

# LEGAL PROTECTION OF DAILY WORKERS(GIG WORKERS) IN DIGITAL ERA

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## ABSTRACT

*The development of the digital era has affected various aspects of human life, including employment issues. This is marked by the emergence of the gig economy which indicates an increase the number of daily workers being recruited through online job vacancy. The use of internet-based technology is utilized by employers by offering jobs through an online platform with a work contract system that makes it easy for job seekers to obtain information. In addition, workers are given flexibility, especially in terms of time and workload. The minimum recruitment costs, no obligation to provide bonuses and the freedom to call workers when needed provide major advantages for employers. This situation has the potential to create space for employers to neglect their obligations to fulfill workers' basic rights. For example, the lack of wage monitoring because the amount of wages depends on the type of work, other allowances are not given because when the work is completed, wages are paid immediately without bonuses and awards. In addition, workers are responsible for the risks of their work because of the lack of protection in social security as a result of the unclear employment agreements. The research method used is normative juridical with the type of library research through collecting library materials as the main source. Daily workers are not explicitly mentioned in Law No. 13 of 2003 concerning Manpower, but protection for workers in labor regulations also applies to daily workers who classified into a specific time work agreement(PKWT).*

**Keywords:** *Legal protection; daily worker (gig worker); digital era*

## INTRODUCTION

The use of the latest internet-based technology as a result of globalization in the digital era also influences employment issues. Technological advances through the internet have been used by employers to recruit workers through online sites with a temporary employment relationship model or contract system. The high availability of job vacancies using online media was triggered by the emergence of the gig economy. The increase in contract work through the digital world is called the gig economy and workers who enter this work model are known as gig workers.

Wilson stated that the gig economy is work that is characterized by short-term contracts or previously more commonly known as freelance, where workers are paid based on the amount of work done in the digital world and their income is not fixed. (Dian Fatmawati, 2019). According to the Central Bureau of Statistics (BPS), the trend of the gig economy



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in Indonesia is developing, judging from the number of freelance workers as of August 2020 of 33.33 million, an increase of around 26% from 2019. If we look at the number of the workforce in Indonesia over the period In the last 3 years (2019-2021) there has been an increase. In addition, the population working in the informal sector from 2019 to 2022 will continue to increase, especially in 2020 reaching 60.47% of the total workforce of 138.22 million people, including gig workers who are classified as workers in the informal sector. (Central Agency Statistics, 2020).

The data quoted from the website of the Ministry of Manpower shows that there has been a change in the distribution of the population working in various business fields. The year 2021 is dominated by the information and communication sector which has experienced the highest increase in the number of working people, namely 12.52 percent, followed by the real estate sector at 10.53 percent. It is undeniable that this condition is one of the impacts of the Covid-19 pandemic which has affected the employment sector in Indonesia. The presence of the Covid-19 pandemic has limited the space for people to move so that the use of the internet for work and socializing has become daily consumption. Unknowingly, the online work model has also accelerated digitalization in the employment sector. So it is not surprising that the information and communication sector experienced the highest increase in workers when the majority of other sectors experienced a decrease in the number of workers due to the Covid-19 pandemic. (Employment In Data, 2021, p. 33). This of course will give birth to new problems in the field of employment, especially regarding work relations in the digital era.

In addition, the symptom of informalization in the work sector is a global strategy implemented by employers in order to achieve a high level of efficiency and productivity. The rise of this work model is due, in part, to a global economic phenomenon known as the trend of labor flexibility. Labor flexibility provides wider space for employers to reduce the use of standard labour, employ workers on a casual basis, subcontract and or outsource. Changing work patterns to efficiency goals, while still creating company competitiveness so that they are able to respond to every fluctuation and market trend. (Agusmidah, 2016, p. 4).

