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## Digital Labour Platformer's Legal Status and Decent Working Conditions: European Union and Indonesian Perspective

Article	Abstract
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### INTRODUCTION

Platform work is a business model that offers workers increased flexibility at the cost of reduced rights compared to traditional employees. This model typically results in lower prices for customers, but it may also lead to unfair competition for professionals and their employers who are engaged in peer employment. This unfair competition can arise from practices such as license,

tax,<sup>1</sup> and social security avoidance. Additionally, platform work generates additional profits for the owners of app-based companies,<sup>2</sup> while contributing less revenue to the national budget.<sup>3</sup> European Union legislators have officially introduced a legislative proposal aimed at enhancing working conditions for those engaged in the gig economy.<sup>4</sup> This initiative seeks to address the problem of platform-mediated false self-employment and offer a viable solution.<sup>5</sup>

In 2021, the European Union Commission implemented a preliminary proposal for a Directive with the aim of guaranteeing that gig workers in Europe be afforded equivalent labour rights to those of conventional employees.<sup>6</sup> The proposed Directive is founded upon the provisions outlined in Articles 16 and 153 (1)(b) of the Treaty on the Functioning of the European Union (TFEU), which pertain to data protection and working conditions, respectively.<sup>7</sup> The suggestions aim to establish legal clarity in response to several legal challenges involving gig economy enterprises that have been brought before the courts of European Member States. For instance, France, Italy, Spain, Greece, and Portugal have implemented stricter domestic legislation yet European Union officials contend that none of these governments have comprehensively tackled the issue at hand.

The utilization of an EU Directive offers the benefit of providing a level of certainty on the minimum requirements and procedural procedures that Member States are obligated to adhere to. Simultaneously, this approach allows Member States (hence referred to as MS) to exercise their discretion in determining the most suitable means of implementing the minimal requirements, while respecting their respective competencies and the autonomy of social partners. Master's students have the option to exceed the minimum requirements outlined in the Directive.

In Indonesia, the legal status of gig workers, including those employed by ride-hailing services, delivery platforms, etc, poses notable difficulties. The main legal concern centres around their categorization as self-employee (partnership) instead of full-time employees, which disqualifies them from receiving benefits like as health insurance, pensions, and job security safeguards generally granted to full-time employees.<sup>8</sup> The categorization has ignited discussions and prompted demands

<sup>1</sup> Celeste M. Black, "The Future of Work: The Gig Economy and Pressures on the Tax System," *Canadian Tax Journal* 68, no. 1 (2020): 69–97, <https://doi.org/10.32721/ctj.2020.68.1.sym.black>.

<sup>2</sup> Companies using the gig economy model have disputed this point about profit. When Spain ruled that gig workers must be considered employees, food delivery app Deliveroo left the country altogether. In a statement, the company said that succeeding in Spain "would require a disproportionate level of investment with highly uncertain long-term potential returns." Investors are now worried the Spanish scenario could be replicated across Europe. See Morgan Meaker, "The Gig Economy's Days in Europe Are Numbered," <https://www.Wired.Com/Story/Gig-Economy-European-Commission-Law/>, December 2021.

<sup>3</sup> Natasha Lomas, "Europe Lays Out A Plan to Flip the Odds on Gig Economy Exploitation," <https://Techcrunch.Com/2021/12/09/Eu-Gig-Economy-Proposal?Guccounter=1>, December 2021.

<sup>4</sup> European Commission, "Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work" (2021), <https://ec.europa.eu/social/BlobServlet?docId=24992&langId=en>.

<sup>5</sup> Lomas, "Europe Lays Out A Plan to Flip the Odds on Gig Economy Exploitation."

<sup>6</sup> Jorge Liboreiro, "New EU Rules Could Turn 4.1 Million Gig Workers into Regular Employees," <https://www.Euronews.Com/My-Europe/2021/12/09/New-Eu-Rules-Could-Turn-4-1-Million-Gig-Workers-into-Regular-Employees>, December 2021.

<sup>7</sup> Commission, "Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work."

<sup>8</sup> Suwinto Johan and Luo Yuan Yuan, "What Does Financial Institution Termination of Employment Mean in Terms of Labor Law?," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (January 2023): 49–59, <https://doi.org/10.24090/volkgeist.v6i1.6372>.

for regulatory restructuring to ensure enhanced safeguards and entitlements for gig workers. The Indonesian government is facing pressure to establish a legal framework that strikes a compromise between the flexibility of gig work and the requirement for equitable labour standards, thereby safeguarding gig workers from exploitation while also preserving the sustainability of the gig economy.<sup>9</sup>

Research on digital platform worker's legal status and its impact to decent working conditions has been conducted by Heeks,<sup>10</sup> Fredman,<sup>11</sup> Xu,<sup>12</sup> and Gundert.<sup>13</sup> This research explored the importance of decent work standards such as fair pay, conditions, contracts, management, and representation, as well as the legal status of gig workers (digital platform workers). Currently, there are weaknesses within legal system in protecting these gig workers, especially in Indonesian legal system with some EU countries court decision on gig worker's legal status and its decent working standards. Furthermore, the novelty of this article lies in its focus on the regulation of digital platform workers and their legal status within the context of Indonesia, as well as comparisons with court decisions in several European Union countries which has potential adoption to develop Indonesian legal framework on digital labour platformer's legal status and its decent working conditions as EU and EU Member States have been practicing through court decision and updated legislation. Therefore, this article provides an overview of the key concepts and rules outlined in the proposed Directive on platform work at the supranational level within the European Union and its potential adoption on the concept of digital labour platformers as well as working conditions in Indonesia.

## RESEARCH METHODS

This article employs doctrinal legal research to analyse issues regarding the legal status of digital-labour platformers and their working conditions based on prevailing legal doctrines and principles, using regulations from both the European Union and/or Indonesia's existing law. Additionally, this article utilizes various court rulings to assert that every digital application-based worker must be recognized for their employment status and possess rights and protections equal to those of permanent employees in a company. Subsequently, these legal innovations are introduced into the Indonesian legal system, either through court decisions and/or amendments to labour-related legislation.

