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Legal Protection of Online-Based Transportation Workers in the Era of Digitalization

Ratna Indayatun¹.

¹Syeh Yusuf Islamic University, Tangerang, Indonesia, rindayatun@unis.ac.id.

Corresponding Author: rindayatun@unis.ac.id¹

Abstract: The objective of this research is to analyze the employment relationship between online transportation workers and their employers, examine why online transportation workers do not receive benefits from the Social Security Administration for Employment (BPJS Ketenagakerjaan) program, and assess the government's role in providing legal protection for online transportation workers. The research employs normative and sociological legal methods, utilizing secondary legal materials such as books, questionnaires, and interviews. Research Findings: The employment relationship between online transportation workers and their employers constitutes a permanent employment relationship (PKWTT) since it involves elements of work and wages. Online transportation workers receive legal protection from the Social Security Administration; however, this protection does not include the Old Age Security program. The government plays a role in providing legal protection to online transportation workers, as stipulated in Article 16, Paragraph (3) of Minister of Transportation Regulation No. PM 12 of 2019. However, in practice, online transportation workers have not fully received the social security benefits provided by the Social Security Administration for Employment (BPJS Ketenagakerjaan). Therefore, the government needs to provide guidance to employers and enforce laws and regulations related to the Old Age Security program in alignment with the digitalization era.

Keyword: Legal Protection, Workers, Online-Based Transportation.

INTRODUCTION

The 1945 Constitution guarantees the right of every citizen to obtain welfare and healthcare services, particularly Work Accident Insurance (JKK), Death Insurance (JKM), and Old Age Security (JHT), as part of the national social security program that ensures healthcare coverage for workers and their families.

This social security program is expected to improve the overall welfare of the Indonesian people in accordance with the mandate of the 1945 Constitution. The implementation of social security can be regarded as a form of assurance in protecting human rights, in line with Article 34, Paragraph (2) of the 1945 Constitution, which states: "The state shall develop a social security system for all people and empower the weak and underprivileged in accordance with human dignity."

Social security is not merely a worker's right but also a crucial instrument in preventing poverty that may arise from unforeseen events such as workplace accidents, illness, or when workers reach a non-productive age.

From an economic-political perspective, the provision of social security for workers can be seen as a form of social contract involving an agreement between workers, employers, and the government. Workers contribute through their efforts and productivity, employers have a responsibility to ensure workers' well-being, and the government acts as a regulator to guarantee social protection for the entire workforce.

Data from the Indonesian National Police Traffic Corps (Korlantas Polri) shows that there were 137,851 traffic accidents in 2022. This number increased compared to 103,645 cases in 2021 and 100,028 cases in 2020. More than 70% of these traffic accidents involved two-wheeled vehicles, including online motorcycle taxis (ojol).

This phenomenon of accidents involving online motorcycle taxi drivers highlights the need for social security programs such as old-age insurance and work accident insurance..

The job of an online motorcycle taxi (ojol) driver often involves navigating traffic-prone accident areas. This situation underscores the need for legal protection for online motorcycle taxi drivers who experience accidents while working.(Gusti et al., 2019); (Aditia & Mahmud, 2023).

Cyber employment relationships that fall under labor law are governed by Law No. 13 of 2003 on Manpower, which regulates all rights and obligations. In addition, employment agreements or collective labor agreements that are not specifically addressed in labor legislation also apply. Legal protection for cyber workers in online transportation, such as GOJEK drivers, who engage in cyber-based employment relationships is safeguarded under the Civil Code (KUHPerdata) or agreements mutually agreed upon by the parties involved.(Lelisari et al., 2022); (Sonhaji, 2018).

Normatively, the regulation of partnership-based employment relationships in Indonesia can be referred to in Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (MSMEs). The law defines a partnership as a business cooperation, either directly or indirectly, based on the principles of mutual necessity, trust, reinforcement, and benefit. This partnership involves Micro, Small, and Medium Enterprises (MSMEs) collaborating with larger businesses. (Afriana & Putri, 2020).

There is no employment contract in the partnership relationship between PT GO-JEK and GO-JEK drivers because one key element—wages—is not fulfilled. As a result, GO-JEK drivers are not classified as employees, as there is no employment relationship between PT GO-JEK and the drivers. Instead, the relationship is purely a partnership, in which both parties hold equal positions as business partners. (Khalid, 2019).

