

Research Article

Gig Economy: Unleashing the Potential of Digital Banking in Indonesia's Employment Regulations

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ABSTRACT: The gig economy has transcended mere trend status, emerging as a resilient force that promotes economies, even in the face of adversities like the COVID-19 pandemic. The gig economy not only impacts employment law but also intersects with regulations governing digital banking. Surprisingly, despite the exponential growth of gig workers in Indonesia, little attention has been given to comprehensively elucidating the legal interplay between employment law and digital banking. Therefore, this research aims to analyze the potential and legal challenges posed by the gig economy's development in the Indonesian economy. This research uses the Global South perspective as the gig economy offers unique challenges to an environment where issues in employment are already a problem. Furthermore, it examines the utilization of digital banking as a mechanism to address the pressing issues faced by gig workers. The potential limitation of this study is the lack of comprehensive data and empirical evidence, which may restrict the depth of analysis and the generalizability of the findings. The rationale of this legal study is to address the lack of comprehensive understanding regarding the legal interplay between employment law and digital banking in the context of the gig economy in Indonesia and bridge the gaps to connect these concepts under the legal context. Employing a normative legal research method with a statutory approach, this study offers a conceptual analysis of these intertwined concepts and their alignment with Indonesia's existing positive laws. The findings reveal significant connections between employment law and digital banking yet highlight the absence of well-defined legal boundaries within Indonesia's legal framework. Consequently, this research catalyses a novel branch of legal development in Indonesia, focusing on the gig economy and its profound implications.

KEYWORDS: Digital Banking; Employment Law; Gig Economy.

I. INTRODUCTION

The gig economy is an exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and

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Submitted: 06 June 2023 | Reviewed: 18 August 2023 | Revised: 07 September 2023 | Accepted: 11 November 2023

payment-by-task basis.¹ The changes brought by the gig economy can be considered revolutionary as they change the landscape of employment and its effects on economies. However, due to the nascent nature of the gig economy, it's not surprising that there are doubts about whether or not this revolution can be proven by statistics.² This view is criticized by many, due to its simplistic methodology, leaving the fact that we're only in the beginning phase of its development.³ Nevertheless, the gig economy will only become bigger as the developments of new technologies that support it are being developed.

The significant shifts brought to the employment landscape challenge the existing legal frameworks and raise crucial questions regarding worker classification, a process of identifying an employment status.⁴ In turn, worker classification determines the liability that digital platforms that facilitate gig work have, in ensuring a fair employment system.⁵ The gig economy's problem with worker classification also presents challenges in ensuring employment benefits, as it often revolves around short-term work, leaving gig workers vulnerable.⁶ Legal analysis on potential policy solutions and legal reforms aimed at ensuring adequate social protection and benefits for gig workers is therefore needed to not only safeguard the interests of workers but also to attract potential talents who are not yet utilizing the powers of the gig economy.

As one of the Global South countries, Indonesia has had a history of dealing with problems regarding labour rights and income inequality. The gig economy brings forth the potential to tackle income inequality

¹ *The Characteristics of Those in the Gig Economy*, by K Lapanjuuri, R Wishart & P Cornick (2018).

² Josh Zumbrun & Anna Louie Sussman, "Proof of a 'Gig Economy' Revolution Is Hard to Find", (26 July 2015), online: *Wall Str J* <<https://www.wsj.com/articles/proof-of-a-gig-economy-revolution-is-hard-to-find-1437932539>>.

³ Antony Bryant, "Liquid uncertainty, chaos and complexity: The gig economy and the open source movement" (2020) 156:1 *Thesis Elev* 45–66.

⁴ Megan Carboni, "A New Class of Worker for the Sharing Economy" (2016) 22:4 *Richmond J Law Technol* 1–56, online: <<https://scholarship.richmond.edu/jolt/vol22/iss42/>>.

⁵ Sandra Fredman et al, "Thinking Out of the Box: Fair Work for Platform Workers" (2020) 31:2 *King's Law J* 236–249.

⁶ Katie Myhill, James Richards & Kate Sang, "Job quality, fair work and gig work: the lived experience of gig workers" (2021) 32:19 *Int J Hum Resour Manag* 4110–4135.

as it provides more opportunities for Indonesia's workforce. However, the indication that it has with employment issues and the rights of workers is often overlooked. The country has a growing gig economy which has contributed to the Indonesian economy and employment trend. There are 0.3 to 1.7% of the Indonesian workforce who participate in the gig economy as their primary job,⁷ as this number is expected to rise as the digitalization process of the Indonesian economy is going to open even more chances for gig workers.

Another example of a Global South country with a thriving gig economy is South Africa, where the gig economy, mostly in the form of ride-hailing, is becoming more common among workers. The case of the gig economy in South Africa differs from that of Indonesia as the South African gig economy includes a significant number of immigrant workers,⁸ whereas Indonesia on its own already has more than enough human resources to integrate the gig culture into its economy. On the other hand, India is potentially looking at the gig economy as an extension of informal work, which threatens the interests of gig workers, by underscoring precarity.⁹ Indonesia essentially deals with the same thing, as there are also no regulations that can guard the interests of gig workers in Indonesia.

