



RESEARCH ARTICLE

# Constitutional Protection of Gig workers' Right to Occupational Safety: Analysis of Legal Vacuum and State Obligations in the Digital Economy Era

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## ABSTRACT

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Development rapidly Indonesia's digital economy has cause increasing amount Gig workers facing risk significant related health and safety work. Ambiguity specific laws and regulations has create a situation where Gig workers are mostly big No protected. Analysis normative This investigate right constitutional related safety Work for Gig workers, evaluating mismatch between directions constitutional and action existing regulations, as well as provide solution suggestions relevant laws with gig economy. Descriptive-analytical techniques qualitative used, with refers to the material primary, secondary, and tertiary laws. Research results show that right on decent living and shelter in place Work in accordance with The 1945 Constitution has not fully implemented for Gig workers. Challenges systemic — such as ambiguous legal status, inadequate oversight adequate, and laws rigid employment — hinders implementation effective protection. Research This emphasize importance revise policy employment to be more inclusive, developing system guarantee flexible social, and create steps enforcement solid law For fulfil not quite enough answer constitutional state. In special study This highlight that change laws and policies innovation is very important For protect rights Gig workers and ensure environment safe and dignified work in Indonesia's digital economy.

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## Introduction

The era of revolution industry 4.0 has transform landscape fundamentally Indonesian employment, marked with growth exponential economy Gig in various sectors outside online transportation. Data from the Central Statistics Agency (BPS) shows proportion informal workers are increasing from 56.6% (2020) to 59.4% or 86.58 million people in February 2025, the highest since pandemic. (Badan Pusat Statistik (BPS), 2023) Growth worker digital platform-based shows an average increase of 15.7% per year during the 2020–2023 period and 10–13% during 2024–2025, with surge in the sector construction scale small, design, architecture, development device software, services creative, and professional consultant. (Adiratna dkk., 2022)

Characteristics Work based project with legal status as partners independence in Indonesia gives rise to vulnerability Serious in aspect Occupational Safety and Health (K3), where some of big

worker gig No get adequate and non-adequate K3 training provided tool protector self (PPE) by the provider work . According to The 2022 National K3 Profile from the Indonesian Ministry of Manpower , K3 training and protection has not yet been implemented. evenly , especially For informal workers and Gig workers whose legal status No parallel with formal workers .

Legal studies latest show that Lots worker gigs that don't get access full to BPJS Employment protection , so that protection accident Occupational health and safety training is very minimal. It is estimated that around 60-70% of workers gigs in the sector projects and construction No given PPE, while not enough from 40% ever get K3 training from platform provider or company . Absence regulations that are explicit arrange K3 protection for Gig workers with status partners independent make things difficult they in get adequate protection , which should be covers K3 training , provision of PPE, and access to guarantee social like insurance accident work . Therefore that , adjustment adequate regulation and collaboration between government and gig platforms economy is very important For ensure protection safety and health Work for worker this . Findings This corroborated by Safety Council data National Work and Ministry of Manpower of the Republic of Indonesia (2024–2025) which recorded incident accident work in the informal sector including worker gig increased from 370,747 cases (2023) to 462,241 cases in 2024, with projection increase by 28.5% during 2025 (Adiratna dkk., 2022).

Digital transformation in economy has create method new in work , namely a platform -based model that produces phenomenon worker off . But on the other hand , things This cause emptiness law related protection safety work . Because the rules employment in Indonesia according to Sri Hartati Indah Rezeki (2022) is not Can includes legal status worker freelance work in accordance request without connection official work .

Constitution Number 13 of 2003 concerning Employment and Law Number 1 of 1970 concerning Safety Work Still relationship - oriented Work traditional , formal and stable (Indonesia, 2003). Latest study disclose that structure the laws that govern employment in Indonesia, especially after ratification Job Creation Law as well the rules , still Not yet capable fulfil need special from work that is of a nature project and gig flexible and decentralized economy . Focus on simplification regulations and incentives For investment cause protection law as well as guarantee social for digital workers yet can achieved with maximum.

