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Legal Protection Reform for Digital Gig Workers in Indonesia: A Comparative Analysis with the Netherlands

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A B S T R A C T

This research aims to examine the inadequacy of Indonesia's labor law framework in protecting digital gig workers and to propose a reform model inspired by the Dutch legal system. Employing a normative legal method, with legislative, conceptual, and comparative approaches. The study analyzes Indonesian labor regulations, notably the Employment Law, the Job Creation Law, and related ministerial decrees and compares them with the Netherlands' Burgerlijk Wetboek Articles 7:610a and 7:610aa. Data were collected from statutory materials, court decisions, and scholarly literature between 2020 and 2024. The findings reveal that Indonesia's formal approach fails to prevent algorithmic subordination. The study concludes by recommending substantive legal reform to ensure fairness and social protection for digital workers

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INTRODUCTION

Global economic transformation is marked by a digital revolution that has given rise to the platform economy and a new work model called the gig economy, in which app-based employment relationships are replacing traditional industrial relations (Yunita, 2023). This phenomenon not only reflects technological evolution but also a shift in the philosophical paradigm regarding the value of work and human dignity in the modern economic order(Jamie & Musilek, 2025). However, behind the facade of flexibility lies a shift in risk from corporations to individuals, as well as the emergence of new control mechanisms that challenge established labor law paradigms.

Philosophically, the foundation of Indonesia's welfare state, as enshrined in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, mandates the state's obligation to guarantee the rights of every citizen to work and to fair and decent treatment in employment relationships. This constitutional mandate is reinforced by the ratification of international human rights instruments, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Puannandini et al., 2025). However, the existing national labor law framework, particularly Law No. 13 of 2003 as amended by the Job Creation Law, is still based on a rigid and binary paradigm of conventional employment relationships (PKWT/PKWTT), which requires the existence of classical elements of command or subordination, thus failing to anticipate and accommodate the reality of this new work model(Yusuf & Roisah, 2022).

The legal vacuum resulting from the rigidity of positive law creates a paradox between economic flexibility and social justice as guaranteed by Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. Normatively, the constitution affirms that every citizen has the right to work and to a decent livelihood, as well as to fair treatment in employment relationships. However, the gig economy in Indonesia has shifted employment relationships toward pseudo self-employment, in which workers bear all business risks without legal recognition as employees (Hakim, 2025). This has given rise to a form of algorithmic subordination, namely digital control by platforms through assessment algorithms, order distribution, and penalty mechanisms that de facto create structural dependence even without direct orders (Muldoon & Raekstad, 2023).

The impact of this condition is very detrimental, as gig workers are systematically excluded from fundamental labor rights, such as fair minimum wages, social security (BPJS Ketenagakerjaan and Kesehatan), working-hour limits, leave entitlements, and occupational safety and health (K3) (Stevania & Hoesin, 2024). From a human rights perspective, digital workers are subjects of human rights. They are entitled to fair, safe, and humane working conditions, as guaranteed by the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which has been ratified through Law No. 11 of 2005. From the perspective of the Theory of Legal Protection proposed by Philipus M. Hadjon, this situation reflects the state's failure to carry out its preventive legal protection function, namely the absence of proactive regulations capable of preventing exploitative practices in the digital era (Hadjon, 1987). This failure, from the perspective of John Rawls' Social Justice Theory, underscores the need for state intervention to correct structural imbalances and ensure the fair distribution of rights and protection for the most vulnerable workers (Edor, 2020).

The study, titled "What is Fair? The Experience of Indonesian Gig Workers," examines the experiences of gig workers in Indonesia through the five principles of the Fairwork Foundation: fair pay, fair conditions, fair contracts, fair management, and fair representation. The study shows that although platforms strive to provide decent income and basic protection, most workers still receive wages below the minimum, work without certainty of hours, formal status, or social security (Putri et al., 2023). Another study titled "The Gig Economy and the Evolving Nature of Work in India: Employment, Policy, and Platform Realities in the Age of Convenience" examines the impact of the gig economy on the structure of work in India. The results show that flexible work models increase labor force participation and technological innovation, but lead to income uncertainty, lack of social protection, and the potential exclusion of workers from the employment security system (Sharma & Sharma, 2025). Meanwhile, a study titled "Living a Calling Despite the Challenges of the Gig Economy? The Role of Meaning-Making and Work Alienation" highlights how work alienation mediates the decline in meaning-making among gig workers. When workers feel alienated, their ability to "live their calling" diminishes even though the work is flexible. This study emphasizes the importance of meaning-making and reducing alienation so that flexibility can be accompanied by psychological well-being (Affolter et al., 2025).