<sup>9</sup> Reza Octavia Kusumaningtyas et al., "Reduction of Digitalization Policy in Indonesian MSMEs and Implications for Sharia Economic Development," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 157–71, <https://doi.org/10.31958/juris.v21i2.6855>.

<sup>10</sup> Richard Heeks et al., "Systematic Evaluation of Gig Work Against Decent Work Standards: The Development and Application of the Fairwork Framework," *Information Society* 37, no. 5 (2021): 267–86, <https://doi.org/10.1080/01972243.2021.1942356>.

<sup>11</sup> Sandra Fredman et al., "International Regulation of Platform Labor A Proposal for Action," *Weizenbaum Journal of the Digital Society* 1, no. 1 (2021): 1–29, <https://doi.org/10.34669/WI.WJDS/1.1.4>.

<sup>12</sup> Y. Xu and D. Liu, "Decent Work for the Digital Platform Workers: A Preliminary Survey in Beijing," *Digital Law Journal* 2, no. 1 (April 2021): 48–63, <https://doi.org/10.38044/2686-9136-2021-2-1-48-63>.

<sup>13</sup> Stefanie Gundert and Janine Leschke, "Challenges and Potentials of Evaluating Platform Work Against Established Job-Quality Measures," *Economic and Industrial Democracy*, 2023, <https://doi.org/10.1177/0143831X231199891>.

## ANALYSIS AND DISCUSSION

### Notion of Gig Economy and Platform Employment

In 2016, European Commission defines the gig economy as an economic system wherein digital technologies facilitate the formation of teams for specific projects, often spanning across different countries, while platforms efficiently link buyers and sellers.<sup>14</sup> The Commission further observed that a significant portion of the aforementioned activities falls within the purview of the collaborative economy, presenting prospects not only for individuals seeking increased work flexibility but also for those who have historically faced limited opportunities in securing stable employment. The European Union posits that the gig economy has engendered a dynamic milieu characterized by the prevalence of temporary roles, wherein organizations hire independent workers for short-term contractual arrangements. The fragmentation and dissemination of tasks can be further expanded by utilizing applications and online platforms.<sup>15</sup>

In recent years, on-demand platforms, namely those providing services like ride-hailing and food delivery, have encountered various legal obstacles pertaining to the categorization of workers' employment status in Europe. The concern surrounding this matter has prompted certain Member States to contemplate or enact domestic legislation, exemplified by Spain's 'riders bill' that was ratified in 2021.<sup>16</sup> This legislation acknowledges delivery platform workers as employees. Portugal has implemented comparable legislation. The enactment of domestic legislation has traditionally served as a common catalyst for the European Union's executive body to propose a pan-European Directive in an effort to prevent the fragmentation of the union's unified market.<sup>17</sup>

The Commission has meticulously delineated the proposed framework for establishing the presumption of employment. Consequently, a set of five proposed criteria was established (refer to the subsequent list). However, according to the proposal, it is sufficient for only two out of the five aforementioned requirements to be fulfilled in order for the presumption of employment to be established. Upon initial examination, it appears that numerous ride-hailing platforms, in particular, would witness their workers being categorized as employees by default (Article 4 of the draft Directive).

### National Court Decisions and their Impact on EU and Member States Legislation

At the EU level, there have been some significant developments in European union jurisprudence, with three cases (C- 434/15 Elite taxi Vs Uber, C- 62/19 Star taxi, C-320/16 Uber France) in the European Court of Justice (CJEU). In these cases, the Court underlined the direct

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<sup>14</sup> Several national researchers apply a more limited definition of the gig economy, by referring only to tasks commissioned through online platforms but realised in a local/physical environment (such as ride-hailing, delivery services or domestic services) rather than (also) online. See Markus Langer and Cornelius J. König, "Introducing a Multi-Stakeholder Perspective on Opacity, Transparency and Strategies to Reduce Opacity in Algorithm-Based Human Resource Management," *Human Resource Management Review* 33, no. 1 (March 2023), <https://doi.org/10.1016/j.hrmr.2021.100881>.

<sup>15</sup> Jeroen Meijerink and Tanya Bondarouk, "The Duality of Algorithmic Management: Toward a Research Agenda on HRM Algorithms, Autonomy and Value Creation," *Human Resource Management Review* 33, no. 1 (March 2023), <https://doi.org/10.1016/j.hrmr.2021.100876>.

<sup>16</sup> The decree aims to clarify the legal situation of thousands of riders after Spain's Supreme Court ruled in 2020 that companies must hire them as employees.

<sup>17</sup> Lomas, "Europe Lays Out A Plan to Flip the Odds on Gig Economy Exploitation."

responsibility of the platforms for the person providing the service. In terms of employment status, the CJEU considered that if the platform is not a passive information service, but closely linked to the provision of a physical service over which the platform exercises control, then the platform is liable to comply with sectoral rules. So, by analogy, one could wonder if the platform company is responsible for the physical service, should the platform company not also be responsible for the person who provides the service? Therefore, delivery and courier services which unilaterally determine essential conditions for the provision of services must be considered as employers. In fact, the platform owns the essential assets for the business, while making use of couriers who do not have their own business organisation and whose work is conducted as part of the organisation pre-determined by the platform.<sup>18</sup>

Several European Union Member States, namely Belgium,<sup>19</sup> France, Greece, Italy,<sup>20</sup> the Netherlands, Portugal, Spain, and the United Kingdom,<sup>21</sup> have witnessed court rulings that have favoured platform workers by determining that they do not meet the criteria for self-employment. Consequently, these rulings have compelled platforms to reclassify these workers as employees. In May 2021, the Spanish government enacted legislation that formalized a 2020 Supreme Court decision, mandating the reclassification of gig workers as employees. In October 2021, the Portuguese government also granted consent to a comparable measure, which is currently pending final enactment from Parliament.<sup>22</sup>

The judiciary in Amsterdam<sup>23</sup> has rendered a verdict stating that individuals who provide transportation services through the ride-hailing platform are subject to the collective labour agreement applicable to taxi drivers in the Netherlands. Consequently, Uber drivers in the country are eligible to receive equivalent employment benefits as those afforded to traditional taxi drivers.<sup>24</sup> The court stated that the legal association between Uber and its drivers exhibits all the defining features of an employment agreement, so necessitating their engagement in a continuous and enduring manner. Uber expressed disappointment with the aforementioned decision, as it was in contrast to the prevailing sentiment among a significant majority of drivers who expressed a desire to maintain their status as independent contractors.<sup>25</sup>

The court rulings consistently indicate that there is a high probability of the ongoing prevalence of this practice, namely the self-declaration of employment status, until the implementation of the platform Directive. The court rulings have also brought attention to the increasing utilization

<sup>18</sup> László Arany and Péter András Popovics, "Az Új Típusú Munkavállalás: A Platform Gazdaság És A Platform Munka Sajátosságai," *International Journal of Engineering and Management Sciences* 9 (January 2024): 1–16, <https://doi.org/10.21791/ijems.2024.005>.