Various changes marked the emergence of the gig economy, such as selling and buying activities through online media, job offers through online networks, offers for services, work contract systems, working conditions based on portfolios and the ability to do several jobs at once. The Gig Economy, also known as the Sharing Economy, also creates Gig Workers, or what are referred to as “freelancers” or Freelancers. The emergence of gig workers is a new problem, especially related to the shift in the conventional labor market which tends to be permanent and rigid to become flexible.

The flexible work that is offered gives great flexibility to gig workers when compared to work models that are bound by working hour rules. The temporary nature of the work because it is based on a work contract seems to reduce the workload even though gig workers often work beyond the working hours set by labor regulations. Research shows

that gig workers in Indonesia work an average of 12 hours a day and even the majority in cities like Jakarta, Yogyakarta and Banyuwangi work 9-12 hours a day. Of course this far exceeds the rules permitted by labor regulations. Likewise, the wages received only depend on the number of jobs as if the wage model is based on "*piece-work* or wages per job" which had previously been abolished are now being practiced again in the field. There is no monitoring and setting of the minimum wage even without bonuses or other allowances. Working conditions that are loaded with the risk of accidents are also the responsibility of the gig worker. Various issues emphasize the vulnerabilities that gig workers suffer from. (NR Izzati, theconversation.com). Therefore it is necessary to provide protection to gig workers through existing legal instruments.

## **METHOD**

The research method used is normative juridical research namely a study that places norms as research objects, both legal norms in statutory regulations, legal norms originating from a law. (Soerjono Soekanto and Sri Mamudji, 2015, p. 70). This type of research uses library research, namely the method of collecting library materials as the main source in writing.

## **RESULT AND DISCUSSION**

### **1. Forms of Gig Worker Employment Relations in Indonesian Labor Law.**

The emergence of the gig economy has caused new problems in employment. The increasing presence of gig workers in the digital era has implications for shifts in work relationships. Work relationships that were initially permanent have been replaced by gig workers. The term gig worker is actually still not popular among the society. So there are quite a lot of different names that basically refer to gig workers. Some refer to them as freelancers, self-employed and part-time workers namely workers who are willing to work when needed.

Law No. 13 of 2003 concerning Manpower Article 1 point 15 states that the employment relationship is the relationship between employers and workers/laborers based on work agreements which have elements of work, wages and orders. The working relationship in Law Number 13 of 2003 concerning Manpower is explained as follows:

- a) Temporary employment relationship. This work relationship lasts for a predetermined period of time, when the time is over then delete the work relationship. Term of employment based on work agreement in the form Specific Time Work Agreement (PKWT). The status of workers with the PKWT model is called contract workers. Therefore, when referring to a form of work relationship that is limited by time, gig workers are included in workers with a work agreement for a certain time or contract workers and casual daily workers. In Law Number 13 of 2003 concerning Manpower it is regulated in Article 51 paragraph (1).
- b) Permanent working relationship. Working relationship that is not limited in time. However, this working relationship may end for certain reasons regulated by law, for example the worker retires and dies. The status of the worker is a permanent worker and



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the form of the work agreement is called an unspecified time work agreement (PKWTT). In Law Number 13 of 2003 concerning Manpower it is regulated in Article 56, Article 60 and Article 63.

Digitalization, which affects current labor conditions, has also given birth to a new type of employment relationship, which is known as a non-standard form of employment or non-standard employment relationship. The ILO defines non-standard employment as a form of deviation from standard employment relations. These non-standard employment relationships are grouped into 4, namely temporary employment, multi-party employment relationships, part time and on-call work, and disguised employment/dependent self-employment. (International Labor Organization, 2015).

*Disguise employment relationship* and *dependent self-employment* is the one that most dominates the job market in gig economy era. The ILO defines a disguise employment relationship or 'disguised employment relationship', as a situation that occurs when an employer treats an individual other than an employee, by hiding his legal status as an employee. Meanwhile, dependent-self employment or 'dependent independent employment relations' is a situation that occurs when workers perform services under a contract that is not an employment contract, are not categorized as workers, but they actually depend on certain companies for their income, as well as their way of working. still controlled by the company.