Meanwhile, according to the definition of an employment relationship as regulated in Law No. 13 of 2003 on Manpower, it is a relationship between an employer and a worker/laborer based on an employment contract, which includes three key elements: work, wages, and orders. Considering these two terms—employment relationship and partnership—it is clear that they follow different patterns in carrying out work.(Sonhaji, 2018)

This suggests that in a partnership model, the worker operates independently and is only bound by a business cooperation agreement, where both parties hold equal positions without a hierarchical structure. In contrast, under the employment relationship defined in the Manpower Law, the worker is in a subordinate position to the employer, indicating a hierarchical (superior-subordinate) relationship. However, upon closer examination, the actual working conditions of online transportation drivers fulfill the elements of work, wages, and orders as stipulated in the Manpower Law.

The legal status of online transportation drivers or workers in Indonesia is crucial, as it directly impacts the protection of their rights, welfare, and, most importantly, the implementation of the old-age security program. This program is considered essential, as its

benefits can support the well-being of online transportation drivers or workers when they reach a non-productive age.

Although there has been collaboration with the Social Security Administering Body for Employment (BPJS Ketenagakerjaan) since 2018, social security protection for online transportation workers has only covered Work Accident Insurance (JKK) and Death Insurance (JKM), without including Old Age Security (JHT). This indicates the need for regulatory updates to provide more comprehensive protection for online transportation workers. (Astrid & Noeraini, 2015)

Several countries have taken firm steps regarding the legal status of online transportation drivers. In 2022, as reported by CNBC Indonesia, on-demand application companies in some countries could no longer implement the partnership model for drivers.

In the United Kingdom (UK), legal disputes over the status of online transportation drivers have been brought to the highest court since 2016. The court ultimately ruled that online transportation drivers are entitled to employment rights, including minimum wage and social security benefits.

The effectiveness of labor laws in regulating employment relationships is often influenced by several factors, such as the implementation of regulations and public participation in adhering to them. The primary goal of the law is to achieve a balance of interests, order, justice, stability, happiness, peace, and overall well-being for individuals. Therefore, regulations concerning the status of online transportation drivers must be continuously updated to reflect the principles of fairness and balanced social protection.

In this article, the research questions are as follows: (1) How is the legal employment relationship between online transportation workers and their employers defined? (2) Why do online transportation workers not receive the benefits of the Social Security Administering Body for Employment (BPJS Ketenagakerjaan) program? (3) What is the government's role in providing legal protection for online transportation workers?.

METHOD

The research approach used in this study is normative-empirical. In normative research, often referred to as doctrinal research, the objective is to provide a systematic exposition of the regulations governing a specific legal category. Additionally, this approach analyzes the relationship between various legal provisions, identifies areas where legal implementation faces obstacles, and predicts future legal developments. Thus, this study does not only focus on the normative aspects of existing regulations but also considers how these regulations are applied in practice. (Abdulkadir, 2004).

The research data sources used in this study are secondary data, consisting of fundamental legal norms and principles, such as the 1945 Constitution, as well as foundational regulations like the People's Consultative Assembly Decree No. XVI/MPR-RI/1998 on Economic Policy within the Framework of Economic Democracy, and other statutory regulations.

The data analysis and processing techniques employed in this study use a qualitative juridical or descriptive qualitative analysis, a method that does not involve statistical testing.

The descriptive qualitative method is applied by presenting all collected data, including both primary and secondary data. The data is then analyzed by referencing legal theories and applicable regulations to provide a comprehensive understanding of the research findings.

The results of this analysis not only provide a systematic overview of the issues being studied but also serve as the basis for drawing conclusions aligned with the research objectives. With this approach, the study can offer a deeper understanding of the examined phenomenon, ensuring a comprehensive and well-founded analysis.

RESULTS AND DISCUSSION

Employment Relationship Between Online Transportation Workers and Employers

The relationship between online transportation drivers (such as Gojek) and platform companies is based on a partnership agreement, rather than a formal employment relationship. Under this agreement, drivers are considered independent service providers, not employees of the company.