Research has highlighted the complexities of worker classification as one of the emerging problems in the gig economy, emphasizing the need for a nuanced approach that goes beyond traditional employment indicators.¹⁰ This is even more important and urgent as workers from the gig economy don't only occupy the remote digital freelance space,

⁷ Muhammad Yorga Permana, Nabiyla Risfa Izzati & Media Wahyudi Askar, "Measuring the Gig Economy in Indonesia: Typology, Characteristics, and Distribution" (2023) SSRN Electron J.

⁸ Tatenda Mpofu et al, *Risks and Risk-Mitigation Strategies of Gig Economy Workers in the Global South: The Case of Ride-Hailing in Cape Town* (2020).

⁹ *Unexceptional neoliberalism: enterprise and informality in the gig economy of India.*, by Gayatri Nair & Jennifer Divyadarshi, Future of Work(ers) SCIS Working Paper 35 (Johannesburg, 2022).

¹⁰ Travis Clark, "The Gig Is Up: An Analysis of the Gig-Economy and an Outdated Worker Classification System in Need of Reform" (2021) 19:3 Seattle J Soc Justice 769–807.

but also the space of essential jobs.¹¹ Additionally, scholars have explored platform liability, emphasizing the significance of clear regulations to hold gig economy platforms accountable for worker safety and fair treatment.¹² Moreover, studies have investigated policy solutions for providing employment benefits to gig workers, such as portable benefits tailored to the unique characteristics of a country's labour market.¹³

Additionally, the literature also recognises the close relationship between the gig economy and digital banking.¹⁴ While it's found that digital banking has a significant impact in providing gig workers with necessary financial services, there's no clear legal basis that can connect digital banking with employment issues according to employment law and other laws related to banking in general. The Global South perspective has also been connected in the literature to the development of the gig economy, and how this development affects gig workers.¹⁵ However, further analysis of the potentials and challenges of the gig economy in the Global South perspective is still needed as the current state of literature doesn't provide more insight on the issues of employment law along with its correlation with the utilization of digital banking.

The previous literature review highlights a research gap in the understanding of worker classification, platform liability, and the provision of employment benefits within the specific context of the Indonesian economy. It also highlights the gap in understanding the roles of digital banking in the development of the gig economy in Indonesia. Additionally, analysis of the potentials and challenges of the

¹¹ Miriam A Cherry & Ana Santos Rutschman, "Gig Workers as Essential Workers: How to Correct the Gig Economy Beyond the COVID-19 Pandemic" (2020) 78:2017 ABA J Labor Employ Law 11–16.

¹² Fredman et al, *supra* note 6.

¹³ Amitai Etzioni, "Benefits for Gig Workers" (2018) 61:3 Challenge 255–268.

¹⁴ Nanda Amelianny et al, *The Impact of Industry 4.0 in Responding to the Digital Economy's Potential in Indonesia at Pandemic Covid 19* (2022).

¹⁵ Mpofu et al, *supra* note 12.

intersection between the gig economy, digital banking, and employment law is needed to provide a contextual basis to deal with the challenges and maximize the benefits of the potential through legal development. Furthermore, it's also important to recognize the limitations of this research as it only attempts to bridge the potentials of digital banking in the gig economy and how it can help deal with issues faced by gig workers, while also analyzing the legal challenges that come with it. This model doesn't provide comprehensive data and empirical evidence, which may restrict the depth of analysis and the generalizability of the findings. Further analysis, particularly one that focuses more on the economic aspects of these legal challenges may be needed, to establish a clearer relation between digital banking and gig employment.

II. METHODOLOGY

This research employs the doctrinal legal research method to analyze the normative values of existing positive laws in Indonesia.¹⁶ This analysis will be focused on the legal framework of employment law in Indonesia. To support the analysis, this research utilizes the statutory approach, by using secondary data in the form of literature reviews such as books and journal articles, along with primary law sources, namely Financial Services Authority Regulation (POJK) 12/POJK.03/2021 concerning Commercial Banks, Financial Services Authority Regulation 38/POJK.03/2016 on Implementation of Risk Management in the Use of Information Technology by Commercial Banks, Amendments to the Financial Services Authority Regulation 38/POJK.03/2016 on Implementation of Risk Management in the Use of Information Technology by Commercial Banks, and Law 13/2003 on Employment. Data are collected through extensive reviews of the

¹⁶ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies" (2022) 24:2 J Judic Rev 289–304.

existing literature and the database of regulations as provided by the Indonesian government on the Legal Documentation and Information Network (JDIH) through The Indonesian Audit Board (BPK). These are then interpreted through the technique of qualitative data analysis to analyze the normative values and their issues, relative to the conceptual analysis of the gig economy, employment law, and digital banking.

III. THE RISE OF GIG ECONOMY: A GLOBAL SOUTH PERSPECTIVE

The global rise of the gig economy has brought many changes to economies around the world. These changes provide unique potentials and challenges for governments around the world to strike the balance between short-term economic benefits of workers, and their legal rights as workers themselves. This issue is particularly relevant to the Global South perspective not only because of the gig economy's presence in Global South countries, but also because of the characteristics of civil issues of Global South countries such as poverty, inequality, social justice, and human rights. These issues often contribute to the exploitation of traditional workers and have been found to potentially continue in the gig economy on gig workers.¹⁷ Moreover, when examining worker classification, platform liability, and the provision of social safety nets for gig workers, the Global South perspective brings forth distinct considerations that necessitate careful analysis. This article explores the specific concerns and considerations of the Global South perspective about the rise of the gig economy.