This study offers a novel approach to the study of digital labor law in Indonesia by integrating the perspectives of Philipus M. Hadjon's Legal Protection Theory and John Rawls's Social Justice Theory in a normative analysis of the gig economy phenomenon. Most previous literature has focused on the economic, managerial, or sociological aspects of digital work. At the same time, this study explicitly examines the gig economy from the perspectives of public law and human rights, placing the state as a subject with a constitutional obligation to protect digital workers. The main novelty of this research lies in three aspects. First, this research identifies the existence of algorithmic subordination in digital work relations in Indonesia, namely, covert digital control through algorithms that replace human commands in classic work relationships. Second, this study constructs a normative argument that the absence of substantive regulations for gig workers constitutes a form of state omission in fulfilling its constitutional obligations as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, as well as its international obligations under the ICESCR Covenant. Third, this study offers a model for digital labor law reform sourced from best practices in the Netherlands, specifically through the application of Article 7:610a BW (presumption of employment) and Article 7:610aa BW (income threshold protection) as principles that can be adopted in the Indonesian legal system to create preventive legal protection for digital workers.

This study has two main objectives. First, to comprehensively analyze the gap between the national labor law framework and the socio-economic reality of digital workers in Indonesia, highlighting how traditional employment concepts fail to accommodate algorithm-based working relationships. This analysis includes an assessment of the effectiveness of legal protections and human rights for gig workers, as well as the identification of the normative and institutional factors that contribute to weak state accountability in providing constitutional protection for digital workers. Second, this study aims to formulate a model for digital labor law reform in Indonesia that is responsive to technological developments, drawing on best practices in the Netherlands, specifically the principles of the presumption of employment (Article 7:610a BW) and income threshold protection (Article 7:610aa BW). This model is expected to serve as a conceptual basis for the formation of a specific regulatory framework on digital work, which is capable of balancing economic efficiency and social protection, as well as ensuring the fulfillment of workers' constitutional rights in accordance with the mandate of Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution.

LITERATURE RIVIEW

A. The Concept of the Gig Economy

Conceptually, the gig economy can be understood as a free-market-based economic system in which organizations or individuals hire independent workers to carry out short-term, specific, and task-based work through digital platforms (Batmunkh et al., 2022). This phenomenon is an integral part of the broader digital economy ecosystem, where information and communication technology fundamentally transform how humans work, produce, and consume. The global development of the gig economy is driven by the convergence of internet penetration, smartphone usage, and increasing demand for fast, efficient, and on-demand services (Banik & Padalkar, 2021). Within the modern economy, this model is considered capable of increasing labor market flexibility and cost efficiency, but it also creates new forms of uncertainty and vulnerability for workers (Singh & Singh, 2024).

In the Indonesian context, the gig economy is not an entirely new phenomenon but rather the institutionalization of informal work that has long been part of society's economic structure (Andreas Noak et al., 2024). Before the digital era, conventional motorcycle taxi services were already part of the urban transportation landscape, but they operated informally without legal protection or clear working standards (Vacano, 2021). The emergence of digital platforms like Gojek, Grab, and ShopeeFood revolutionized this system by organizing and expanding the informal labor market into a more structured digital network (Ani Linta Sari et al., 2024). These platforms do not entirely create new jobs, but rather reorganize the mechanisms of work distribution and supervision through algorithmic technology, which enables high efficiency but simultaneously creates new forms of control over workers (Isbah, 2022). Thus, the gig economy in Indonesia reflects a paradox between economic innovation and challenges to the principles of social justice and workers' legal protection within the national labor law framework.

B. The Concept of Digital Labor

Digital labor refers to individuals who perform work through digital media, either online or via algorithmic applications (Tarigas, 2025a). This concept includes online transportation workers, couriers, graphic designers, online freelancers, and microservice providers on global platforms (Pongratz, 2018). The digital workforce represents the new face of the global proletariat, where workers are economically bound but not legally bound. They work under conditions referred to as false autonomy, where they appear to be free to choose their working hours but are actually controlled by a data-based assignment system (Sloth Laursen et al., 2021).

In Indonesian law, the position of digital workers has not yet been explicitly recognized. Article 1, point (15), of Law Number 13 of 2003 concerning Manpower defines an employment relationship based on the elements of work, wages, and orders, but the "orders" element is difficult to prove in digital work regulated by algorithms rather than human superiors. As a result, digital workers are classified as "business partners" under civil law, as stated in the Circular Letter of the Minister of Manpower Number M/6/HK.04/IV/2021, and therefore do not receive fundamental rights such as social security, protection against unilateral termination of employment, or minimum wage standards (Gultom & Susanto, 2025).