From the perspective of labor law, the relationship between drivers and platform companies does not fall under the definition of an employment contract, which typically includes elements of wages, orders, and work. In this case, there is no element of wages, as drivers earn income through a profit-sharing mechanism rather than receiving a fixed salary.

However, upon closer examination, the employment relationship between online workers and their employers aligns with a Permanent Employment Agreement (PKWTT), as it includes elements of work and wages between the employer and the worker. Therefore, the author argues that the partnership agreement broadly contains employment elements, as defined in labor law, which clearly regulates the requirements for agreements between parties, the rights and obligations of both parties, and worker protection..

Partnership vs. Employment Relationship

Gojek operates as an intermediary that connects drivers with consumers, rather than as an employer. This relationship is regulated through a partnership agreement based on the principle of freedom of contract, as stipulated in Article 1338(1) of the Indonesian Civil Code (KUH Perdata).

Within this framework, drivers are considered independent partners, not employees, meaning they are not subject to standard labor regulations that typically provide worker protections, such as fixed salaries, social security benefits, and severance pay. Instead, their working conditions, including rights and obligations, are determined based on mutual agreements outlined in the partnership contract.

Legal Framework of Partnerships

Referring to Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (MSMEs), partnerships are regulated through a written agreement that defines the rights, obligations, and dispute resolution mechanisms between the involved parties.

The principle of partnership must ensure a balanced relationship, meaning it should not create dependency or lead to exploitation of the partner. Instead, partnerships should promote mutual benefits, fairness, and transparency, allowing both parties to maintain their autonomy while fulfilling their respective responsibilities as stipulated in the agreement.

Standard Contracts and Imbalance in Bargaining Power

In the partnership relationship between online transportation drivers and platform companies, the agreements used are often standard contracts. The clauses in these agreements are typically determined unilaterally by large companies without providing fair negotiation opportunities for driver partners.

This situation can create an imbalance in the working relationship, where the company holds greater control compared to its partners. As a result, there is a potential for exploitation, where drivers are bound by the company's rules and policies without having equal protection as formal workers.

Weaknesses in Legal Protection

In practice, partnership agreements are often standardized, with clauses unilaterally determined by large companies, leaving no room for negotiation for partners. This situation can create an imbalance in the working relationship, where the dominant party—in this case, the

platform company—has full control over the terms and conditions that partners must comply with.

This bargaining power imbalance has the potential to lead to exploitation, such as unfair profit-sharing, unilateral policy changes, or unclear legal protection for partners. Therefore, clearer and fairer regulatory mechanisms are needed to ensure that partnerships truly benefit both parties.

The Principle of Mutualism

Partnerships in online transportation offer work flexibility for drivers, allowing them to work without fixed hours or rigid assignments. This system enables drivers to manage their own working hours based on their needs and preferences. However, on the other hand, this mechanism also presents income uncertainty and job insecurity, as drivers are not guaranteed a stable income or labor protections similar to those received by formal workers.

In the context of legal relationships, this partnership provides business opportunities for drivers but also poses challenges in protecting their rights. Therefore, legal reforms are needed to create a balance between work flexibility and welfare protection, ensuring that partnerships remain fair and sustainable for all parties involved.

Implementation of the Social Security Program for Online Transportation Workers

Constitutional and Regulatory Foundation

Social security for workers has a strong legal foundation in Article 28H paragraph (3) of the 1945 Constitution of Indonesia, which affirms that every person has the right to social security to fully develop themselves as dignified human beings. Additionally, Law No. 40 of 2004 concerning the National Social Security System (SJSN) regulates the implementation of Indonesia's social security system to provide protection and ensure the well-being of all workers.

As an implementation of these regulations, the Workers Social Security Agency (BPJS Ketenagakerjaan) plays a crucial role in administering social security programs aimed at protecting workers' rights, including both formal and informal workers. This program is designed to ensure labor welfare, mitigate socio-economic risks from work accidents, job loss, or retirement, and create a more equitable and sustainable employment system.

Field Implementation

Many online transportation drivers have registered with BPJS Ketenagakerjaan, but the majority enroll independently rather than through their employers. Gojek and Grab do provide insurance protection options, either through BPJS Ketenagakerjaan or private insurance companies such as Allianz. However, participation in these programs is voluntary, meaning there is no mandatory requirement for every driver to join.