The Global South perspective has its indications on the rise of the gig economy, as it places a significant emphasis on addressing poverty and inequality. Unlike developed countries, many countries in the Global

¹⁷ Eloisa Betti & Eileen Boris, "Feminised work after Fordism: The new precarity" in *Routledge Handb Gig Econ* (2022) 131.

South continue to struggle with high levels of poverty, making any development to help alleviate poverty urgent.¹⁸ However, it is crucial to acknowledge that the gig economy can exacerbate existing issues of poverty and inequality. Poverty in Global South countries may compel gig workers to accept jobs that are disadvantageous or generally unfair, which creates an environment where workers' rights are consistently undermined, as supposed to providing solutions to poverty and inequality. The Global South perspective emphasizes the need for robust legal frameworks that protect the human rights and dignity of gig workers, ensuring fair treatment, safe working conditions, and the ability to exercise collective bargaining rights, especially for a country like Indonesia.¹⁹ Moreover, this perspective calls for comprehensive mechanisms to address the issues of unfair working conditions.

Worker classification is a crucial area where the Global South perspective significantly differs from the general perspective on the rise of the gig economy. In developed countries, debates often revolve around whether gig workers should be classified as employees or independent contractors. However, in the Global South, a substantial proportion of gig workers fall into the informal sector, lacking legal recognition and protection.²⁰ The Global South perspective advocates for the recognition of these workers' rights and the development of legal frameworks that ensure adequate protections and benefits, regardless of their formal classification. This perspective challenges the traditional binary distinction between employees and independent contractors, calling for a nuanced approach that encompasses the realities of informal gig work.

¹⁸ Rodolfo Benevenuto & Brian Caulfield, "Poverty and transport in the global south: An overview" (2019) 79 *Transp Policy* 115–124.

¹⁹ Alex De Ruyter & Riani Rachmawati, "Understanding the Working Conditions of Gig Workers and Decent Work: Evidence from Indonesia's online Ojek Riders" (2020) 2020:2 *sozialpolitik.ch* 1–16.

²⁰ De Ruyter & Rachmawati, *supra* note 24.

Additionally, the Global South perspective sheds light on the issue of platform liability. While platform companies often argue for minimal liability, the Global South perspective highlights the need for platforms to be held accountable for the well-being and rights of gig workers. This perspective recognizes the power imbalances between platforms and workers and calls for legal mechanisms that ensure fair treatment, transparency, and adequate dispute resolution mechanisms within the gig economy. Indonesia has faced several cases of labour exploitation, including for example, the fairly recent one indicating not only labour exploitation but also inequality, leading to deaths and injuries of women.²¹ While on this the liability is clear, similar things can happen to gig workers, without a clear legal liability for the platforms that provide gig works. Building on this, the gig economy in many Global South countries is not just a matter of convenience or supplemental income, but often a lifeline for many who have limited access to traditional employment opportunities.²² The informal nature of gig work, combined with weaker labour protections in some of these countries, can leave workers especially vulnerable.

The provision of social safety nets for gig workers is an area where the Global South perspective diverges from the general perspective on the rise of the gig economy.²³ In developed countries, there is an existing infrastructure of social protection that often includes unemployment benefits and healthcare coverage for traditional employees that can help employees get through even some of the toughest economic and social challenges.²⁴ However, in the Global South, where formal employment is scarce, gig workers often lack access to these crucial social safety nets.

²¹ Hasna Dherin Syakira et al, “Keteguhan Nilai Pancasila di Tengah Prahara Eksploitasi Buruh: Aice Group” (2022) 4:1 INTELEKTIVA J Ekon dan Hum 10–20, online: <<https://jurnalintelektiva.com/index.php/jurnal/article/view/840>>.

²² Jeremias Prassl, *Humans as a service: The promise and perils of work in the gig economy* (New York: Oxford University Press, 2018)., p. 2.

²³ Ira Anjali Anwar & Zothan Mawii, “Platform work and the erosion of community networks in the global south” (2022) 29:6 Interactions 72–75.

²⁴ Isabel Baptista et al, *Social protection and inclusion policy responses to the COVID-19 crisis* (Luxembourg, 2021)., p. 101.

The Global South perspective emphasizes the need for innovative solutions to address this gap and ensure that gig workers are not left vulnerable to economic shocks and insecurity. It calls for the development of tailored social protection mechanisms that accommodate the flexible nature of gig work and provide adequate support to gig workers during periods of unemployment, illness, or retirement. These mechanisms may include portable benefits systems, micro-insurance schemes, or collective arrangements that enable gig workers to pool resources and mitigate risks collectively.

IV. UNLEASHING THE GIG ECONOMY: IMPLICATIONS FOR DIGITAL BANKING AND EMPLOYMENT LAW

From the perspective of digital banking, the gig economy has necessitated the development and implementation of innovative financial solutions. As gig workers often lack the stability and predictability of traditional employment, their financial needs differ significantly. Conceptually, digital banking transformation encompasses more than technological changes. It involves enhancing existing business processes and facilitating the development of new ones through the utilization of advanced hardware, software technologies, tools, platforms, and applications.²⁵ Digital banking platforms have responded by offering tailored products and services that cater to the unique financial circumstances of gig workers. For instance, flexible lending options, such as on-demand loans or invoice financing, have been introduced to accommodate irregular income patterns.²⁶ Additionally, digital banks have embraced the use of advanced data

²⁵ Kartina Abdul Latif, Nik Hasnaa Nik Mahmood & Nor Raihana Mohd Ali, "Exploring the Changing Human Resource Management Role in the Context of Digital Banking Transformation" (2019) 7:2 Open Int J Informatics 1–13.