<sup>19</sup> In Belgium, a court decided in November 2021 that only Uber drivers who have official taxi licenses may continue to operate, which the company said excluded 95 percent of drivers on the app.

<sup>20</sup> Italian legislators have enacted laws granting food-delivery workers the same rights as employees, and several other countries were proceeding in a similar direction.

<sup>21</sup> In 2016 an employment court in the UK found that Uber drivers are not self-employed and should be paid the minimum wage, a verdict upheld by the supreme court in February 2021.

<sup>22</sup> Meaker, "The Gig Economy's Days in Europe Are Numbered."

<sup>23</sup> The Dutch court decision in September 2021 followed a similar ruling by the UK Supreme Court in February 2021 that said Uber drivers are "workers" and not self-employed.

<sup>24</sup> Nicholas L. Debruyne, "Uber Drivers: A Disputed Employment Relationship in Light of the Sharing Economy," *Chicago-Kent Law Review* 92, no. 1 (2017): 289–315, <https://scholarship.kentlaw.iit.edu/cklawreviewhttps://scholarship.kentlaw.iit.edu/cklawreview/vol92/iss1/11>.

<sup>25</sup> Euronews, "Uber Loses Court Battle over Whether Its Drivers Are Permanent Employees," <https://www.euronews.com/2021/09/13/Uber-Loses-Court-Battle-over-Whether-Its-Drivers-Are-Permanent-Employees>, September 2021.

of intricate subcontracting networks by platforms, which serve as a means to evade employer obligations. This practice is observed not only in the platform economy but also in various other forms of insecure and poorly remunerated employment throughout Europe.

The proposal put forth by the European Union (EU) regarding the presumption of an employment relationship signifies a significant step towards extending the rights of platform workers throughout the EU. This proposal seeks to reclassify platform workers as employees, thereby granting them the same rights and protections as other individuals in dependent employment. By doing so, this initiative aims to establish a fair and equitable environment within the platform economy, which has been long overdue.<sup>26</sup>

### Pros and Cons of the Draft Directive

There are several justifications for the proponents of the work plan aimed at enhancing working conditions at the European Union (EU) level.<sup>27</sup> These rationales include the proposed Directive aims to reclassify a significant portion of gig workers, ranging from 1.7 to 4.1 million individuals, as regular employees, with the possibility of acknowledging the remainder workers as authentically self-employed. The ultimate numerical value will be contingent upon<sup>28</sup> the quantity of platforms that satisfy a minimum of two out of five requirements in order to be classified as an employer. The re-classified workers will promptly acquire a range of entitlements, including but not limited to guaranteed vacation time, parental leave, adherence to minimum wage regulations, access to old-age pensions, enhanced safety measures, and the opportunity to engage in collective bargaining. It is worth noting that gig workers are typically not affiliated with labour unions. In addition, individuals will have the opportunity to avail themselves of various benefits, including unemployment, illness, and healthcare benefits. Furthermore, they will be provided with insurance coverage for workplace accidents.<sup>29</sup>

Several European Union Member States have been urging the Commission to take action. The draft text emphasizes a potential motivation for governments to participate, suggesting that Member States will enjoy increased revenues in the form of additional tax and social protection contributions.<sup>30</sup> The proposal includes a provision stipulating that platforms utilizing self-employed individuals will not face the possibility of employment reclassification if they provide training, health and safety measures, and social protection to their workers. This provision effectively addresses a significant regulatory obstacle faced by platforms seeking to implement measures aimed at enhancing worker protection. Nevertheless, the execution of these actions is contingent upon the platforms' discretion.<sup>31</sup>

<sup>26</sup> Alessio Bertolini et al., "Fairwork Response to the European Commission's Proposal for a Directive on Platform Work," <https://Fair.Work/En/Fw/Blog/Fairwork-Response-to-the-European-Commissions-Proposal-for-a-Directive-on-Platform-Work/>, December 2021.

<sup>27</sup> Ilaria Purificato, "The Position of Collective Rights in the 'Platform Work' Directive Proposal: Commission v Parliament," *Hungarian Labour Law* 1 (2023), [https://eur-lex.europa.eu/procedure/EN/2021\\_414](https://eur-lex.europa.eu/procedure/EN/2021_414).

<sup>28</sup> Alex De Ruyter and Riani Rachmawati, "Understanding the Working Conditions of Gig Workers and Decent Work: Evidence from Indonesia's Online Ojek Riders," *Sozialpolitik.Ch*, no. 2/2020 (December 2020), <https://doi.org/10.18753/2297-8224-159>.

<sup>29</sup> Liboreiro, "New EU Rules Could Turn 4.1 Million Gig Workers into Regular Employees."

<sup>30</sup> Lomas, "Europe Lays Out A Plan to Flip the Odds on Gig Economy Exploitation."

<sup>31</sup> Bertolini et al., "Fairwork Response to the European Commission's Proposal for a Directive on Platform Work."