Additionally, the registration process and premium payments are entirely the responsibility of individual drivers, which often poses a challenge for those with unstable incomes. As a result, many drivers still lack adequate social protection, increasing their risk when facing unexpected events such as workplace accidents or income loss.

Law No. 13 of 2003 on Manpower cannot be applied to the working relationship between online transportation drivers and companies like Gojek, as this relationship is based on a partnership model rather than an employer-employee relationship. Consequently, these companies are not obligated to provide social security benefits as mandated for formal workers.

Nevertheless, Gojek provides insurance coverage, including collaboration with BPJS Ketenagakerjaan. Online taxi and motorcycle taxi (ojek) driver-partners are required to pay IDR 16,800 per month to receive benefits such as work accident protection, scholarships for their children in case of a work-related accident, and financial compensation.

If drivers wish to receive Jaminan Hari Tua (JHT) or Old Age Security, they must pay an additional contribution starting from IDR 36,800 per month, which can be deducted directly from their in-app balance.

However, in practice, JHT is not included in the official partnership scheme between Gojek and BPJS Ketenagakerjaan, meaning that drivers must register independently if they want to access this benefit. This poses challenges for driver-partners, especially those with irregular incomes, in ensuring the sustainability of their social security protection for the future.

Limitations of Legal Protection

The relationship between application-based companies (platform providers) and drivers in online transportation is based on a partnership model, rather than a formal employment relationship as regulated under Labor Law. Consequently, drivers do not automatically receive employment rights, such as benefits, social security, or legal protection, which are typically the employer's responsibility toward their employees.

Without formal worker status, drivers are not entitled to wage protection, severance pay, or company-sponsored labor social security. Instead, they must independently register and pay for available social protection programs, such as BPJS Ketenagakerjaan or private insurance. These limitations create challenges for drivers in obtaining legal certainty and social welfare, particularly when facing risks such as work accidents or loss of income.

International Comparison

Several countries have taken steps to recognize online transportation drivers as workers with clearer employment rights. The UK, Switzerland, and the Netherlands classify drivers as workers, granting them minimum wage, benefits, and social protection such as health insurance and pensions. This decision is based on the consideration that although drivers work flexibly, they still rely on the platform as their primary source of income.

Meanwhile, Malaysia has implemented a more proactive policy by providing fixed salaries and benefits to drivers without requiring a court ruling. This approach demonstrates that recognizing drivers' rights does not always have to go through a lengthy legal process but can instead be initiated through more adaptive regulations that accommodate the digital economy's evolution.

This comparison highlights that in several countries, efforts have been made to balance work flexibility with labor protection—a challenge that remains unresolved in many countries, including Indonesia.

Writer's Perspective

In the context of employment relationships, online transportation drivers in Indonesia fulfill the three main elements as stipulated in Law No. 13 of 2003 on Manpower, namely work, wages, and orders. Although legally classified as partners, real-world conditions indicate that platform companies (applicators) exercise significant control over drivers through application systems, performance evaluations, and sanction mechanisms.

Normatively, Article 1, point 15 of the Manpower Law states that an employment relationship exists when there is a work agreement between a worker and an employer, encompassing work, wages, and orders. In practice, online transportation drivers receive orders through the application, where the system automatically assigns a driver based on proximity. Once the order is accepted, the app provides destination instructions and trip guidance, demonstrating the platform's control over driver operations.

Although drivers have the freedom to accept or decline orders, the platform company (applicator) retains full authority in assessing their performance. Rejecting orders may result in a lower rating or even restricted access to future requests. Additionally, drivers are required to

follow certain rules set by the platform, such as dressing neatly, behaving politely, and driving safely to enhance customer satisfaction.

Furthermore, passengers also have the right to rate drivers and file complaints with the platform, which may lead to sanctions against the driver. This situation further highlights that online transportation drivers operate under the control and supervision of the platform company, resembling an employment relationship between a worker and an employer in many aspects.

Therefore, according to the author, online transportation drivers should receive fairer labor protection that aligns with the actual nature of their working relationship.

In the context of employment relationships, online transportation drivers in Indonesia fulfill the three main elements outlined in Law No. 13 of 2003 on Manpower: work, wages, and orders. Although legally categorized as partners, the reality in the field shows that the platform company exercises significant control over drivers through the application system, performance evaluations, and sanction mechanisms.