The phenomenon of the gig economy also creates a unique relationship and is adopted by the two giant companies Go Jek and Grab, which contribute quite a lot of gig workers in Indonesia. Employers (service providers) are only a third party between workers and consumers. Elements of "command" to workers obtained directly from consumers. Thus obscuring the element of "command" as one of the conditions for the birth of a working relationship. This model can be said as a partnership relationship. However, in practice service provider companies can end the 'partnership relationship' unilaterally if the contribution of workers assessed through the rating system has decreased. In addition, workers must comply with all conditions set by the service provider company, so that it is not correct to say that workers are 'self-employed'. For this reason, the types of relationships that emerge in this gig economy can be categorized as dependent self-employment. (Izzati, NR 2021, p. 298). Of course the blurring of the form of this working relationship will legalize employers to ignore the rights of their workers.

However, in the Civil Code (BW) 1601 it has been stated "If an agreement contains signs (elements) of a labor agreement (work agreement) in an employment relationship, along with signs of other types of agreement outside of an employment relationship, then the both the provisions regarding the work agreement and the provisions concerning other agreements (refers to labor agreement with employment relationship) whose symbols are included there in; If there is a conflict between these two (these) provisions, then the provisions regarding the work agreement (Article 1601) apply. The most common working

relationships in the digital era are those that are more of a partnership in nature. That is, if there is an agreement that contains elements of an employment relationship, but there are also elements of other legal relations besides the employment relationship, then what is enforced is the provisions regarding employment relations. (Nuraeni, 2020, p.8). The clarity of work relations is very crucial because it will have an impact on the status of workers. In line with what Cherry said, worker status is an important indicator to protect workers' rights (Cherry (2017)).

The emergence of daily workers (freelance) who are categorized as *on-call work* or *on-demand workers* contribute to the number of gig workers in Indonesia. The ILO research that there has been an increase in the trend of part-time workers in Indonesia, from around 16.1% in 2006, to 22.7% in 2014 (Izzati, NR 2021, p.296). In addition, the domination of jobs controlled by internet technology in the digital era has minimized normal working hours. Normal working hours are 35 hours a week based on Minister of Manpower Regulation No. 1 of 2014. Meanwhile, on-call work does not have to work full time and only works when needed, meaning working hours are less than 35 hours a week.

The provisions regarding casual daily workers are almost the same as the provisions in the specific time work agreement model (PKWT), where the employment relationship is temporary. However, regarding the period of time for daily workers, it has been specified in detail in the labor regulations and their implementing regulations. In addition, the relationship between employers and daily workers relies on online platforms through the use of the internet, this is clearly different from the agreement model in specific time work agreement (PKWT) regulated by labor regulations.

## **2. Legal Protection for Gig Workers in Indonesian Labor Laws in Digital Era**

Labor has a very crucial position as implementer and target of national development. Therefore, basic labor rights must be completely and clearly regulated in labor regulations in Indonesia, which include the protection of workers' rights. Legal protection can be realized in material form (worker welfare) but also in the form of prevention of accidents, because this is very important so that workers can maintain their health and safety while carrying out work. (Zaeni Asyhadi, 2014, p. 6)

Every worker has the right to obtain protection, as stipulated in Article 86 paragraph (1) of the Manpower Act Number 13 of 2003, namely protection for: 1. Occupational safety and health; 2. Morals and religious decency; 3. Behavior is in accordance with human dignity and values as well as religious values. The form of labor protection by Imam Soepomo is economic protection that regulates work relations and work agreements (work contracts) as protection for work conditions; Second, Work Safety Protection which prioritizes work safety for workers in dealing with dangerous conditions caused by work tools; Third, Occupational Health Protection, employers are often negligent and arbitrary in providing a job (exploitation of workers); Fourth, Protection of Employment Relations for work carried out by workers for employers in work relations by receiving wages; Fifth, Protection of Legal Certainty, in the form of; legal protection stipulated in laws and regulations which are of a legal nature, sanctions for labor



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violations that are coercive in nature, as harshly and strictly as possible against criminal sanctions that contain orders or prohibitions (Sulaiman and Walli, 2019, p. 91).