The Commission acknowledged the potential threat posed by algorithmic management to employees' rights and emphasized the necessity of increased transparency and comprehensibility in the implementation of artificial intelligence in management procedures.<sup>32</sup> The objective of the proposal is to establish collective rights pertaining to information and consultation on significant changes related to the utilization of automated monitoring and decision-making systems.<sup>33</sup> The introduction of these rights signifies a significant advancement in promoting transparency in AI implementation within the workplace and empowers unions and works councils to engage in negotiations that uphold equitable management practices. The proposal additionally solidifies the requirement for platforms to engage in regular monitoring and assessment of the consequences of individual actions made or facilitated by automated monitoring and decision-making systems on working conditions. This provision aims to enhance supervision and mitigate potential negative impacts on workers.<sup>34</sup>

The proposal grants workers the entitlement to request an elucidation from the digital labour platform regarding a decision, the absence of a decision, or a series of decisions made or endorsed by automated systems that have a substantial impact on their working conditions.<sup>35</sup> This provision enables workers to acquire additional information pertaining to pertinent aspects of their work, including the option to engage with a human representative. Finally, the plan confers onto workers the entitlement to a fair and impartial procedure for evaluating a platform's determination and creating a rational period within which a response must be provided. These policies establish legal rights pertaining to openness, explainability, and accountability, so facilitating a redistribution of power within the platform economy that benefits workers. Significantly, it is crucial to note that these regulations will not solely apply to individuals who are officially recognized as employees, but rather encompass all workers in the platform economy, irrespective of their job classification.

The proposal additionally examines crucial concerns pertaining to data protection inside the platform economy. Despite the European Union's existing stringent and comprehensive data protection regulatory framework, the proposed measures aim to further strengthen the current framework by imposing restrictions on platforms' data processing capabilities, specifically targeting data that is not directly necessary for their operations.<sup>36</sup>

There exist further justifications for the opposing faction to decline the proposition of establishing regulations pertaining to working conditions and platforms at the European Union level. Nevertheless, there exist apprehensions regarding those employed in the gig economy, primarily pertaining to the potential vulnerability of their employment due to various circumstances, including one of the challenges faced by individuals in the workforce is the unpredictability of working hours and income. One of the main issues identified in this study is the insufficient attention given to the topic of employment rights. There exists a considerable level of ambiguity and lack of

<sup>32</sup> John Danaher, "The Threat of Algocracy: Reality, Resistance and Accommodation," *Philosophy and Technology* 29, no. 3 (2016): 245–68.

<sup>33</sup> Monideepa Tarafdar, Xinru Page, and Marco Marabelli, "Algorithms as Co-Workers: Human Algorithm Role Interactions in Algorithmic Work," *Information Systems Journal* 33, no. 2 (March 2023): 232–67, <https://doi.org/10.1111/isj.12389>.

<sup>34</sup> Tarafdar, Page, and Marabelli.

<sup>35</sup> Fajar Sukma and Zulheldi Zulheldi, "Government Policies in Economic Empowerment of Muslim Communities in the Digital Economy Era," *El-Mashlahah* 11, no. 2 (December 23, 2021): 146–63, <https://doi.org/10.23971/elma.v11i2.3108>.

<sup>36</sup> Bertolini et al., "Fairwork Response to the European Commission's Proposal for a Directive on Platform Work."

clarity regarding the stability and reliability of social security and pension systems. The absence of opportunities to engage in career growth and training.<sup>37</sup>

MoveEU<sup>38</sup> has presented the argument that the actions taken by the European Union (EU) may potentially result in employment losses. The diversity of platform employment necessitates a cautious approach, as a uniform strategy could have significant implications for the business model of platforms and, consequently, have adverse consequences for the numerous independent workers that depend on them.

The Commission faced criticism for its role in potentially undermining the gig economy company model by the reclassification of numerous workers and the adjustment of their models to diminish the extent of control exerted, so enabling the designation of people as really self-employed.<sup>39</sup> Not unexpectedly, various platforms<sup>40</sup> and governments<sup>41</sup> have been actively engaged<sup>42</sup> in lobbying efforts opposing the proposed reform. Additionally, according to a study conducted by Copenhagen Economics, the concept of a “fixed employment scenario” contradicts the inherent advantage of flexibility that digital platforms provide.<sup>43</sup> This advantage is likely a key factor influencing individuals’ decision to engage in work through these platforms.<sup>44</sup> It grants a level of flexibility unheard in the past for the businesses involved.<sup>45</sup>

Even platforms that designate their workers as employees may nonetheless utilize intermediaries, such as prominent multinational employment agencies, to diminish their direct responsibilities as employers and create challenges for workers in asserting their rights. The EU proposal lacks pertinent provisions concerning subcontracting, hence failing to provide adequate safeguards for platform workers against such tactics. These practices are expected to become more prevalent as an increasing number of platforms transition away from the independent contractor framework.

Fairwork’s experts have identified an additional limitation pertaining to the absence of advancements in the rights and safeguards for workers who would persistently be categorized as self-employed, irrespective of their true employment status.<sup>46</sup> The primary objective of Fairwork

<sup>37</sup> Danaher, “The Threat of Algocracy: Reality, Resistance and Accommodation.”

<sup>38</sup> This is a body representing ride-hailing apps, like UBER

<sup>39</sup> Kamila Naumowicz, “Some Remarks to the Legal Status of Platform Workers in the Light of the Latest European Jurisprudence,” *Studia z Zakresu Prawa Pracy i Polityki Społecznej* 28, no. 3 (2021): 177–89, <https://doi.org/10.4467/25444654spp.21.016.13962>.

<sup>40</sup> Uber, for example, has been accused of lobbying the EU to lower employment protections — after it published a white paper earlier this year calling for a “new standard” for platform work which critics decried as an attempt to push for a ‘Prop-22’-style outcome to carve out gig work from European employment rights.

<sup>41</sup> Spain’s on-demand delivery platform Glovo also pre-empted the Commission’s proposal by announcing what it couched as a “Couriers Pledge back in October 2020 - committing its business to “fairer” standards for gig workers and tacitly accepting there are problems with conditions currently offered.

<sup>42</sup> This movement has been led by some of the largest ride-hailing and food delivery platforms which are likely to face the most disruption to their businesses.

<sup>43</sup> Lomas, “Europe Lays Out A Plan to Flip the Odds on Gig Economy Exploitation.”