C. The Concept of Legal Protection and Human Rights

Legal protection for digital workers needs to be understood within the framework of the Theory of Legal Protection proposed by Philipus M. Hadjon, which distinguishes between preventive and repressive protection. Preventive protection serves to prevent violations through proactive policies or regulations, while repressive protection is reactive after a violation has occurred (Hadjon, 1987). In the context of the gig economy, the lack of substantive regulations reflects a failure to provide preventive protection, which should be the state's responsibility. This condition reveals the imbalance between das Sollen (legal ideal) and das Sein (legal reality), in which legal norms have failed to anticipate digital socio-economic developments.

Constitutionally, the right to fair and decent work is guaranteed by Article 27, paragraph (2) and Article 28D, paragraph (2) of the 1945 Constitution, while internationally it is affirmed through Article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and Article 23 of the Universal Declaration of Human Rights (UDHR). Within this framework, the state has a positive obligation to guarantee legal protection for all workers, including digital workers who are de facto dependent on platforms for their livelihoods. Thus, the failure to provide a specific legal umbrella for digital workers can be seen as state negligence in fulfilling its constitutional obligation to protect the economic and social rights of its citizens.

D. The Concept of Employment Relationships and Algorithmic Subordination

In classical labor law, an employment relationship is defined as a relationship between an employer and an employee characterized by three main elements: work, wages, and commands (Tampone, 2024). However, in the context of the gig economy, the employment relationship has undergone a fundamental redefinition, as commands are no longer issued by humans but by digital systems governed by algorithms. This phenomenon is known as algorithmic subordination, in which workers are subject to a system of assessment, task allocation, and automatic sanction mechanisms set by the platform (Pastuh & Geppert, 2020).

The gig economy mechanism is a form of digital control that creates an asymmetric dependence between platforms and workers. Although they are formally independent partners, in reality, they are under the platform's control (Wulansari et al., 2024). In practice, workers can lose access to work simply because their rating declines or an algorithmic decision is made, without any mechanism for objection (Ajunwa, 2020). This creates a legal dilemma because substantive employment relationships (based on control and dependence) are not formally recognized by Indonesian positive law. Thus, the concept of algorithmic subordination underscores the need to update the concept of employment relationships to encompass forms of digital control hidden behind technology. This reformulation is crucial to ensure that labor law remains relevant and responsive to the realities of employment relationships in the digital age.

METHODOLOGY

This study uses a normative legal method with three approaches, namely legislation, conceptual, and comparative. The legislative approach is used to analyze the positive legal framework governing labor relations and the protection of digital workers in Indonesia, by examining Law No. 13 of 2003 concerning Manpower, Law No. 11 of 2020 concerning Job Creation, Government Regulation No. 35 of 2021, Law No. 20 of 2008 concerning MSMEs, and the SE Minister of Manpower No. M/6/HK.04/IV/2021. The conceptual approach draws on Philipus M. Hadjon's Theory of Legal Protection and John Rawls' Theory of Social Justice to assess the extent to which national laws reflect the state's role in ensuring social justice for digital workers amid structural inequalities between platforms and workers. A comparative approach was conducted by examining the Dutch legal system as a representation of a progressive civil law country, through the application of Article 7:610a BW on the presumption of employment and the draft Article 7:610aa BW on income threshold protection, as well as their implementation in the Deliveroo (Hoge Raad, 2023) and Uber (Rechtbank Amsterdam, 2021) rulings.

The types of data used consist of primary and secondary legal materials. Primary legal materials include national legislation, ministerial regulations, and international legal instruments such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). Secondary legal materials include legal literature, scientific journals, reports from international labor institutions, prior research results, and government policy documents and court decisions. The research specification is descriptive-analytical, aiming to provide an objective picture of the weaknesses and directions for updating digital labor law in Indonesia, while offering a relevant legal reform model based on best practices from the Netherlands. Through these four approaches, this research is expected to provide a conceptual contribution to the formation of a new legal framework that is adaptive to technological transformation and oriented towards social justice and the protection of human rights.

RESULT AND DISCUSSION

Human Rights Principles in the Protection of Gig Economy Workers

1. The Right to Fair and Decent Work

The failure of national law to protect gig workers is not only a technical-legal issue but also a violation of fundamental human rights principles, both those guaranteed by the Indonesian constitution and those ratified in international legal instruments. Article 23 of the Universal Declaration of Human Rights (UDHR) affirms that everyone has the right to work, to choose their occupation freely, to just and favorable conditions of work, and to protection against unemployment. Paragraph (3) of this article affirms the right to just and favorable remuneration, ensuring for himself and his family an existence worthy of human dignity. This principle is reinforced by Article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which requires states to recognize the right of everyone to fair and favorable working conditions, including remuneration that guarantees a decent living for workers and their families (Wibowo & Susanto, 2025).

