>57</sup> where the principles of labor protection

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<sup>57</sup> Niru Anita Sinaga & Tiberius Zaluchu, "Perlindungan Hukum Hak-Hak Pekerja Dalam Hubungan Ketenagakerjaan di Indonesia" (2017) 6:1 Jurnal Teknologi Industri.



are contained in Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation. In addition to legal protection for workers and employers in conducting employment relations, there must be good faith in making work agreements and their implementation, of course, the principle of justice that is adhered to by the Indonesian nation, which is generally depicted in the Pancasila philosophy becomes the foundation in the framework of Indonesian labor law.<sup>58</sup>

Through cases regarding the status of employment relations in the digital platform era, the German state, based on a court decision in the case, plans to have a political policy by the German Ministry of Labor and Social Affairs regarding regulatory plans to protect the gig economy workers. Considerations the German government is working out are mandatory pensions, continued salary payments, maternity leave and holidays, notice periods, and simplified ways to clarify their employment status. Indonesia's civil law legal tradition may still have many considerations for implementing policies like those in the UK. As means of legal development in the field of labor law, Indonesia may consider to take example of countries that have succeeded in dealing with labor issues in the gig economy era by enacting new regulations or revising labor regulations in Indonesia to provide legal protection and certainty for the workforce. Some measures that can be taken, for example: a) regulating digital platform workers, such as . Gojek, Grab and Maxim drivers through a new piece of legislation ; b) classifying digital platform workers as employees to enable them access to social benefits for Indonesian digital platforms workers.

If then Indonesia would like to adopt similar regulation like those in the two countries of study, the government should deliberate the different characteristics of legal culture between countries. Such characteristics include enacting laws and regulations. Therefore, Indonesia should thoroughly assess the acceptance whether a law brought from another legal system can be implemented within the Indonesian society.<sup>59</sup>

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<sup>58</sup> Nur Aliefia Septiani & Teddy Lesmana, "Analisis Sistem Kebijakan dan Perlindungan Hukum tentang Ketenagakerjaan Terkait Kesejahteraan bagi Tenaga Kerja dalam Perspektif Hukum di Indonesia" (2023) 2:1 *Civilia : Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, online: <<http://jurnal.anfa.co.id>>.

<sup>59</sup> Suteki, *Desein Hukum di Ruang Sosial* (Thafa Media, 2013).

Concerning the application of the omnibus law in the Indonesian legal system in Indonesia, the authors are in the opinion that Omnibus Law is not well adapted. Such law should have been adjusted before it was implemented in Indonesia, and a more thorough and in-depth academic study should have been carried out, so that the law can be well created and implemented, in compliance with provisions of "Article 5 of the Law" -Law Number 15 of 2019 concerning Formation of Legislation". According to Satjipto Rahardjo, it is necessary to apply identification of reception in society carefully because law and society are two sides that cannot be separated; according to Satjipto Rahardjo, the law achieves its legitimacy from society, and society is the social basis of law.<sup>60</sup>

In this regard, the Indonesian government should comprehensively consider the revision/adoption of a new law within the broader context of Indonesia's labor laws and regulations. Indonesia should focus on adapting and modernizing these frameworks to address the unique challenges and opportunities presented by the gig economy, such as regulatory flexibility, public awareness, and safety nets. Moreover, the government should recognize that the gig economy is diverse, and therefore, one-size-fits-all regulations like omnibus law may not be suitable for the specific needs and characteristics of different online work sectors in Indonesia.

## VI. CONCLUSION

Digital labor platforms have played a crucial role in driving this shift towards non-standard forms of employment. Despite the technological advancements, the work arrangements on these platforms often resemble traditional labor relationship, albeit mediated by digital tools.

In Indonesia, rigid labor regulations have led business to classify workers under partnership models to avoid traditional labor relations. In contrast, the German Federal Labor Court's decision to classify digital platforms workers as employees represents progress towards providing adequate protection for workers in the gig economy. The UK's traditional approach of distinguishing between employees and independent contractors has also influenced many jurisdictions.

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<sup>60</sup> Satjipto Rahardjo, *Penegakan Hukum, Tinjauan Sosiologis* (Jakarta: Genta Publishing, 2009).

Indonesia can learn from countries that have adapted their labor regulations to the gig economy era. This could involve enacting new laws or revising existing ones to create a more comprehensive regulatory framework, ensuring decent work standards, enabling digital platform workers to form formal labor unions, and classifying them as employees, ultimately promoting fair and equitable working conditions in the gig economy.

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