<sup>44</sup> Bruno Basalisco, Gerdis Marquardt, and Morten May Hansen, “Study of the Value of Flexible Work for Local Delivery Couriers,” <https://copenhageneconomics.com/publication/study-of-the-value-of-flexible-work-for-local-delivery-couriers/>, 2021.

<sup>45</sup> Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdwork and Labour Protection in the Gig-Economy,” *Comparative Labor Law & Policy Journal* 37, no. 3 (2015): 471–504, [www.ilo.org/publns](http://www.ilo.org/publns).

<sup>46</sup> Bertolini et al., “Fairwork Response to the European Commission’s Proposal for a Directive on Platform Work.”



Research is to ensure that all workers, irrespective of their job classification, are afforded fundamental labour standards that align with the International Labour Organization's Decent Work Agenda.<sup>47</sup>

The item within the plan elucidates that platforms that engage self-employed workers will not face the possibility of employment reclassification if they provide training, ensure health and safety measures, and offer social security to their workers. Nevertheless, the proposed Directive delegates the implementation of measures to the discretion of platforms, rather than aiming to enforce a uniform norm.<sup>48</sup> The proposal lacks strength in establishing a requirement for platforms to implement a collective representation mechanism, such as a worker representative or a workers' assembly.<sup>49</sup>

### **The Proposed Solution of the Draft Platform Work Directive**

The objective of the Commission's proposal is to accurately ascertain the employment status of platform workers, it is imperative to establish a comprehensive set of unambiguous criteria. This approach would enable platform workers to avail themselves of the existing labour and social rights, encompassing but not limited to the entitlement to a minimum wage (where applicable), the ability to engage in collective bargaining, provisions for working time and health protection, the right to paid leave, enhanced access to safeguards against work-related accidents, unemployment and sickness benefits, and access to old-age pensions. Another objective is to enhance transparency, rights, and accountability pertaining to algorithmic management on digital labour platforms by facilitating a comprehensive comprehension of job allocation and price determination processes, thereby empowering individuals to challenge decisions that impact their working conditions, if necessary.

Enhance the efficacy of regulating and monitoring platform work, particularly in scenarios involving multiple jurisdictions, by mandating platforms to disclose the location where work is carried out and facilitating access for national authorities to pertinent details regarding individuals engaged in platform work and their associated contractual arrangements. One approach to enhancing collective bargaining and social discussion is to prioritize their strengthening. The objective is to provide information and engage in consultation with platform workers and their representatives<sup>50</sup> over decisions related to algorithmic management.<sup>51</sup> There are some key points that are important to be considered, for instance, the scope and definition, criteria to determine digital platform worker, self-employed worker, and algorithmic management.

The scope of directive is focused on individual experiences and perspectives. The proposed directive is intended to be applicable to digital labour platforms that facilitate the organization of work carried out by persons. This exclusion does not extend to online platforms that solely serve as vehicles for advertising service offerings or requests, or for showcasing service providers within a certain geographic region. This provision will also not be applicable to service providers whose

<sup>47</sup> Bertolini et al.

<sup>48</sup> Bertolini et al.

<sup>49</sup> Bertolini et al.

<sup>50</sup> It asks digital labour platforms to facilitate communication channels for people working through them to organise themselves, and to be contacted by workers' representatives.

<sup>51</sup> European Commission, "Questions and Answers Questions and Answers: Improving Working Conditions in Platform Work," 2021, [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda\\_21\\_6606/QANDA\\_21\\_6606\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_21_6606/QANDA_21_6606_EN.pdf).

main objective is to exploit or distribute assets, such as those engaged in the short-term rental of accommodations.

This regulation shall be applicable to all digital labour platforms that offer services within the European Union, irrespective of their geographical origin, as long as the platform work facilitated by such digital labour platforms is carried out within the European Union. Irrespective of their employment status, individuals engaged in digital labour platforms would be granted additional rights pertaining to algorithmic management. This implies that all digital labour platforms will be required to adhere to the newly imposed responsibilities of algorithmic management in relation to the individuals employed through these platforms. Employers that fall under the classification of some platforms will bear greater responsibilities compared to others, particularly in terms of obligations related to health and safety protection, as well as information and consultation rights.<sup>52</sup>

Besides that, digital work platforms refer to internet-based companies that serve as intermediaries and organizers of work assignments offered by workers or self-employed individuals to clients that are external to the platform. The provision of work can occur in either a designated physical setting, sometimes referred to as “on location,” such as in the case of food delivery or ride-hailing services, or through online platforms, as seen in the context of tasks like data encoding and translation services. The business model of digital work platforms is predicated on the utilization of algorithmic technology to effectively align the supply and demand for labour or services.<sup>53</sup>

Furthermore, there are list of criteria to determine digital platform workers of the draft platform work directive. The draft Directive places emphasis on the platform as opposed to the individual worker. When a platform exerts a discernible level of authority over individuals engaged in labour via its platform, it will be seen to possess the status of an employer by default. This implies that individuals who are engaged in the same activities under comparable circumstances will be considered as workers by default.

The proposal presents a set of criteria, wherein the fulfilment of a minimum of two criterion is required in order to establish platforms as employers. The criteria outlined in the draft Directive will play a crucial role in assessing the level of control exerted on individuals, particularly by examining any limitations imposed on their ability to organize their work. The criterion for evaluation is to process of ascertaining the extent of compensation or establishing maximum thresholds. The act of overseeing work performance using electronic methods, specifically, three methods. Limiting the autonomy to determine one’s preferred working hours or times of absence, to exercise discretion in accepting or declining duties, or to utilize subcontractors or substitutes. Besides that, the evaluation process is to establish precise regulations pertaining to physical appearance, behaviour towards service recipients, and task execution, as well as to limit the potential to establish a clientele or engage in work for external entities.

In practical terms, this implies that digital labour platforms that satisfy a minimum of two criteria will be regarded and treated as employers by all national authorities, including social security entities. Consequently, it is imperative for these platforms to adhere to their responsibilities as employers in accordance with both national and EU legislation in relation to its presumed

<sup>52</sup> Katherine C. Kellogg, Melissa A. Valentine, and Angèle Christin, “Algorithms at Work: The New Contested Terrain of Control,” *Academy of Management Annals* 14, no. 1 (January 2020): 366–410, <https://doi.org/10.5465/annals.2018.0174>.