Table 1. Worker Data Gig worker

Year	Total Labor Force ( million )	Workers (%)	Amount Informal Workers ( million )	Average Increase Digital Platform Workers (%)	Surge Sector Notes
2020	136.46	56.6	77.25	15.7	Digital platform, software
2021	139.07	57.3	79.68	15.7	Project professional , services creative
2022	139.81	58.2	81.37	15.7	Architecture , devices software , consultant
2023	144.21	58.9	85.01	15.7	Construction small , services design , IT
2024	148.19	59.2	87.72	10-13	transportation sector increase
2025	145.64	59.4	86.58	10-13	Surge gig digital worker

This is show that need done design repeat policies to be more sensitive to the development of the modern world of work which is increasingly varied and digital- (Maruf dkk., 2022)

Based Regulation specific like Regulation of the Minister of Manpower Number 16 of 2020 concerning Guarantee Accident Work show limitations Implementation . Evaluation of the Ministry of Manpower (2022)(Adiratna dkk., 2022) disclose only 23.4% of digital platforms are consistent apply provision K3 rotection for partners his work . Failure a country in fulfil obligation related *tripartite* with right basic humans , especially in matter protect (*to protect*) and fulfill (*to fulfill*) rights constitutional citizens , showing existence incompleteness not quite enough answer conflicting nationalities with principles law international and state constitution . This country's obligations in a way firm mandated in Article 28I paragraph (4) of the 1945 Constitution which confirms that protection , development , enforcement and fulfillment right basic man is not quite enough state responsibility , especially government (Sujatmoko, 2019). Therefore that , research entitled “ **Constitutional Protection of Gig workers' Right to Occupational Safety: Analysis of Legal Vacuum and State Obligations in the Digital Economy Era**” become significant For conducted . Research This aim For analyze gap between guarantee constitutional and implementation regulation, identifying factors inhibitors , as well as formulating a responsive K3 protection model for worker *Gig*

## Method

### Specification Study

This study adopt paradigm qualitative with approach descriptive-analytical , selected Because his abilities For delve into phenomenon protection right safety Work for Gig workers in general comprehensive . As stated by T. Sembiring et al . (2023), " Research qualitative tend nature descriptive and attempt For dig understanding deep through observation , interviews , analysis text , or studies case " . This method focuses on the experiences , views , and meanings formed by workers as center analysis , with utilise narrative and observational data collection For understand complexity problems that occur in the field . With use framework descriptive- analytical research This No only aim For describe characteristics phenomenon , but also for do analysis deep to the dynamics contained therein , so capable build understanding comprehensive about reality guarantee safety Work in context protection constitutional , with notice dimensions social , regulatory , and practical (Sembiring dkk., 2023).

### Types of research

Types of research This use method study juridical combined normative with approach juridical empirical , where the analysis qualitative implemented For study in a way deep and holistic reality law , no relies on the quantification of numerical data but rather in the analysis against legal norms as well as its implementation in decision relevant courts , so that study This nature descriptive purposeful analysis reveal synchronization between law positive with field practice to provide solution solution problem (Fauzi, 2021) (Fauzi dkk., 2021).

### Sources of Legal Materials

Legal materials used in study This consists of from :

- *Primary Legal Materials*, that is The 1945 Constitution of the Republic of Indonesia ( especially Article 27 paragraph (2), Article 28D paragraph (2)), Law Number 13 of 2003 concerning Employment , Law Number 1 of 1970 concerning Safety Work ,
- Law Number 11 of 2020 concerning Job Creation ( along with regulation derivatives ), Regulation of the Minister of Manpower Number 16 of 2020 concerning Implementation of the Guarantee Program Accident Work and Death Benefit , Decision Court Constitution Number 88/PUU-XI/2013, Regulation other relevant legislation with protection workers and safety Work .
- *Secondary Legal Materials*, that is Books text law employment and law constitution , Journal scientific and articles academic about economy *gigs* and protection workers , Comments expert to regulation legislation , research results relevant previous seminar papers and works scientific related , Encyclopedia law and dictionary law .