In Indonesia's gig economy, these rights are systematically neglected. The income model for platform workers is not based on the state-mandated minimum wage but instead on a highly volatile, legally uncertain per-task rate system. Unilateral commission and incentive schemes, with deductions of 20–40%, further weaken workers' economic position. As a result, many workers have to work more than twelve hours a day to achieve a decent income as guaranteed by Article 27 paragraph (2) of the 1945 Constitution (Putri et al., 2023). This condition is substantively contrary to the principles of fair and decent work. It reflects the state's failure to fulfill its constitutional obligation to protect human dignity in digital work relationships (Natalia & Putranto, 2023).

2. The Principle of Non-Discrimination and Equality in the Digital Workplace

The principle of non-discrimination is a fundamental pillar of human rights law, as affirmed in Article 2 of the UDHR and Article 2 of the ICESCR, which demands equal treatment for every individual regardless of social or economic status or form of employment relationship. In the context of digital employment, classifying gig workers as “partners” amounts to de jure discrimination, as they are legally excluded from the formal employment protection system (PKWTT/PKWT) and the national social security network (Wibowo & Susanto, 2025). This situation reinforces the legal gap between digital workers and formal workers who enjoy normative protection under public labor law (Fadhlulloh et al., 2023a).

Furthermore, discrimination in the gig economy is not only structural but also algorithmic. The algorithmic systems used to regulate job distribution, performance evaluation, and incentive schemes operate as black boxes, neither transparent nor accountable. In practice, these systems can lead to bias and unfair treatment of certain groups, such as female workers, older workers, or those in areas with low demand. The lack of clarity regarding these algorithmic criteria violates Article 28D paragraph (1) of the 1945 Constitution, which guarantees everyone the right to fair treatment and equality before the law. Therefore, applying the principle of equality in digital work requires algorithmic transparency mechanisms and regulations that guarantee non-discriminatory treatment for all platform-based workers (Kerikmäe et al., 2022a) .

3. Human Dignity and the Right to Humane Working Conditions

Human dignity is a universal value that underpins the human rights legal system. Exploitative, unsafe, and uncertain working conditions directly demean workers' dignity and contradict the principles of justice and civility enshrined in the Preamble to the 1945 Constitution. In the gig economy, digital workers, especially online motorcycle taxi drivers and logistics couriers, face high road risks without adequate work accident insurance (Tarigas, 2025b). Their status as "non-workers" means that all economic and physical risks are borne by the individual, without any responsibility on the part of the platform (Putra et al., 2025a).

The psychological pressure of having to be constantly online, the fear of losing one's account, and extreme income uncertainty cause chronic stress and mental exhaustion. This condition contradicts Article 28H, paragraph (1), of the 1945 Constitution, which guarantees every citizen the right to live in physical and spiritual prosperity, as well as to a healthy and humane working environment. The state has an obligation to ensure that economic digitalization does not sacrifice human values and the fundamental rights of workers. However, the implementation of human rights protection in Indonesia remains reactive and fragmented, unable to address the complexity of digital work relationships across technological, economic, and social dimensions. Therefore, legal reforms are needed to emphasize a human-centered approach in digital economy regulations, where human, not algorithms or market efficiency—are placed at the center of legal and public policy orientation (Kamarudin & Arif, 2024).

Indonesia's National Legal Framework on Gig Workers

Legally, Indonesia's labor law system still adheres to the traditional employment relationship paradigm, which subordinates workers and employers. Article 1, point (15), of Law Number 13 of 2003 concerning Manpower defines an employment relationship as a relationship between an employer and a worker or laborer based on an employment agreement, which includes the elements of work, wages, and orders (Muhyiddin et al., 2024). This legal structure is no longer adequate to accommodate new forms of employment relationships that have emerged in the gig economy era, as digital platform-based work models do not always fulfill the "command" element as understood in classical employment relationships. In practice, the relationship between platform workers and companies is more asymmetrical, where control is exercised not through explicit instructions, but through digital systems and algorithms (Fadhlulloh et al., 2023b)

Gig workers in Indonesia are legally classified as "partners" under cooperation agreements, which are subject to civil law provisions (Article 1320 of the Civil Code), not labor law (Albab et al., 2023). This construction is reinforced by Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (MSME Law), specifically Article 1 point 13, which defines partnership as a business cooperation based on the principles of mutual need, reinforcement, and benefit. However, in reality, the partnership between the platform and workers is illusory, as the platform retains complete control over the job distribution algorithm, rate determination, and sanction mechanisms. This condition creates de facto subordination, in which workers lack a balanced bargaining position and lose legal protection as employment subjects (Quesqi Kendrareva Putri Dibrata, 2025).