<sup>53</sup> Laura Katsnelson, Felix Oberholzer-Gee, and Harvard Business School, “Being the Boss: Gig Workers’ Value of Flexible Work” (2021), <https://www.hbs.edu/faculty/Pages/item.aspx?num=60255>.

employees. This includes requirements such as ensuring the provision of minimum salaries (where applicable) and adhering to regulations concerning working hours, as well as granting yearly and family-related leave entitlements.

There is self-employed worker classification within the draft of directive, due to the fact that more than 90% of digital labour platforms operating within the European Union categorize individuals engaged in their services as self-employed. The majority of individuals exhibit a high degree of autonomy in their professional endeavours and leverage platform employment as a means to foster their entrepreneurial pursuits. Platform workers who are self-employed in their main job are associated with a much more positive profile where work autonomy ('being my own boss') and a varied job stand out.<sup>54</sup> The authentic form of self-employment is playing a constructive role in fostering job growth, promoting business advancement, driving innovation, enhancing service accessibility, and facilitating digital transformation within the European Union.

Hence, it will consistently be feasible to contest the presumption of job status and consequently nullify its legal consequences. In order to establish the classification of a connection as self-employment rather than employment, the platform or individual involved must demonstrate that it does not meet the criteria outlined in the relevant Directive. This entails providing evidence that the nature of the relationship aligns with the concept of self-employment, hence warranting the categorization of the person or specific group of individuals as self-employed. In instances where the digital labour platform asserts that the contractual relationship in question does not constitute an employment relationship, the onus would rest with the platform to provide evidence supporting their claim. In cases where the individual engaged in platform labour asserts that the contractual arrangement in question does not constitute an employment connection, it is incumbent upon the platform to facilitate the appropriate settlement of the legal processes. This includes the need to furnish all pertinent information that is necessary for the proceedings.

Certain digital labour platforms that presently exert a certain level of authority over individuals engaged in their services may necessitate the modification of their contractual agreements in order to establish a more authentic framework of self-employment. Consequently, individuals who are self-employed may experience modifications to their working arrangements in order to ensure the complete autonomy that is inherent in self-employment. This will enhance the capacity of self-employed individuals to capitalize on entrepreneurial opportunities, such as establishing their own pricing structures or cultivating their own clientele base. There will be no alterations for individuals who are already authentically self-employed. The individuals in question will maintain their respective perks.

Self-employed individuals operating inside platform-based employment arrangements will be granted comparable rights to those of traditional workers in relation to algorithmic management. This encompasses the rights to enhanced transparency on the utilization of automated technologies, as well as the processes available for seeking recourse and reviewing judgments made by algorithms.<sup>55</sup>

The draft also proposes algorithmic management is a term used to describe the utilization of information technology-driven automated systems for monitoring and decision-making within

<sup>54</sup> Emilio Congregado et al., "Heterogeneity Among Self-Employed Digital Platform Workers: Evidence from Europe," *International Review of Entrepreneurship* 20, no. 1 (2022): 45–68.

<sup>55</sup> Gemma Newlands, "Algorithmic Surveillance in the Gig Economy: The Organization of Work through Lefebvrian Conceivable Space," *Organization Studies* 42, no. 5 (May 2021): 719–37, <https://doi.org/10.1177/0170840620937900>.

enterprises.<sup>56</sup> The platforms are operated via their mobile apps, which perform automated or semi-automated decision-making functions in the organisation of labour and its replacement.<sup>57</sup> The intelligence of these algorithms is largely driven by advanced technological affordances such as context-awareness, real-time responsiveness, interactivity, and (big) data availability.<sup>58</sup> These systems are gradually replacing the traditional managerial activities, such as task allocation, work monitoring and evaluation, as well as the provision of incentives or enforcement of sanctions. Algorithmic methods are employed by digital labour platforms to effectively coordinate and oversee individuals engaged in platform employment via their own applications or websites.<sup>59</sup> Individuals engaged in labour through online platforms frequently encounter a dearth of knowledge regarding the inner workings of algorithms and the decision-making processes employed, which often makes workers wonder why algorithmic control direct them towards certain behaviours. One notable aspect pertains to the insufficiency of information concerning the utilization of personal data.<sup>60</sup>

The proposed Directive seeks to achieve the following objectives, for instance, to enhance transparency which individuals engaged in platform-based labour will possess the entitlement to get comprehensive information from digital labour platforms regarding the utilization of automated monitoring and decision-making systems, as well as the consequential impact on their working circumstances.<sup>61</sup> Additionally, worker representatives and labour authorities will be granted access to information. The other objective is to safeguard of personal data is ensured by imposing restrictions on digital labour platforms, which prohibit the collection or processing of any personal data that is not directly relevant to the tasks being carried out. Furthermore, individuals will be prohibited from gathering data during periods when the user is not actively logged into the corresponding application or website. Furthermore, it is imperative to provide human oversight that digital labour platforms must implement mechanisms to observe and assess the consequences of individual choices made or facilitated by automated monitoring and decision-making systems on various aspects of working conditions, including remuneration and working hours. The proposal must also provide a mechanism that enables individuals engaged in platform employment to exercise their entitlement to receive justifications for substantial automated decisions that impact their working conditions, as well as to challenge such decisions.

Therefore, it is important for digital labour platforms to have mechanisms that guarantee individuals engaged in platform employment have the opportunity to engage in direct communication

<sup>56</sup> Meijerink and Bondarouk, “The Duality of Algorithmic Management: Toward a Research Agenda on HRM Algorithms, Autonomy and Value Creation.” job autonomy and the value to workers who are subject to algorithmic management. Against tendencies to present algorithmic management as having predetermined, undesired consequences (e.g. restriction of job autonomy, poor financial compensation and deteriorating working conditions

<sup>57</sup> Moritz Altenried, “Mobile Workers, Contingent Labour: Migration, the Gig Economy and the Multiplication of Labour,” *Environment and Planning A* 56, no. 4 (2021): 1113–28, <https://doi.org/10.1177/0308518X211054846>.