²⁶ *The State of Small Business Lending: Innovation and Technology and the Implications for Regulation*, by Karen Mills, Harvard Business School Entrepreneurial Management Working Paper 17–042 (Boston, 2016).

analytics to assess the creditworthiness of gig workers, leveraging alternative data sources beyond traditional employment records.²⁷

However, the gig economy's impact on employment law has been equally profound. The rise of gig work has blurred the lines between independent contractors and employees, giving rise to debates surrounding employment classification and the accompanying rights and protections.²⁸ Employment laws designed for traditional employer-employee relationships often struggle to address the intricate nature of gig work, leading to legal challenges and regulatory gaps. Courts and legislators have grappled with determining the appropriate legal framework for gig workers, particularly about issues such as minimum wage, overtime compensation, and access to benefits.

Furthermore, the gig economy has underscored the need for a reevaluation of existing labour standards and social safety nets. Traditional employment models typically provide workers with various protections, such as health insurance, retirement benefits, and unemployment benefits. In the gig economy, however, gig workers are often considered self-employed, resulting in limited access to such protections. This has prompted discussions on the necessity of developing new frameworks that ensure gig workers are not left without essential safeguards, particularly in sectors where gig work has become increasingly prevalent.²⁹

Moreover, the gig economy's reliance on digital platforms and technology has raised concerns regarding data privacy, security, and algorithmic fairness.³⁰ Digital banking platforms, which play a pivotal role in facilitating financial transactions for gig workers, must grapple

²⁷ Abdul Latif, Nik Mahmood & Mohd Ali, *supra* note 31.

²⁸ Nikos Koutsimpogiorgos et al, "Conceptualizing the Gig Economy and Its Regulatory Problems" (2020) 12:4 Policy and Internet 525–545.

²⁹ Stan Malos, Gretchen Vogelgesang Lester & Meghna Virick, "Uber Drivers and Employment Status in the Gig Economy: Should Corporate Social Responsibility Tip the Scales?" (2018) 30:4 Empl Responsib Rights J 239–251.

³⁰ J Prassl, "What if your boss was an algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work" (2019) Comp Labor Law Policy J.

with the responsibility of safeguarding personal and financial data while ensuring transparency and fairness in the algorithms used to determine eligibility for financial services. Employment law, in turn, must address the potential risks associated with algorithmic decision-making, as the use of automated systems can perpetuate biases and exacerbate existing inequalities in access to employment opportunities within the gig economy.

The gig economy's implications on digital banking extend beyond the realm of financial products and services. It has also spurred the development of new payment systems and transactional methods to accommodate the unique dynamics of gig work.³¹ Digital banking platforms have introduced features such as real-time payments, mobile wallets, and peer-to-peer transfers, allowing gig workers to receive immediate compensation for their services. This shift towards faster and more convenient payment mechanisms has not only benefited gig workers but has also facilitated the growth and expansion of the gig economy.

Moreover, the gig economy's global and cross-border nature poses complexities for both digital banking and employment law. Gig workers often operate across multiple jurisdictions, making it difficult to determine which laws and regulations should apply to their work and financial transactions.³² Digital banking platforms must navigate the intricacies of international banking and regulatory frameworks to ensure compliance and protect the interests of gig workers. Similarly, employment law faces challenges in harmonizing and enforcing regulations in the gig economy across different jurisdictions, requiring cooperation and coordination at national and international levels.

³¹ Rob Jago Floetgen et al, "Platform Ecosystem Structures: Leveraging Platform-based Technology and the Finance Ecosystem for the New Normal" (2021) July Pacific Asia Conf Inf Syst 1–14.

³² Valerio De Stefano et al, "Introduction to A Research Agenda for the Gig Economy and Society" in *A Res Agenda Gig Econ Soc* (2022) 1.

The intersection of digital banking and employment law in the context of the gig economy revolves around the financial aspects of gig work and the legal implications that arise from it. Digital banking plays a crucial role in providing financial services and solutions tailored to the unique needs of gig workers, such as flexible lending options and advanced data analytics for credit assessments. However, this intersection also raises significant legal considerations related to worker classification, rights, and protections. Employment law must grapple with defining the legal status of gig workers and ensuring their entitlement to appropriate benefits and safeguards.³³ Additionally, the reliance on digital platforms in the gig economy raises concerns regarding data privacy, security, algorithmic fairness, and the responsibility of platforms in safeguarding the financial well-being of gig workers. This intersection necessitates ongoing collaboration and adaptation between the digital banking and employment law realms to address the challenges and opportunities presented by the gig economy effectively.