The legal framework derived from Law No. 11 of 2020 concerning Job Creation, particularly Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment, also does not provide space for the recognition of digital employment relationships. These regulations recognize only two categories of formal employment relationships: permanent workers (PKWTT) and contract workers (PKWT), thereby excluding digital workers from the public labor protection system. As a result, gig workers do not enjoy fundamental rights such as minimum wage, employment social security, protection against unilateral termination of employment, and occupational safety and health (OSH) (Aminuddin & Kusumawati, 2023). This legal uncertainty weakens workers' position vis-à-vis companies, exacerbates inequality, and obscures the state's responsibility to guarantee constitutional protection for citizens working in the digital sector.

In legal practice, partnership contracts between platforms and workers often include standard clauses with unilateral provisions, such as the company's right to deactivate accounts without fair notice or a dispute-resolution mechanism (Aminuddin & Kusumawati, 2023). This practice contradicts the principle of fair contractual freedom as stipulated in Article 1338 of the Civil Code, as it is carried out without equality of position and without substantive negotiation. This “take it or leave it” contract system reflects the economic dominance of platform companies, which weakens workers' legal position. From a progressive legal perspective, as argued by Satjipto Rahardjo, such laws lose their social function because they do not protect the weaker party and therefore need to be reinterpreted to be more responsive to digital realities.

The weakness of national regulations is further reinforced by the Circular Letter of the Minister of Manpower Number M/6/HK.04/IV/2021, which explicitly states that the relationship between online motorcycle taxi drivers and application companies is a business partnership subject to civil law, not an employment relationship under labor law. This circular letter is administrative in nature and lacks the normative force of legislation, thereby reinforcing the legal vacuum in the protection of digital workers. As a result, gig workers lose access to dispute-resolution mechanisms in the Industrial Relations Court (PHI). They can only file general civil lawsuits, which are not substantively designed to protect labor rights (Wibowo & Susanto, 2025).

Thus, Indonesia's national legal framework still shows normative lag in responding to the transformation of digital work relationships. The labor law paradigm needs to be reformulated with a more inclusive and adaptive approach to the characteristics of platform-based work. Revisions to the Labor Law or the creation of a specific law on digital work are urgently needed so that Indonesia's legal system can provide certainty, justice, and equal protection for all workers, regardless of the form of employment relationship they are engaged in (Satria, 2025).

Implementation of Legal and Human Rights Protection for Gig Economy Workers in the Field

The absence of specific regulations governing gig workers has led to very weak and ineffective legal protections in the field. The status of the relationship between digital workers and platforms, which is structured as a partnership under civil law, has profound implications for access to justice and the protection of labor rights. In practice, various problems faced by gig workers cannot be resolved through formal labor law mechanisms because they are not recognized as workers under the legal definition of 13 of 2003 concerning Manpower. As a result, disputes between workers and platform companies cannot be brought before the Industrial Relations Court (PHI). However, they can only be filed through general civil law channels, which are not designed to protect the weaker party in the employment relationship (Putra et al., 2025b).

One tangible example of the weak implementation of legal protections is the various actions and protests carried out by platform workers in Indonesia. The large demonstration on August 29, 2024, for example, reflected structural unrest stemming from a wage system considered exploitative and prolonged legal uncertainty. The workers demanded transparency in algorithms, clarity in the commission system, and a guarantee of a decent minimum income. This action illustrates that the problems of the gig economy are not only contractual issues but also concern workers' fundamental rights related to welfare, social justice, and humane treatment (Murdani & Wijayati, 2023).

The practice of unilateral account suspension by application companies is one of the most frequently raised issues and does not yet have an adequate legal solution. Gig workers can lose access to their accounts, their only source of income, without any notification, clarification, or fair defense mechanism (Putri et al., 2023). Such deactivation is typically carried out through an automated algorithm-based system that does not provide an administrative appeal process or legal procedures. This practice substantially contradicts the principle of due process of law. It violates the principle of preventive legal protection, as stated by Philipus M. Hadjon, who emphasizes that any action with the potential to harm citizens must be accompanied by control and oversight mechanisms to prevent the abuse of power.

Several disputes involving digital workers have been filed through legal channels, but the outcomes highlight the limitations of Indonesian positive law in addressing this phenomenon. Because formal employment relationships are not recognized, gig workers' lawsuits cannot be filed with the Industrial Relations Court (PHI) and are often referred to the Consumer Disputes Settlement Agency (BPSK) mechanism under consumer protection law (Yudha et al., 2025). This approach is problematic because the relationship between workers and platforms should be viewed as an employment relationship, not a consumer relationship. This indicates a misclassification of employment status, which causes workers to lose substantive protection of their rights as subjects of labor law.