<sup>58</sup> Sebastian Schuetz and Viswanath Venkatesh, “Research Perspectives: The Rise of Human Machines: How Cognitive Computing Systems Challenge Assumptions of User-System Interaction,” *Journal of the Association for Information Systems* 21, no. 2 (2020): 460–82, <https://doi.org/10.17705/1jais.00608>.

<sup>59</sup> Sara Baiocco et al., “The Algorithmic Management of Work and Its Implications in Different Contexts” (2022), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_849220.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_849220.pdf).

<sup>60</sup> Mingming Cheng and Carmel Foley, “Algorithmic Management: The Case of Airbnb,” *International Journal of Hospitality Management* 83 (October 2019): 33–36, <https://doi.org/10.1016/j.ijhm.2019.04.009>.

<sup>61</sup> James Duggan et al., “Algorithmic Management and App-Work in the Gig Economy: A Research Agenda for Employment Relations and HRM,” *Human Resource Management Journal* 30, no. 1 (January 2020): 114–32, <https://doi.org/10.1111/1748-8583.12258>.

with a human representative from the platform. This provision is necessary to facilitate discussions pertaining to decisions that have substantial implications for these individuals. In the event of being requested to reassess its determination, the platform is obligated to provide a response within a period of one week. If the choice made by the digital labour platform violates the individual's rights, it is imperative for the platform to rectify the decision or offer appropriate compensation.<sup>62</sup>

### **A Lesson for Indonesia on Gig Worker's Legal Status and Decent Working Conditions**

In the development of the law regarding gig workers, Indonesia is still using Law Number 13 of 2003 concerning Labour (Labour Act 2003), in conjunction with Law Number 6 of 2023 concerning Job Creation. In the regime of the Labour Act, gig workers are still not clearly regulated. The rules only recognize labour and employee agreement. Meanwhile, the gig worker is not bound under such provision. The gig work relationship can only be generated under the civil code, and the clauses have been determined by the company as "standard agreement". The prospective partner can only choose "yes" or "no" with their offering without any communicative negotiations. It shows that Indonesia has not clearly regulated the legal framework on gig workers, especially regarding their rights and obligations. The current rights and obligations are binding only when the agreement is concluded between the company and the worker which the clauses have been set up by the company.<sup>63</sup>

As the gig worker regime in EU, the regulation and protection of gig workers have been strengthened by the Court decision to formalize the norm to balance the rights of the gig worker equal with the traditional worker. Therefore, after the court decision, the EU changes their view on protecting and taking care of the rights of the gig worker, and the court decision is further enacted into a draft directive on the gig worker. However, the Indonesian court never regulated the status of the gig worker similarly to the EU Constitutional court ruling to address the issue on the rights of the gig worker. In Indonesia, the court only ruled that the transportation of grab/gojek/uber, etc., is categorized as private transportation, not public transportation (Constitutional Court Decision Number 41/PUU-XVI/2018). Thus, Indonesia has never faced a similar case and decision as the EU. This situation can be called as a *vacuum of law* for Indonesia since the regulation of gig workers is still unclear on the legal basis, and there is inconsistency in practice that generates the imbalance of the rights.

As gig workers have developed within the European Union, court rulings in a number of the aforementioned European nations have confirmed their legal standing and shown that their status is comparable to that of employees in businesses generally.<sup>64</sup> As a result, gig workers now have access to a monthly income, a pension fund, and other benefits in accordance with the rights granted to regular employees of a company. There is currently no comparable court ruling in the Indonesian setting. Thus, similar to the EU prior to the court ruling, the status of gig workers in Indonesia remains ambiguous, which affects the ambiguous rights and obligations of workers. Gig workers

<sup>62</sup> Duggan et al.

<sup>63</sup> Riani Rachmawati et al., "Urban Gig Workers in Indonesia during COVID-19: The Experience of Online 'Ojek' Drivers," *Work Organisation, Labour & Globalisation* 15, no. 1 (2021): 31–45. \uc0\u8220{}Urban Gig Workers in Indonesia during COVID-19: The Experience of Online \uc0\u8216{}Ojek\uuc0\u8217{} Drivers,\uc0\u8221{} \i{}Work Organisation, Labour & Globalisation} 15, no. 1 (2021

<sup>64</sup> Miriam A. Cherry, "Employment Status for 'Essential Workers': The Case for Gig Worker Parity," *Loyola of Los Angeles Law Review* 55, no. 2 (2022).

face a number of issues in Indonesia, including the rise of a pervasive unemployment issue brought on by their susceptibility to job loss due to the company's ability to terminate their partnership status with no stringent legal repercussions. If the status is employee, the person would receive certain benefits in the event that the employer terminated their job. Online labour platforms presented their workforces as "on-demand," composed of "independent contractors" or "freelancers" who might be "fired on the spot" by abruptly terminating their contracts.<sup>65</sup>

The fall in people's purchasing power and the standstill of Indonesia's economic growth will have an economic consequence. Although the gig worker trend is created by the development of the gig economy, in dealing with this issue, a country must be vigilant in addressing the quick changes in the labour system induced by technology advances as well.<sup>66</sup> There are various issues and disputes about the merits and cons of applying the gig worker model in Indonesia. From the point of view of pros, there are several advantages to implementing a gig economy business model for gig workers, namely:

1. More flexible and more mobile. Workers have more alternatives to optimize time and income. They can also complete tasks on the go and can better balance work and family.
2. Freedom to choose work. Workers can choose the type of project they will take on. In addition, the choice of projects is also more varied because it does not only come from domestic companies, but also companies around the world.
3. More options. Depending on the budget of the business, they might choose from among the top people in their respective fields. There are more options available because goods are sourced from workers worldwide in addition to local ones.
4. Facilitate operating efficiency. Hiring part-time workers is a cheaper and more efficient alternative. Companies do not have to pay training fees or benefits like insurance, which helps lower operating costs.
5. Reduced fixed expenses. Office space, furnishings, and other amenities are not required of businesses. Because of the decreased fixed costs, they can achieve economies of scale and break even faster.
6. Greater chances to increase one's income. Employees can work on multiple projects at once.