It's important to note that under the Indonesian legal system, there's no definitive distinction between employment and "labour law" as understood by Western legal tradition. These two concepts are instead merged into the same legal framework, under the label of employment law. This legal framework encompasses all aspects that are important in balancing the rights of workers and productivity for their workplaces. In the context of the gig economy, the absence of a clear legal distinction between the two doesn't necessarily signify a normative issue, at least not in the enforcement of employment law, although it can certainly provide challenges in aspects such as worker classification, worker classification, and employment benefits.

³³ Ben Steinberger, "Redefining 'Employee' in the Gig Economy: Shielding Workers from the Uber Model" (2018) 23:2 Fordham J Corp Financ Law 577–596.

V. DECODING GIG ECONOMY WORKER CLASSIFICATION: A LEGAL PERSPECTIVE

Worker classification in the gig economy is a significant focal point within the realm of employment law, entailing complex legal considerations and debates. The determination of whether gig workers should be classified as independent contractors or employees holds significant consequences for their rights, protections, and entitlements under employment laws.³⁴ This issue is more important than ever, as the COVID-19 pandemic proved that the gig economy can provide flexibility even in essential sectors.³⁵

Many legal systems have traditionally relied on established legal tests to determine worker classification, such as the control test, economic reality test, or the multifactor test. These tests assess the level of control exerted by the employer, the degree of independence enjoyed by the worker, the presence of a contractual relationship, the nature of the work performed, and other relevant factors.³⁶ However, these tests were developed in the context of traditional employment relationships, which may not adequately capture the intricacies of gig work.

Some jurisdictions have adopted more nuanced approaches to worker classification in response to the unique characteristics of the gig economy. They consider factors specific to gig work, such as the level of platform control, the worker's ability to accept or reject jobs, the freedom to work for multiple platforms simultaneously, and the degree of entrepreneurial opportunity afforded to gig workers.³⁷ These considerations aim to differentiate gig work from traditional

³⁴ Orly Lobel, "We Are All Gig Workers Now: Online Platforms, Freelancers & the Battles Over Employment Status & Rights During the Covid-19 Pandemic" (2020) 57:4 San Diego Law Rev 919–946.

³⁵ Julian Friedland & David B Balkin, "When gig workers become essential: Leveraging customer moral self-awareness beyond COVID-19" (2023) 66:2 Bus Horiz 181–190.

³⁶ John A Pearce II & Silva Jonathan P, "The Future of Independent Contractors and Their Status as Non-Employees: Moving on from a Common Law Standard" (2018) 4:1 Hast Bus Law J 1–36.

³⁷ Kamala Sankaran et al, "The architecture of digital labour platforms: Policy recommendations on platform design for worker well-being" (2022) 36:3 Work Employ Soc 1–49.

employment, recognizing the independence and flexibility inherent in many gig arrangements.

Indonesia mainly uses Law 13/2003 on Employment (Employment Law) to govern the issues regarding employment and labour. Perhaps the biggest problem with the Employment Law in Indonesia is the absence of worker classification. Despite being the main source of law for employment in Indonesia, the Employment Law doesn't give any provision that gives specific and comprehensive classification of workers. However, there is a mention of "work agreements for a specified or non-specified time" in Article 56, which was later revised by Article 81 number 12 of Law No. 6 of 2023 on Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation to become Law (Revised Job Creation Law). This normative basis is flawed because it leaves room for whatever party that has leverage in a work agreement, to demand more from workers, including things that are above the pay grade, as long as the workers agree to it. Classifications that give a proper status for workers such as full-time employees, part-time employees, temporary employees, interns, seasonal workers, and leased employees are better because these statuses prevent the mentioned potential issue by making workers entitled to certain employment benefits.

The general classification in the concept of "work agreement" as governed by the legal framework of employment law in Indonesia also doesn't necessarily cover the specific examples of classification as mentioned above, as it cannot normatively separate whether a worker is an independent contractor or an employee. The classification of gig workers as independent contractors or employees has profound implications for their rights and benefits.³⁸ Independent contractors typically enjoy greater flexibility and autonomy but are often excluded from certain employment protections, such as minimum wage, overtime

³⁸ Lobel, *supra* note 40.

pay, and benefits like health insurance and retirement plans.³⁹ Employees, on the other hand, benefit from these protections and entitlements but may have less flexibility and control over their work. The determination of worker classification thus directly impacts gig workers' access to legal rights, financial security, and social safety nets.

The issue of worker misclassification has been a subject of concern in the gig economy. Misclassification occurs when workers are wrongly classified as independent contractors rather than employees, thereby depriving them of the benefits and protections to which they may be entitled.⁴⁰ This practice has led to legal disputes and regulatory enforcement actions, prompting courts and lawmakers to examine the factors influencing classification decisions and the potential for misclassification abuses within the gig economy.⁴¹

Moreover, worker classification in the gig economy has spurred discussions on the need for legislative and regulatory reforms. Some argue that existing employment laws were designed for a different era and do not adequately address the evolving nature of work. Calls for updated legislation or a hybrid classification that recognizes the unique characteristics of gig work have emerged. Indonesia had the chance to address this issue but unfortunately failed to do so with the Revised Job Creation Law. The objective to strike a balance between protecting worker rights and fostering innovation and flexibility within the gig economy through a proper legal distinction within the concept of worker classification was never fully realized in the Indonesian legal system.

One of the key factors considered in worker classification is the level of control exerted by the platform or employer over the gig worker. Courts

³⁹ Savannah M Singletary, "The Gig is Up: California's Crackdown on the Gig Economy" (2021) 43:3 Campbell L Rev 521–541.