Another weakness lies in public policy. To date, the government has yet to develop a national strategy for protecting digital workers that can bridge the transition from traditional to technology-based work systems. Existing sectoral policies, such as those implemented by the Ministries of Manpower, Communication and Information Technology, and Cooperatives and Small and Medium Enterprises, remain partial and have not been integrated into a comprehensive national legal framework. As a result, violations of the fundamental rights of digital workers often go unpunished by formal legal mechanisms, even though they substantially concern constitutional rights as guaranteed in Article 27 paragraph (2), Article 28D paragraph (2), and Article 28H paragraph (1) of the 1945 Constitution.

Reviewing the perspective of Legal Protection Theory, this condition indicates the state’s failure to fulfill its preventive and repressive protective functions. Preventive protection has failed because there are no substantive regulations capable of preventing exploitative practices. In contrast, repressive protection has not been adequate due to workers’ weak access to formal justice mechanisms. From the perspective of John Rawls’ Theory of Social Justice, this situation reflects a structural imbalance in which socio-economic inequality does not benefit the weakest party, namely, digital workers. Therefore, labor law reform in Indonesia must be directed towards creating a progressive, inclusive, and human rights-based system that not only guarantees economic flexibility but also ensures justice and welfare for all workers in the digital age.

Gig Economy Regulations in the Netherlands

The Netherlands is among the most progressive civil law countries in addressing the legal challenges posed by the gig economy. The main principle underlying the Dutch labor law system is the protection of the weaker party in an employment relationship, reflected in a substantive rather than formalistic approach to determining its existence. Unlike Indonesia, which still requires the explicit element of “command” to determine worker status, the Netherlands assesses employment relationships based on the factual reality of economic dependence and the employer's substantive control over digital workers (Fadhlulloh et al., 2023b).

The primary foundation for regulating the gig economy in the Netherlands is set out in Book 7 of the Civil Code (Burgerlijk Wetboek/BW), specifically Article 7:610a BW, which introduces the concept of presumption of employment (rechtsvermoeden van arbeidsovereenkomst). This article states that if a person performs continuous work for another party for three consecutive months and receives fixed compensation, a working relationship is legally presumed to exist unless the employer can prove otherwise. This provision is significant because it shifts the burden of proof from workers to employers, thereby protecting workers from disguised employment practices commonly used by platform companies. Thus, the status of workers does not depend on contractual labels such as "partner" or "independent," but on the substance of the employment relationship itself (Van Slageren et al., 2023a).

Furthermore, the Dutch government is proposing a new draft law introducing Article 7:610aa BW, which adds a presumption of an employment relationship based on an hourly wage threshold. Under this draft, if a worker receives less than €32.24 per hour (2023 rate), the relationship is considered an employment relationship unless the platform proves otherwise. This draft aims to provide legal protection to low-income workers who are vulnerable to digital exploitation and lack adequate contractual bargaining power (Kerikmäe et al., 2022b).

The Dutch legal system also strengthens administrative and judicial oversight. The Dutch Tax Authority (Belastingdienst) has announced that the moratorium on law enforcement against cases of worker misclassification will end as of January 1, 2025. The government will resume active investigations to ensure that workers classified as self-employed are genuinely independent, not disguised employees (Keijzer, 2025). This step marks an important transition from a passive approach to proactive law enforcement against violations of digital employment relationships. From a judicial perspective, Dutch courts have played a significant role in expanding legal protections for digital workers. Two important rulings have become milestones in the history of gig worker protection:

1. Deliveroo Ruling (Hoge Raad, March 24, 2023)

The Dutch Supreme Court affirmed that Deliveroo couriers must be classified as employees, not independent contractors. The court adopted a holistic approach, considering algorithmic control, the integration of couriers into the company's operational structure, and the economic dependence of workers on the platform(Sagel et al., 2023) .

2. Uber Ruling (Amsterdam Court, 2021)

The court ruled that Uber drivers have a substantive employment relationship and are therefore subject to national labor law provisions and the Collective Labor Agreement (CAO) for the transportation sector(Butler, 2021) .

The CAO is a collective labor agreement negotiated between trade unions (vakbond) and employer associations that regulates wage standards, working hours, leave, benefits, and pension guarantees, often higher than the minimum requirements of the law (Bohn Stafleu van Loghum, 2012). The application of CAOs in the digital sector expands the scope of collective protection for gig workers, while also affirming their integration into the national labor law system.

This Dutch approach reflects an interventionist and protective legal philosophy, in which the state plays an active role in balancing the power asymmetry between platform companies and workers. Legislators and the judiciary consistently "pierce the contractual veil" to reveal the reality of the employment relationship. This paradigm positions the law as a social instrument to correct structural inequalities in the digital labor market, rather than merely as a mechanism for resolving private disputes (Verhulp, 2011).