Those who oppose the gig economy model for gig workers need to take into account the following crucial points:

1. Not receiving allowances. Workers do not get benefits such as insurance and pensions. The business pays them according to the contract. Therefore, they must be selective in choosing a job.
2. Paying taxes out of your own pocket. If they become permanent workers, the company may pay their income taxes. On the other hand, if they work part time, they do not get that kind of benefit.
3. Income is not stable. Workers must pursue projects to secure income. However, it is a

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<sup>65</sup> Alex J. Wood et al., "Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy," *Work, Employment and Society* 33, no. 1 (February 2019): 56–75, <https://doi.org/10.1177/0950017018785616>.

<sup>66</sup> Brent Daniel Mittelstadt et al., "The Ethics of Algorithms: Mapping the Debate," *Big Data and Society* 3, no. 2 (December 2016), <https://doi.org/10.1177/2053951716679679>.

difficult task. They have to compete with individuals around the world. Thus, the market demand for certain jobs is lower than the available labour supply. As a result, it is more difficult to get to multiple projects at a time.

A major issue is the lack of a clear legal framework in Indonesia to govern the status of gig workers, leading to numerous violations and unequal rights for employers and employees. This legal vacuum makes it difficult to regulate the status of gig workers. Meanwhile, all citizens are guaranteed legal certainty by Article 28D, Paragraph (1) of the 1945 Constitution. Everyone has the right to work and to fair and appropriate compensation and treatment in an employment relationship, according to Article 28D Paragraph (2). Additionally, everyone has the right to social security that enables them to fully develop into dignified human beings, according to Article 28H Paragraph (3).

A number of the directive's recommendations, such the one on predictable and transparent working conditions, might be put into practice to improve gig workers' standing in Indonesia. The purpose of this clause is to give the gig worker some assurances. This covers guidelines for on-demand contracts as well as standards for openness, the right to information, probationary periods, parallel employment, and minimal predictability of labour.<sup>67</sup> Given the nature of the company and the atypical work schedules of those employed through the platform, these minimal requirements are especially pertinent to them. Particularly in Indonesia, there are still instances where an employee was fired by the employer without cause or even the employee's agreement.<sup>68</sup> Moreover, Indonesia needs to take into account the Directive on work-life balance for parents and caregivers as another crucial clause to safeguard gig workers. At the moment, there is no assurance of protection offered by the employer to gig workers in Indonesia, particularly to expectant and nursing moms. Therefore, in order to avoid taking into account the health protection of expectant and nursing mothers. The fundamental rights of workers are often violated in this situation. The corporation may genuinely provide budgets for women who are expecting or have recently given birth as one of its incentives. A portion of this budget may be set aside for the employee and the business under a mutual contract.<sup>69</sup>

Indonesia also needs to take note of the rule about appropriate minimum salaries.<sup>70</sup> Since there was no minimum pay for gig workers up until now, it is crucial that this point be put into practice. Pay is determined by the quantity of jobs performed and the number of hours spent. In other words, the more and longer someone works, the more money they make, and vice versa. This creates a condition of wage uncertainty.<sup>71</sup> As a result, a large number of workers took longer than the government-mandated working hours and overtime in order to increase their pay. Regarding the Directive on Pay Transparency, Indonesia must take the last item into account when regulating

<sup>67</sup> Chen Liang et al., "The Hidden Costs and Benefits of Monitoring in the Gig Economy," *Information Systems Research* 34, no. 1 (March 2023): 297–318, <https://doi.org/10.1287/isre.2022.1130>.

<sup>68</sup> Norma Sari, "Accelerating Business Law Dynamization through Proposed Amendments to Indonesian Consumer Protection Law," *Jurnal Hukum Novelty* 14, no. 1 (2023): 88–99, <http://dx.doi.org/10.26555/novelty.v14i1.a25945>.

<sup>69</sup> Rita Remeikienė, Ligita Gasparėnienė, and Romas Lazutka, "Working Conditions of Platform Workers in New EU Member States: Motives, Working Environment and Legal Regulations," *Economics & Sociology* 15, no. 4 (2022): 186–203, <https://doi.org/10.14254/2071>.

<sup>70</sup> David Tan, "A Brave New Frontier in the Dichotomous Indonesian Labour Law: Gig Economy, Platform Paradox and Workers without Employers," *Mimbar Hukum* 33, no. 1 (2021): 1–38, <https://doi.org/10.22146/mh.v33i1.1956>.

<sup>71</sup> Benjamin Glasner, "The Minimum Wage, Self-Employment, and the Online Gig Economy," *Journal of Labor Economics* 41, no. 1 (2023), <https://doi.org/10.1086/719690>.

and safeguarding gig workers. This idea is really important because it relates to the issue of wage transparency and the lawsuits that have occurred that have against gig workers living standards. Additionally, income reductions for employees are possible at any time without their knowledge or approval.

## CONCLUSION

The EU Commission Proposal for a Directive on Platform Work is an important step forward in the creation of a fairer platform economy in the European Union. However, it also contains important shortcomings as it refrains from addressing some of the most relevant issues faced by many platform workers in their daily working life. The proposed draft Directive will strengthen human monitoring of automated decisions and introduce the right to contest and rectify them if they are incorrect or unfair. Platform workers will also be able to obtain more information on how they are being supervised and evaluated, including by the clients they serve. Platforms will not be allowed to collect personal data that is not related to the workplace. The provisions on algorithm transparency will apply to all kinds of gig workers, both the self-employed and those who are re-classified as employees under the new method. Once the text is adopted, EU MSs have up to two years to transpose the Directive into domestic law. The new EU Directive will give Member States more flexibility to adapt their national laws to meet a set of basic goals and conditions. The European legal framework is basically different with Indonesian perspective. The Indonesian legal framework has not clearly regulated on the issue of the status of the gig worker. Indonesia still uses the Labour Act 2003 and Job Creation Act 2023 to ensure the status of worker (employee and employer), meanwhile the legal basis for gig worker is only under the civil code that the company has standardized the agreement and the gig worker's option is limited and determined by the company, which is going to make unfair condition.

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