⁴⁰ Mark Erlich, "Misclassification in Construction: The Original Gig Economy" (2021) 74:5 ILR Rev 1202–1230.

⁴¹ Keith Cunningham-Parmeter, "Gig-Dependence: Finding the real independent contractors of platform work" (2019) 39:3 North Ill Univ Law Rev 379–427.

assess the degree of supervision, direction, and control exercised by the platform about the work performed. If the platform exercises significant control over the worker's activities, the worker may be more likely to be classified as an employee, as opposed to an independent contractor who enjoys greater autonomy in the execution of tasks.⁴²

Another important element in classification analysis is the economic reality of the working relationship. This encompasses factors such as the worker's opportunity for profit or loss, the degree of investment in equipment or tools, and the permanency or transience of the working relationship. Courts examine whether gig workers are truly in business for themselves or if they are economically dependent on the platform, which can influence their classification as independent contractors or employees.

The nature of the work itself is also considered when determining worker classification. Some jurisdictions differentiate between core platform tasks and ancillary services, considering the extent to which the worker's role is integral to the platform's business model.⁴³ If the work performed by the gig worker is seen as central to the platform's operations, there may be a greater likelihood of classifying the worker as an employee rather than an independent contractor.

Furthermore, the presence or absence of certain contractual features can impact worker classification. The existence of written agreements, the freedom to negotiate contract terms, and the ability to work for multiple platforms simultaneously are factors that can influence the determination of classification.⁴⁴ Courts and regulators consider the totality of the contractual relationship to assess the level of dependence and control between the parties. The Indonesian legal framework for

⁴² Gyubin Jeong, "Comparative Employment and Labor Law Study: Diverse Approaches Towards Providing Protections for Gig Workers in Various Jurisdictions" (2021) SSRN Electron J 1–16.

⁴³ *European Legal Framework for "Digital Labour Platforms"*, by Antonio De Stefano, Valerio & Aloisi (2018).

⁴⁴ Kristine M Kuhn & Tera L Galloway, "Expanding perspectives on gig work and gig workers" (2019) 34:4 J Manag Psychol 186–191.

employment law is also lacking in promoting a more developed concept of working agreement, as it relies heavily only on the principle of *pacta sunt servanda*, based on Article 1338(1) of the Civil Law Book, which states “that all legally made agreements are valid as law for those who make them.”⁴⁵

The ongoing debates surrounding worker classification in the gig economy reflect the need to strike a balance between fostering innovation and protecting worker rights. Achieving clarity and consistency in classification is crucial for ensuring fair treatment, access to benefits, and appropriate legal protections for gig workers. As the gig economy continues to evolve and new forms of work emerge, employment law will continue to adapt and develop frameworks that adequately address the realities and complexities of gig work, safeguarding the interests of all stakeholders involved.

VI. PLATFORM LIABILITY ON EMPLOYMENT AND DIGITAL BANKING: ADDRESSING CHALLENGES

As digital platforms serve as intermediaries connecting gig workers with job opportunities and facilitating financial transactions, questions arise regarding their responsibility and potential liability in these domains. From an employment law perspective, the issue of platform liability revolves around the classification of gig workers and the extent to which platforms may be held accountable as employers. Courts and regulators have grappled with determining the level of control and influence exerted by platforms over gig workers. If platforms are found to exercise significant control, they may be subject to legal obligations and liabilities associated with the traditional employer-employee

⁴⁵ Apri Amalia et al, “Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan dan Hukum Perjanjian” (2016) 5:1 USU Law J 1–23.

relationship, such as minimum wage requirements, overtime pay, and provision of benefits.⁴⁶

Moreover, platform liability extends to issues of workplace safety and discrimination. Platforms may be held accountable for ensuring a safe working environment, regardless of the classification of gig workers.⁴⁷ This includes implementing measures to prevent harassment, discrimination, and unsafe conditions within the platform's digital ecosystem. Failure to address these concerns could lead to legal consequences for the platform.

In the realm of digital banking, platform liability can arise in various contexts. Platforms acting as payment facilitators or providing financial services to gig workers may be subject to legal obligations related to privacy, data security, and fraud prevention.⁴⁸ They must safeguard sensitive financial information, protect against unauthorized access, and employ robust security measures to mitigate the risk of data breaches.

Furthermore, platforms may be held responsible for the fair and transparent operation of their financial systems.⁴⁹ Ensuring algorithmic fairness and non-discriminatory practices in assessing gig workers' eligibility for financial services is paramount.⁵⁰ Platforms must take steps to prevent biases in their algorithms and decision-making processes that could lead to unjust outcomes or unequal access to financial opportunities.

Liability issues also arise concerning the platform's role in financial transactions and payment processing.⁵¹ Platforms acting as payment intermediaries are expected to handle funds securely, accurately process

⁴⁶ Filippo Oncini et al, "Towards food platforms? An analysis of online food provisioning services in Italy" (2020) 114 *Geoforum* 172–180.

⁴⁷ Fredman et al, *supra* note 6.

⁴⁸ Dvara Research et al, "Primer on Consumer Data Regulation" (2020) SSRN Electron J 1–7.