Thus, the Dutch model offers concrete inspiration for Indonesia in reforming digital labor law. The principles of presumption of employment (Article 7:610a BW), the threshold-based presumption (Article 7:610aa BW), and judicial recognition of algorithmic subordination can be adopted in the national legal system to build a more inclusive, equitable legal framework that is in line with the mandate of the Indonesian constitution as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. The integration of these principles will affirm a paradigm shift in Indonesian labor law from a formal-contractual approach towards a substantive justice approach that places human protection at the center of the digital economy.

Results of Comparison and Comparative Analysis of Gig Economy Regulations between Indonesia and the Netherlands

A comparison between Indonesia and the Netherlands reveals fundamental differences in legal orientation, protection philosophy, and regulatory mechanisms for gig workers. Indonesia still adheres to a formalistic, laissez-faire paradigm, treating employment relationships as private agreements between two parties, grounded in the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. In this paradigm, the state takes a passive position. It allows market mechanisms to determine the balance, even though in reality, there is a sharp structural imbalance between platform companies and digital workers. The weakness of this approach is evident in the absence of specific norms that recognize digital employment relationships and in workers' limited access to formal legal protection mechanisms, both in the labor law system and in social security (Hasan & Sibarani, 2023).

The Netherlands has adopted an interventionist and protective approach, characteristic of the continental civil law tradition, which places law as an instrument to correct socio-economic imbalances. The Dutch legal system explicitly recognizes the asymmetry of power (inequality of bargaining power) between workers and employers, especially in the context of the digital economy. Therefore, the state plays an active role in protecting the weaker party. Legislators and courts in the Netherlands are not fixated on the formal form of contracts, but assess the substance of the actual employment relationship, known as the principle of substance over form, to ensure social justice for workers (Dazzi, 2019).

The most notable difference between the two countries lies in the application of the presumption of employment doctrine as stipulated in Article 7:610a of the Burgerlijk Wetboek (BW). This provision stipulates that a person who works for another party for a fixed remuneration for a specific period is legally considered to have an employment relationship, unless the employer can prove otherwise. This principle has significant legal implications because it shifts the burden of proof from workers to employers, thereby protecting workers from disguised employment practices. Meanwhile, in Indonesia, gig workers must prove the existence of their employment relationship themselves, a difficult task given their weak bargaining position and high economic dependence on the platform (Hasan & Sibarani, 2023).

The Dutch legal approach is also reinforced by draft Article 7:610aa BW, which introduces a presumption based on an income threshold: workers who earn below a specific rate (e.g., €32.24 per hour in 2023) are automatically considered employees. This provision expands protection for low-income workers in the gig economy, who are often excluded from the social safety net. This principle has high normative value because it reinforces the state's social responsibility to ensure the welfare of its citizens, regardless of the form of employment relationship.

In addition to the normative framework, Dutch jurisprudence also plays an important role in expanding the scope of legal protection for digital workers. In the Deliveroo ruling (Hoge Raad, March 24, 2023) and the Uber ruling (Rechtbank Amsterdam, 2021), the courts consistently classified platform workers as employees, not independent contractors. The courts ruled that even though workers have the freedom to choose their working hours, this does not negate the element of substantive subordination, because algorithms still control the distribution of orders, penalty systems, and incentives. In the Deliveroo case, the Supreme Court even required platform companies to comply with the Collective Labor Agreement (Collectieve Arbeidsovereenkomst/CAO) in the professional goods transportation sector. Through the CAO, digital workers gain access to collective social protection, including minimum wage standards, leave, pension guarantees, and occupational safety protections. This approach contrasts with Indonesia, which does not yet have a collective bargaining mechanism in the digital economy sector. Indonesia still focuses on individual contracts, which are often unilateral and do not provide room for fair negotiation. By adopting the CAO principle, Indonesia can develop a Sectoral Collective Labor Agreement (PKB) for digital platforms, as recommended by progressive legal doctrine, which views law as a tool of social engineering (Dazzi, 2019)

Conceptually, the comparison shows that the Netherlands has integrated the protection of digital workers into an active welfare-state framework. At the same time, Indonesia remains at an administrative stage that tends to be passive in the face of social change. The Netherlands places social protection as a fundamental right guaranteed by the state, while Indonesia still treats digital employment relationships as a private matter subject to contractual logic. In fact, in the gig economy, digital labor relations have a public dimension that is closely related to social welfare and justice, as mandated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution (Van Slageren et al., 2023b).