- *Tertiary Legal Materials* , namely the Big Indonesian Dictionary, Dictionary of law and legal terms , Encyclopedia general and specific , bibliography and index literature law , Official website institutions government ( Ministry of Manpower , BPS, etc. ).

### **Data collection technique**

Data collection was carried out through study library , which includes search and collection material law from libraries , legal databases , online journals , and source other related literature with the subject being studied .

### **Data Analysis Techniques**

Data analysis process is carried out with approach qualitative use technique analysis content . Approach This involving interpretation , compilation law , as well as synchronization in a way vertical ( between level regulation ) and horizontal ( between equivalent regulations ) for answer questions asked.

## **Results and Discussion**

### **Construction Constitutional Legal Arrangements About Guarantee Safety Work in the 1945 Constitution of the Republic of Indonesia and its Implementation for Protection *Gig worker***

1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as constitution the highest in Indonesia guarantees various right base citizens , including right on protection safety and health work . In a way constitutional , protection power Work arranged especially in Article 27 paragraph (2) which states that " Each citizens have the right on decent work and livelihood for humanity ," and Article 28D paragraph (1) which guarantees right on recognition , guarantee , protection , and certainty just law as well as the same treatment in front law . In addition , Article 28H emphasizes right on guarantee social and services health as part from right on welfare .(Undang-Undang Dasar Negara Republik Indonesia 1945, 1959)

Construction This reflect principle that protection safety Work is fundamental rights that must be guaranteed by the state through effective regulation and implementation . This also includes protection to worker in all form connection work , including worker *gig economy* , even though Not yet in a way explicit mentioned in the 1945 Constitution.

### **Implementation Protection Safety Work for *Gig worker***

*Gig worker* or worker platform economy is form new connection frequent work No covered in arrangement employment traditional in Indonesia . Law Number 13 of 2003 concerning Employment of course arrange protection safety and health Work in Article 86, however its implementation more focus on formal workers with connection clear work , so that protection to *gig worker* Still not optimal.(Indonesia, 2003)

In practice , *Gig workers* often No have formal worker status and access to guarantee social or safety work . Some instrument regulation implementers , such as Minister of Manpower Regulation Number 5 of 2021 concerning Procedures for Implementing the Guarantee Program Social Employment , starting open room for protection for informal workers , including *gig worker* . However , not yet There is regulations that are special arrange safety Work *gig worker* in a way comprehensive (Minister of Manpower Regulation Number 5 of 2021, 2021)

Academics and practitioners law evaluate protection *gig worker* must strengthened through revision Constitution employment to accommodate characteristics digital platform work , incl guarantee safety and health adequate work . Commission IX of the Indonesian House of Representatives at the moment this is also in progress study changes to the Employment Law For enter cargo protection for worker *gig* as part from workers outside connection Work conventional (Nola, 2025).

### **Legal Protection and Challenges Implementation For *Gig worker***

Based on Law of the Republic of Indonesia Number 40 of 2004 concerning System Guarantee National Social Security (SJSN), security social is A form purposeful protection For fulfil need decent living for all over Indonesian society , both For formal and non-formal workers (Article 1). The guarantee program social services operated by the Organizing Agency Guarantee Social (BPJS) includes guarantee health , accidents work , retirement , day old age , and death (Article 18). However

, when done evaluation , there is participation that is still low from worker *gig* ( worker) with pattern Work temporary ). The cause such as characteristics work that is not still , lack of understanding about importance membership , and the existence of constraint in the registration process . In addition , many workers — including worker *gig* —which is not get right on guarantee social Because provision about membership Not yet fully fulfilled , including not quite enough answer company in register its employees (Article 13) and the existence of help dues for group underprivileged communities capable (Article 14). (Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System, State Gazette of the Republic of Indonesia 2004 Number 150, Jakarta, 19 October 2004., 2004)

According to Henry Aspan (2021), the challenge the main thing that appears , as seen from changes in the digital era overall , is lack of regulations clear laws that can give protection from risk economy , no existence guarantee social , as well as prone to to practice exploitation in the digital world. The easy access and flexibility offered by digital platforms are often exploited by individuals who are not responsible answer , because lack of supervision and enforcement effective law , and phenomena this is also seen in various type crime cyber others . For overcome problem protection this , a number of academics and practitioners law propose For do revision to Constitution employment (Aspan, 2021).