⁴⁹ *The Potential Impact of Digital Transformation on Egypt*, by Sherif Kamel (Giza, 2021).

⁵⁰ Akon E Ekpo et al, "The platformed money ecosystem: Digital financial platforms, datafication, and reimagining financial well-being" (2022) 56:3 *J Consum Aff* 1062–1078.

⁵¹ R Hikida & J Perry, "FinTech Trends in the United States: Implications for Household Finance" (2020) 16:4 *Public Policy Rev* 1–32.

transactions, and promptly resolve any disputes or issues that may arise during financial transactions between gig workers and clients. Failure to fulfil these responsibilities could result in legal liability for the platform. The existence of normative structure around this issue is important as it's an acknowledgment of the intersection between digital banking and employment law issues, in the context of the gig economy.

Digital Banking in Indonesia is legally defined by Financial Services Authority Regulation (POJK) 12/POJK.03/2021 on Commercial Banks (POJK on Banks) through Article 1 number 11 which states that "Digital Bank is an Indonesian legal entity bank (BHI Bank) that provides and carries out business activities mainly through electronic channels without physical offices other than KP or using limited physical offices." Unfortunately, there's no specific mention of the process and liabilities behind wage payment which is more relevant than ever in the context of the gig economy today in the POJK on Banks. The only mentions of wages are in the context of the revocation of business licenses for banks and the closure of representative offices of banks domiciled overseas. This normative hole opens a potential loophole for digital banks, along with employers to escape liabilities as mentioned before.

Furthermore, despite being a rather new regulation, this legal source doesn't have any specific governance of the liabilities of digital banks as mentioned, other than the responsibility to protect consumer data in Article 143 paragraph (2) letter d number 1, which only applies normatively in the context of banking synergy. The provision states: "(2) The cooperation agreement referred to in paragraph (1) at least includes: a. parties who cooperate; b. purpose and scope of cooperation; c. cooperation agreement period; and d. the rights and obligations of each party at least regarding the obligation of both parties to maintain the confidentiality and security of information (non-disclosure agreement), including the confidentiality and security of information to protect customer data;"

Banking synergy as explained by Article 1 number 23 is "Banking synergy is cooperation between banks that are members of a bank business group, with operating shareholders (PSP) in the form of a bank, or towards non-bank financial service institutions as subsidiaries, for efficiency and optimizing resources through support and providing added value in supporting the implementation of business activities, services, and operations of the collaborating parties." The lack of emphasis on customer, especially in the context of digital banking is concerning as it shows the lack of respect that the Indonesian government has for the potential threats and challenges in the utilization of digital banking services.

To address these liability concerns, legal frameworks and regulations need to constantly be developed to establish guidelines and standards for platform accountability. The Indonesian government need to take some essential factors into account when developing the legal framework to acknowledge these issues, particularly factors such as platform liability, considering factors such as the level of control exerted by platforms, the extent of their financial involvement, and the potential impact on gig workers and consumers, along with their appropriate scopes.

The intersection of digital banking and employment law in the gig economy is multifaceted. It encompasses the financial inclusion of gig workers through digital banking services, the influence of worker classification on their access to financial products, and the important consideration of data privacy and security within digital banking platforms. This intersection involves navigating the complexities of providing financial services tailored to gig workers while adhering to employment law principles and ensuring the protection of their sensitive information.

VII. HARNESSING DIGITAL BANKING FOR WORKER PROTECTIONS AND SOCIAL SAFETY NETS

Digital banking platforms play a crucial and impactful role in bolstering worker protections and fortifying social safety nets within the gig economy. The gig economy, characterized by non-traditional employment arrangements, often falls short of providing the conventional benefits and safeguards associated with regular employment.⁵² However, digital banking platforms have emerged as instrumental tools in bridging these gaps and fostering financial security for gig workers.⁵³ By leveraging the power of technology and digital financial services, these platforms empower gig workers by offering a range of financial tools and resources that address their unique needs and challenges. Through digital banking, gig workers gain access to tailored financial solutions such as digital wallets, payment processing, and lending services, enabling them to manage their income, expenses, and savings more effectively. Additionally, these platforms facilitate seamless and secure transactions, ensuring timely and reliable payments, which is crucial for gig workers who rely on irregular and on-demand income streams.

Moreover, digital banking platforms equip gig workers with financial guidance, helping them make informed decisions about budgeting, investment, and risk management.⁵⁴ By integrating worker-friendly features such as instant notifications, expense tracking, and goal setting, these platforms enable gig workers to maintain financial stability and plan for the future. Furthermore, a report by the United Kingdom's IPPR found that the advent of digital banking has opened doors to innovative solutions such as income smoothing, gig workers can access

⁵² Zhi Ming Tan et al, "The ethical debate about the gig economy: A review and critical analysis" (2021) 65 Technol Soc 101594.

⁵³ Jay L Cunningham et al, *The Cost of Culture: An Analysis of Cash App and the Financial Inclusion of Black American Communities* (2022).

⁵⁴ *Updating Banking & Fintech Antitrust Regulation*, by Lele Isha (Michigan: Michigan Ross School of Business, 2022).

funds in advance based on their anticipated earnings, mitigating the challenges posed by uneven cash flows.⁵⁵ In summary, digital banking catalyses addressing the vulnerabilities of gig work by offering comprehensive financial services, fostering stability, and promoting the overall well-being of gig workers.