The rights of daily workers are regulated in the Manpower Act and its derivatives. The following are the provisions of daily workers in Indonesia:

a) Law Number 13 of 2003 concerning Manpower.

Daily Workers can be categorized under a Specific Time Work Agreement (PKWT). Provisions regarding Specific Time Work Agreements (PKWT) are further regulated in Articles 57-66 of the Manpower Law. A Specific Time Work Agreement (PKWT) is made in writing and must use Indonesian and Latin letters. If it turns out that the work agreement for a certain time was made unwritten, then it is stated as a work agreement for an indefinite time, which means that the worker's status becomes a permanent worker. Furthermore, the work agreement is made in Indonesian and a foreign language, if later there is a difference in interpretation between the two, then the work agreement made in Indonesian will apply.

b) Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Kep-100/Men/VI/2004 of 2004 concerning Provisions for the Implementation of Certain Time Work Agreements.

This regulation states that the Daily Casual Work Agreement is part of the Specific Time Work Agreement (PKWT), which is contained in Chapter V Article 10 to Article 12. There are several provisions that are more specific when compared to the provisions in the Manpower Act. For example, it has been stipulated that a Specific Time Work Agreement is intended for certain types of jobs that change depending on the time and volume of work. Wages are determined based on attendance. The working period is less than 21 (twenty one) days in 1 (one) month. If the worker works for 21 (twenty one) days or more for 3 (three) consecutive months, the casual daily work agreement changes to an unspecified time work agreement.

c) Regulation of the Minister of Manpower Number PER-06/MEN/1985 concerning Protection of Casual Daily Workers.

There are several provisions regarding the relationship between employers and casual daily workers as in the following article:

Article 5 :

"Employers are required to make and maintain a list of daily workers employed, using the form attached and submitting one copy to the local Office of the Ministry of Manpower no later than 7 (seven) days after hiring casual daily workers including if there is an addition or reduction of daily workers."

Article 5 emphasizes the obligation for employers to make a written agreement between casual daily workers and employers whose implementation is supervised by the government.

Article 7 :

"Remuneration for casual daily workers is based on daily wages, the amount of which cannot be less than the minimum wage determined by the Government."

Furthermore, this article emphasizes that the wages paid by employers to casual daily workers may not be lower than the minimum wage according to government regulations.

- d) Regulation of the Minister of Manpower of the Republic of Indonesia Number 5 of 2021 concerning Procedures for Implementing Work Accident Benefit, Death Benefit and Old Age Benefit.

This regulation requires employers to continue to include casual daily workers and workers with a contract system (PKWT) to receive protection in the form of social security.

The guarantee of legal protection for workers to obtain normative rights in the sense of a decent living for themselves and their families is the realization of fair normative rights arrangements for workers, so that in order to prevent unfair standards of normative rights, it is necessary to have regulations. normative workers' rights law (law enforcement). (Adrian Sutedi, 2014, p.56)

Basically labor law wants to realize social justice for all people and this is based on two aspects, namely: 1) law is ideally realized through statutory regulations (heteronomous) and which are autonomous in nature. In this legal realm, it must represent a legal product that is in accordance with *das sollen* according to justice and truth, certainty, and has benefits for the parties. These laws and regulations will later be aligned with the meaning of justice in Article 27 paragraph (2) of the 1945 RR Constitution; and 2) the implementation of normative law contributes in the form of supervision through structural instruments (law enforcement) and takes action on those who do not comply with legal provisions

## CONCLUSION

The use of internet-based technology that has led to the growth of the gig economy in the digital era has created new problems in the field of employment, especially regarding the lack of protection for the basic rights of gig workers. The position of gig workers who are implicitly considered as workers with a contract system and freelance daily workers in the Labor Law does not seem to perfectly accommodate the fulfillment of workers' basic rights. Therefore it is very necessary to update labor law instruments that are able to adapt with technological developments. Mainly concerning the status of workers and the flexibility of work relations models in the digital era which has implications for fulfilling workers' basic rights.