### **Inhibiting Factors Effectiveness Regulation Employment Under Protection Safety Work Comprehensive for Gig workers .**

Based on study about existing regulations , protection safety Work For workers in the economy *gigs* in Indonesia still experience obstacle sufficient structural big . Inhibitor main is ambiguity regarding legal status worker *gig* in context law employment at the level national . As explained by Fadhlulloh , et al. ( 2023), workers *gigs* in Indonesia in general considered as partners Work or contractor independent , not as worker in understanding official according to law employment .

Impact from that status is lack of access worker *gig* to diverse right base employment , including insurance accident work , protection health and insurance programs social services run by BPJS Employment . Problems This the more bad Because No existence regulation certain which are comprehensive arrange protection For workers in the economy *gig* . Absence regulation This create gap laws that result in low protection safety Work For worker *gig* . As the result , position bid they become weak and they face vulnerability to risk Work as well as limitations in guarantee social , which makes situation This become problem serious that must be quick handled with more policies clear and focused (Fadhlulloh & Azhari, 2023).

Next , the weakness performance regulations that protect worker *gigs* in Indonesia no only caused by legal status issues , but also increasingly exacerbated by the lack of capacity and resources Power from party authority supervisor employment . Until moment this , not yet There is mechanism comprehensive control for digital platforms, so provider service often can avoid not quite enough answer full on safety Work partners them . In addition , understanding law worker *gig* about rights and obligations they in protection Work still minimal, which results in implementation principle safety Work No walk with good . Need existence improvement information and education about rights worker *gig* to be created condition decent work and protection Real law in the digital economy (Mulyohadi, 2025)era .

Number 35 of 2021, protection law Still focus on the concept connection Work conventional which requires existence contract official between workers and employers work . Besides that , no existence standard safety and health designed work special For context digital economy adds vulnerability position law worker *gig* , because digital platforms do not own not quite enough answer sufficient law in provide guarantee safety work and mechanism For finish dispute in a way effective . Therefore that , various study academic and policy advice emphasize the importance of further regulatory reform progressive and responsive For adapt pattern modern work in the sector *gig* , so that the rights base workers , including safety work , can guaranteed with more comprehensive (Latri dkk., 2024). In a way concise can loaded in the following table .

Table 2. Summary Findings Keys and Triggers *Protection Gap*

Inhibiting Factors	Explanation	Source Phenomenon Scientific
Unclear Legal Status	Connection Work <i>gig worker</i> nature partnership , not yet recognized as formal workers (UU 13/2003), so right minimal protection	Law 13/2003
Risks & Algorithmic Platform	Working model <i>gig</i> lower control man on working hours & safety consequence pressure algorithmic /platform, minimal formal K3 training	Taylor (2023),(Taylor dkk., 2023) Fairwork 2021(Fairwork, 2021)
Fragmentation Regulation	Supervision and responsibility K3 responsibilities are spread across the chain subcontracting / projects , protection social not universal	Pilatti et al. (2024), Wibowo & Susanto (2025)
Weakness Institutional	Weakness supervision and capacity institutions , integrated data systems Not yet available , and regulations Not yet adaptive For worker cross project <i>gig</i>	SJ Lesmana (2025), Ministry of Manpower ( 2022), ILO (2021)
The gap Guarantee Social	BPJS for <i>gig worker</i> Still voluntary , >60% not yet protected ( Fairwork ) , access to K3 is very limited	Fairwork (2021),

#### Data Recap & Research Comparison

- Working hours Gig workers : 28.4% work 13–14 hours/ day , 24.4% work 11–12 hours/ day ( Fairwork , 2021).(Fairwork Ratings Indonesia 2021: Standar Kerja Layak pada Gig Economy, t.t.)
- Accident work : Risk specific increase 2024–2025 in the sector online transportation / logistics .
- Protection social : Only 40% of Gig workers have BPJS or insurance accident Work .