Despite having a good provision for employment benefits, Indonesia's Employment Law as explained before, doesn't have any normative connection to employment classifications which in turn can make the provision regarding employment useless to begin with. The absence of a normative structure bridging employment classification with employment benefits leads back to the fact that the Indonesian legal system only relies on "work agreement", which doesn't have any context-based legal restrictions other than the basic principle of agreements as mentioned in Article 1320 of the Civil Law Book, namely 1. the agreement of those who are bound; 2. the skills of those who make the contract; 3. a certain thing; 4. a lawful cause.

Furthermore, Article 94 of the Employment Law stipulates that "If the wage component consists of basic wages and fixed allowances (benefits), the amount of the basic wages is at least 75% of the total basic wages and fixed allowances." This provision is becoming more and more irrelevant in the gig economy as gig workers are often paid not based on any standard, with even lesser safety nets, giving corporates less responsibility in providing these essential rights that gig workers have.⁵⁶

Digital banking platforms also play a crucial role in providing gig workers with access to credit and financial services. By leveraging digital data and advanced analytics, platforms can assess the creditworthiness of gig workers and extend lending opportunities tailored to their unique circumstances. This access to credit can help gig workers bridge income

⁵⁵ *Not cashless, but less cash: economic justice and the future of UK payments*, by Rachel Statham, Lesley Rankin & Douglas Sloan (London, 2020).

⁵⁶ Malos, Lester & Virick, *supra* note 35.

gaps, invest in their businesses, or manage unexpected expenses, thus enhancing their financial resilience and stability.

However, there's currently still no legal basis to support and watch over the process of digital banking utilization in providing safety nets for gig workers in Indonesia. Another regulation closely tied to the governance of digital banking in Indonesia is Financial Services Authority Regulation 38/POJK.03/2016 on Implementation of Risk Management in the Use of Information Technology by Commercial Banks (POJK on IT Risk Management in Banking), which was later revised by Amendments to the Financial Services Authority Regulation 38/POJK.03/2016 on Implementation of Risk Management in the Use of Information Technology by Commercial Banks (Revised POJK on IT Risk Management in Banking). Despite having amended the regulation recently, the Indonesian government missed another opportunity to regulate digital banking as a way to ensure social safety nets for gig workers.

Furthermore, digital banking platforms can also facilitate transparent and timely payment mechanisms for gig workers. By offering real-time payments, instant transfers, and clear transaction records, platforms enable gig workers to receive their earnings quickly and track their financial transactions efficiently. This transparency helps prevent payment disputes, ensures fair compensation, and enhances worker trust in the digital ecosystem. While this can certainly benefit gig workers in their financial management issues, there's a serious concern about privacy, especially in Indonesia where there's no legal worker classification. This means that the contents of the work agreement must be leaked to the bank for the bank to create these tailored experiences. While this is covered by the provision of Article 143(2) letter d number 1 of the POJK on Banks (12/POJK.03/2021), there's no definitive legal restriction that can prevent employers from accessing the data analytics of their gig workers who are also using the digital banking services that are working with them.

Digital banking platforms can act as advocates for gig workers' financial rights and protections. They can partner with regulatory bodies, labour organizations, and other stakeholders to advocate for fair employment practices, promote worker benefits, and drive improvements in labour standards within the gig economy. These partnerships can foster collaboration and dialogue to address the unique challenges faced by gig workers and promote their financial well-being. For this, Indonesia will have to create a specific transparency law specifically for banks to act as intermediaries for a possible employment dispute between gig workers and their employers, while also working closely with labour organizations. Digital banking holds immense potential in addressing employment law issues and improving worker protections while enhancing social safety nets. By leveraging technological advancements and innovative financial solutions, digital banking platforms can offer a range of benefits that contribute to a fairer and more secure working environment for gig workers. To utilize the potential of digital banking, Indonesia must be ready to analyze the challenges that come with them and how to mitigate risks in using them, to ensure the rights of gig workers.

V. CONCLUSION

The conceptual analysis of this research found that there is a close relationship between digital banking and employment law in the context of the gig economy, and there's a heightened urgency for legal development in Indonesia to establish clear lines to make sure that gig workers are treated fairly. However, the normative analyses of this research found many normative loopholes that can be used to starve gig workers off of their rights. It was also found that the legal intersection between employment law and digital banking is still lacking, despite the new regulations that govern them. Further research is needed to establish the important lines, particularly the ones with an economic

basis, to protect the rights of gig workers in the gig economy. The findings of this research serve the purpose of opening a new branch of analysis for the continuous development of the Indonesian legal system, into the gig economy.

ACKNOWLEDGMENTS

The authors would like to express their sincere gratitude to the Research and Community Service Institute (LPPM) and the Faculty of Law at Universitas Internasional Batam for their invaluable support and resources in facilitating the research project. Their commitment to fostering an environment conducive to academic inquiry has been instrumental in the successful completion of this research. We also extend our appreciation to the dedicated staff and faculty members for their assistance and guidance throughout the research process. This research would not have been possible without their unwavering support. Lastly, we would like to acknowledge the financial assistance provided by LPPM, which significantly contributed to the realization of this study.

COMPETING INTEREST

The authors declare they do not have a conflict of interest in conducting this research.

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