Normatively, Article 1, point 15 of the Manpower Law states that an employment relationship exists when there is a work agreement between a worker and an employer that includes elements of work, wages, and orders. In practice, online transportation drivers receive orders through an application, where the system automatically assigns drivers based on their nearest location. After accepting an order, the application provides destination details and travel instructions, indicating the platform company's control over the drivers' operations.

Although drivers have the freedom to accept or decline orders, the platform company still holds full authority in assessing their performance. Rejecting orders may result in a lower rating or even restricted access to future requests. Additionally, drivers must comply with specific rules set by the platform, such as dressing neatly, behaving politely, and driving safely to enhance customer satisfaction.

Furthermore, passengers have the right to rate drivers and submit complaints to the platform, which may lead to sanctions against the driver. This situation further highlights that online transportation drivers operate under the control and supervision of the platform company, resembling an employment relationship between a worker and an employer in many aspects.

Therefore, according to the author, online transportation drivers should receive fairer labor protection that aligns with the actual nature of their working relationship.

The Role of the Government in Providing Legal Protection for Online-Based Transportation Workers

Legal protection aims to safeguard society from arbitrary actions, create order, and uphold human dignity. The employment relationship between online transportation drivers and platform companies, which is based on partnership agreements, creates an imbalance in bargaining power, as these agreements are often unfair. Therefore, the government needs to establish mandatory regulations to protect drivers' rights.

A partnership agreement differs from an employment contract, meaning that labor laws do not apply. Disputes between drivers and platform companies are resolved through general courts rather than industrial relations courts. The government has responded to this issue by issuing Ministerial Regulation No. 108 of 2017 and Ministerial Regulation No. 12 of 2019, which regulate driver safety protection and social security.

However, a regulatory weakness is evident in the fact that online motorcycle taxis (ojek online) are not recognized as public transportation, making it difficult for them to obtain insurance and social security protection. Drivers can only secure protection through BPJS Ketenagakerjaan by registering and paying contributions independently.

The government, as proposed by the Manpower Office of Lampung Province (Disnaker Provinsi Lampung), should develop policies that consider the employment status of online

motorcycle taxi drivers. While changing the partnership relationship into a formal employment relationship could enhance protection, it might also reduce work flexibility and limit job opportunities.

Therefore, the government is expected to strengthen regulations that protect drivers' rights without altering the partnership model, while still ensuring social protection and well-being, in accordance with constitutional mandates.

CONCLUSION

The relationship between online transportation drivers and platform companies does not meet the criteria of an employment contract as defined in Law No. 13 of 2003 on Manpower, since there is no fixed wage element. Drivers' earnings are based on a revenue-sharing system rather than a salary determined by the company. However, in practice, this relationship reflects the characteristics of a Permanent Employment Agreement (PKWTT) because it still includes elements of work and income. Therefore, although legally categorized as a partnership, this relationship still entails employment rights and obligations, even though it is not formally recognized as an employment relationship.

Being classified as partners means that drivers are not automatically entitled to social security benefits as regulated under the Manpower Law. As a solution, Gojek provides a protection scheme through a collaboration with BPJS Ketenagakerjaan. Drivers who wish to obtain work accident protection and compensation must pay a self-contribution of IDR 16,800 per month. Meanwhile, those who want to receive Old Age Security (JHT) must pay an additional contribution of IDR 36,800 per month. However, JHT is not integrated into the collaboration between Gojek and BPJS Ketenagakerjaan, reducing long-term protection for drivers.

Currently, the Manpower Law and Ministerial Regulation No. 12 of 2019 (Permenhub No. 12/2019) have not fully provided protection for online transportation drivers. The partnership agreement limits the company's responsibilities, shifting legal protection to the BPJS Ketenagakerjaan scheme for non-salaried workers (BPU). Under this scheme, drivers must actively pay their own contributions to access social security benefits. This weak regulatory framework keeps drivers in a legally and economically vulnerable position.

Therefore, the government needs to strengthen regulations that accommodate social protection needs for drivers without compromising the work flexibility that is the main advantage of the online transportation system. Additionally, efforts should be made to increase bargaining power equality between drivers and platform companies, ensuring a fairer and more sustainable employment relationship.

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