Protection K3 law : Still dominated worker permanent , worker projects and percentages *gig worker* difficult reachable formal system ( Aigbe , 2025; Pilatti et al., 2024).(Aigbe dkk., 2025)(Pilatti dkk., 2024)

#### Legal solutions taken For overcome problematic protection safety Work *Gig worker*.

According to study conducted by Ismaidar , et al ( 2024), politics law functioning as policy main government in determine the law that will maintained , changed , or made For fulfil the goals of the state. Therefore that's the solution law For protection worker *gig* need shift paradigm from system employment rigid traditional towards a more regulatory model inclusive and responsive . As has been stated , " Legal Politics is policy from government about which law will still there is , which law will superseded , whichever law is necessary revised , and which laws should be deleted " ( Ismaidar et al ., 2024: 1) (Ismaidar dkk., 2024). Characteristics dynamic from connection Work in economy *gig* demand existence framework law new which is special acknowledge and regulate type connection Work This is for ensure that worker *gig* No lost rights social and protection safety them . Therefore , the approach regulations adopted must oriented towards creating balance between fulfillment rights normative worker with flexibility platform operations , so as not to only give certainty law , but also prevent existence burden excessive regulation , which is in line with the country's goals in increase welfare general.

#### Conclusions and Recommendations

What : Gig workers are growing rapid and dominant digital informal sector , marking change big in the Indonesian job market .

Why : Emptiness regulations and definitions law cause status uncertainty , less formal protection , and the high problem welfare as well as risk Work .

How :

- Gig worker integration to in BPJS system with mandatory & portable benefit scheme

- Reform the Employment Law regulations to accommodate connection non- conventional work ( hybrid worker )
- Formation association worker gig , transparency platform algorithm & reporting accident Work
- Synergy cross-institutional in K3 supervision and protection work cross project /platform

Comparison of Studies and Future Insights :

International studies ( EU Directive, ILO, OECD) highlight importance expansion social coverage protection for informal and Gig workers through digital compliance systems , new governance models , and strengthening advocacy collective .

Legal Solutions for Protection Safety Work Gig worker

### **Regulatory Reform Employment**

Compiling and revising Constitution Employment (Law No. 13 of 2003 and Job Creation Law No. 11 of 2003) 2020) so that in a way explicit recognize gig worker status and give protection adequate employment , including guarantee safety work , guarantee social , working hours and fair wages . Regulation This must flexible For adapt character digital platform work while ensure right base worker still guaranteed .(Nola, 2025)

### **Development Guarantee Inclusive and Responsive Social**

Expand BPJS Employment and BPJS Health coverage with make things easier access registration and payment accommodating contributions income Gig workers who No remain . Implementation system contributions that can be cut directly by the platform company and customized with frequency Work Gig workers are effort important For ensure protection social they in a way sustainable as implemented in several developed countries .(Stiftung, 2024)

### **Strict Law Enforcement and Supervision Effective**

Strengthen institution supervisor employment with source Power adequate For do inspection and action violation on right safety Work Gig workers . Government need adopt digital technology for effective supervision to distributed platform companies extensive . In addition , education law for Gig workers to understand their rights and conveniences access settlement the dispute is very crucial remember vulnerability they in face condition informal work .(Stiftung, 2024)

### **Legal Recognition of Connection Platform Work**

Make framework *lex specialis* law which regulates connection work on digital platforms with rights and obligations clear between Gig workers and platform companies . This includes protection to termination connection Work unilateral , transparency algorithmic in assignment work and treatment fair in accordance principle employment . Regulatory model This has adopted by several countries such as Japan , the Netherlands, and Singapore as response to development gig economy .(Nasution dkk., 2025)

### **Working Hours and Occupational Health Standards Specifically for Gig workers**

Set limitation time work , time rest , and standards relevant safety For gig worker character his job flexible and spread out , so that they No experience exploitation work and fatigue . Encourage regulation special K3 techniques that adapt risk work in the digital economy is very much needed (Nola, 2025) More far , inclusion gig worker in system guarantee social responsive national to income not still is step important For ensure continuity protection social they

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