Based on these comparisons, Indonesia needs to implement substantial and progressive legal reforms, drawing on Dutch legal practices. There are at least three Dutch legal principles that can be adopted into the Indonesian legal system:

1. The Principle of Presumption of Employment (Article 7:610a BW), to create preventive legal protection for platform workers who work continuously.
2. The Threshold Income Protection principle (Article 7:610aa BW), to ensure that low-income workers are not exploited by algorithmic tariff systems.
3. Strengthening Collective Labor Agreements (CAO/PKB), as a form of collective protection for digital workers through the active participation of labor unions and platform associations.

The application of these three principles will not only strengthen Indonesia's labor law regime but also fulfill the constitutional mandate to protect all Indonesian workers fairly and humanely in the digital era. Thus, the transposition of the Dutch model into the Indonesian legal context is a strategic step to balance the efficiency of the digital economy with the principles of civilized social justice.

CONCLUSIONS

This study concludes that Indonesia's labor law framework has not adequately addressed the structural challenges posed by the gig economy, particularly in protecting digital workers from algorithmic subordination and legal exclusion. The national legal system is still oriented towards the paradigm of conventional binary employment relationships (PKWT/PKWTT), which requires the element of human "command" as the leading indicator of an employment relationship. However, in the context of digital work, control over workers is exercised covertly through algorithmic mechanisms that determine job distribution, rates, and performance evaluations. As a result, platform workers are classified as "partners" under the civil law regime, thereby losing fundamental labor rights, such as minimum wages, social security, and protection against unilateral termination of employment.

From Philipus M. Hadjon's Legal Protection Theory perspective, this condition shows the absence of the state's preventive and repressive legal protection functions. The state has failed to establish proactive norms to prevent exploitation in the digital sector, while the available dispute-resolution mechanisms are inaccessible to workers with unrecognized legal status. Meanwhile, according to John Rawls' Theory of Social Justice, this unequal digital employment relationship reflects a structural imbalance that does not benefit the weakest party, namely, digital workers. In contrast, the Dutch legal system adopts an interventionist, protective regulatory model, with the state as an active actor in addressing inequalities in the digital labor market. Through the implementation of Article 7:610a BW on the presumption of employment, the draft Article 7:610aa BW on income threshold protection, and important rulings such as Deliveroo (Hoge Raad, 2023) and Uber (Rechtbank Amsterdam, 2021), the Netherlands has expanded the scope of legal protection for platform workers and affirmed the substantive justice approach paradigm in digital labor law. This model has proven to be more responsive to technological transformation and more aligned with the principles of civilized social justice.

RECOMMENDATIONS

Based on the conclusions outlined above, the recommendations from this study are as follows:

1. The Indonesian government and the House of Representatives must immediately reform labor laws, either by revising the Manpower/Job Creation Law or by forming a special (sui generis) law that regulates digital work.
2. Legal reform must adopt the principle of presumption of employment (similar to Article 7:610a of the Civil Code). Workers who are deemed economically dependent and subject to algorithmic control must be legally considered workers, unless the platform can prove otherwise in court.
3. Encourage the establishment of Sectoral Collective Labor Agreements (PKB) for the digital industry. This will create fair industry standards regarding rates, incentive schemes, algorithm transparency, and social security, replacing unequal individual partnership contracts.
4. Courts should begin applying a substance over form approach to “look behind the veil” of partnership contracts. In addition, the Ministry of Manpower should revoke policies (such as SE Menaker 2021) that legitimize misclassification and shift to proactive oversight of covert employment practices.

FURTHER STUDY

This study offers a comprehensive normative and comparative analysis of Indonesia's labour law in addressing digital gig work, proposing a reform model inspired by the Dutch legal system. However, several aspects warrant further examination to deepen theoretical understanding and policy relevance. Future research should expand comparative perspectives beyond the Netherlands to include other civil law jurisdictions such as France, Germany, and Spain, thereby enriching the conceptual foundation for a lex specialis on digital work in Indonesia. Empirical studies are also necessary to validate normative findings by analysing workers' real experiences across platforms such as Gojek, Grab, and ShopeeFood using socio-legal or mixed-methods approaches. Further inquiry should explore the intersection of digital labour rights, data protection, and algorithmic ethics, particularly with respect to transparency, privacy, and accountability. Institutional reforms, including the establishment of a digital labour authority or compliance unit under the Ministry of Manpower, also merit consideration to strengthen oversight and ensure algorithmic fairness. Interdisciplinary research combining law, technology, and economics could better balance efficiency, innovation, and social justice. Ultimately, developing a sui generis Digital Work Act, incorporating principles such as presumption of employment, income threshold protection, and algorithmic accountability, would ensure alignment between national labour policy, constitutional values, and international human rights standards.

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