## REFERENCES

- Agusmidah. (2016). *Hak Ekonomi Perempuan Pekerja Rumahan Dalam Peraturan Ketenagakerjaan Di Indonesia*, Paper dipresentasikan dalam Seminar Ilmiah dalam rangka Dies Natalis USU, hl. 4. <https://repository.usu.ac.id>



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- Booklet Survei Angkatan Kerja Nasional tahun 2019, 2020, 2021, 2022, Subdirektorat Statistik Ketenagakerjaan. Badan Pusat Statistik.
- Cherry, M. A., & Aloisi, A. (2016). “Dependent Contractors” in the Gig Economy: A Comparative Approach. *SSR Electronic Journal*.<https://doi.org/10.2139/ssrn.2847869>
- Darma, S. A. (2017). Kedudukan Hubungan Kerja; Berdasarkan Sudut Pandang Ilmu Kaidah Hukum Ketenagakerjaan dan Sifat Hukum Publik dan Privat. *Mimbar Hukum*.<https://doi.org/10.22146/jmh.25047>
- Fatmawati, D., Isbah, F., & Kusumaningtyas, A. P. (2019). Pekerja Muda dan Ancaman Deskillling-SkillTrap di Sektor Transportasi Berbasis Daring. *Jurnal Studi Pemuda*, 8(1), 29.<https://doi.org/10.22146/studipemudaugm.45301>
- Hidayah, D. N. Akselerasi Digital Ekonomi Gig di Indonesia: Untuk Siapa, Manusia atau Negara?. *Subjek-Subjek Algoritmik: Perspektif Sosiologi Tentang Dunia Digital-Jejak Pustaka*, 1, 65.
- International Labour Organization. (2015). Non-standard forms of employment. *International Labour Organization*.<https://doi.org/10.1164/rccm.201209-1671OC>
- Izzati, N. R. (2021). Eksistensi Yuridis dan Empiris Hubungan Kerja Non-Standar Dalam Hukum Ketenagakerjaan Indonesia. *Masalah-Masalah Hukum*, 50(3), 290-303.
- Ketenagakerjaan Dalam Data Edisi 4 (2021). Bidang Pengelolaan Data Ketenagakerjaan. Pusat Data dan Teknologi Informasi Ketenagakerjaan.
- Nuraeni, Y. (2020). Analisis Terhadap Undang Undang Ketenagakerjaan Indonesia Dalam Menghadapi Tantangan Revolusi Industri 4.0. *Jurnal Ketenagakerjaan*, 5(1), 1-12.
- Soekanto, Soerjono., Sri Mamudji. (2015). *Penelitian Hukum Normatif*. Jakarta. Rajawali Pers.
- Sulaiman, Abdullah., Andi Walli. (2019). *Hukum Ketenagakerjaan/Perburuhan*. Cetakan Kedua, Jakarta. Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia-YPPSDM.
- Sutedi, Adrian. (2014). *Hukum Perburuhan*, Jakarta. Sinar Grafika.
- Zaeni, Asyhadi. (2014). *Hukum Kerja : Hukum Ketenagakerjaan Bidang Hubungan Kerja*, Jakarta. Raja Grafindo Persada.
- Sisi Gelap Pekerja Gig Economy Indonesia: Disebut 'Mitra' Tapi Tak Ada Payung Hukumnya<https://theconversation.com/disebut-mitra-tapi-tak-ada-payung-hukumnya-pekerja-gig-economy-tidak-terproteksi-190464>



