

‘Misclassified Partnership’ and the Impact of Legal Loophole on Workers

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ABSTRACT

In Indonesia, the partnership model was previously popularized by gig companies. However, now it is spreading into various businesses, such as e-commerce, shipping, and start-up industries. Over the years, the extensive use of the partnership model is becoming problematic as it transforms into a "misclassified partnership," where a job that should be considered an employment relationship is instead misclassified into a partnership. This study uses doctrinal legal research completed with a statutory approach to finding an apparent legal loophole regarding the partnership model within Indonesia's regulatory space. The term "partnership" is not recognized by Manpower Law, Micro, Small, and Medium Enterprises Law, on the other hand, identifies the term partnership (*kemitraan*) but does not contextualize it within the current partnership model. The research also found that this legal loophole has been impacting the working conditions of workers under the partnership model, robbing their workers' rights and legal protection by law. The possible solutions to the issue are then discussed by looking at the good practices in other countries, such as the UK, France, Spain, and the US.



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1. Introduction

With the growth of the gig economy in Indonesia ([Fanggidae et al., 2018](#); [Izzati et al., 2021](#)), the stirring debates regarding partnership relationship (usually called *hubungan kemitraan* in Indonesian) are also rising. The partnership or independent contractor model is crucial in the business process of the gig economy, as the platform companies are known to describe their workforce as ‘partner’, deliberately avoid using the terms employee-employer, with the aim to conceptualize gig work as a commercial contract between a service provider (worker) and client (service purchaser), as opposed to contracting within an employment relationship ([Stewart & Stanford, 2017](#)). The reluctance to use the terms ‘employee’ or ‘worker’ in the gig economy can be seen from the “made up” terms that the platforms choose to call the person who works as service providers in their app. For example, Deliveroo, a British food-delivery platform, calls their workers who perform delivery ‘riders’. The company even has a list of dos and don’ts on how to talk to and about their ‘riders’, using terms designed to fend off claims that the riders are employees, workers,

or staff (Butler, 2017). While Go-Jek, Grab, and other gig economy platforms such as Maxim, AnterAja, or Uber (while it was still running in Indonesia) call the people who work as their service providers as *mitra* (an Indonesian word for 'partner'), hence, rising the popularity of the term *hubungan kemitraan* in Indonesia.

Scholars have argued that the avoidance of the employee label became business strategic for many platforms in the gig economy since it removed the need for, among other things: potential overtime payments, union or organisation rights, payroll taxes, and unemployment benefits (De Stefano, 2016; Frost, 2016). This phenomenon is what Prassl called *human as a service* (Gramano, 2018). This term emerged from Jeff Bezos's speech in 2005 when he was about to launch Amazon Mechanical Turk (MTurk), which then became one of the most popular and used crowdwork platforms. In that speech, he said, "You've heard of software as a service. Well, this is basically humans as a service" (Gramano, 2018). The background of this sentence is Bezos's excitement toward MTurk's business promise because it means that in addition to selling goods, Amazon would henceforth sell 'work', conveying the idea of an extreme form of commodification of human beings (Bergvall-Kåreborn & Howcroft, 2014). This is alarming because legal systems worldwide have long sought to safeguard employees from severe forms of commodification. Treaty of Versailles (1919), which established the International Labour Organization, Article 427 clearly stated that there is a need for principles for regulating labour conditions because "labour should not be regarded merely as an article of commerce."

In the Indonesian context, the fear over the impact of the commodification of labour due to the lack of employment relationship ring more valid than ever. In these past few years, the partnership model has been used extensively, not just by gig companies but also by other businesses that should be implementing the regular employment relationship with their workers. One of the clear examples can be seen in the relationship between e-commerce couriers with the companies. Most freight forwarding or shipping companies now use the partnership model with their couriers. In 2021, the working condition of Shopee Express couriers became the talk on social media when most of the couriers went on a mass strike because of a wage cut by the company. There were at least 1,000 couriers who went on strike and chose to resign from the job. All these couriers are classified as partners, not employees, of the Shopee Express company (Abdi, 2021).

The extensive use of the partnership model becomes problematic, since most of the time, just like the case with the e-commerce couriers, the relationship practically fulfils the elements of work, wage, and order, which should make the relationship considered an employment relationship. The use of the partnership model over the employment relationship looks like a way for companies to avoid liability for fulfilling the workers' rights under Indonesian labour law, such as the right to get a minimum wage, overtime pay, and the social security benefit. Hence, the partnership model then altered more into a disguised employment relationship, which ILO defines as a situation that occurs when an employer treats an individual not as a worker by hiding his real legal status (Tekeli-Yesil & Kiran, 2020). In the Indonesian case, it is set by calling the workers as partners, misclassifying them into the fallacious partnership model. There goes a situation where relationship which should be classified as employment relationship are instead classified as partnership, hence became a 'misclassified partnership' (Sprague, 2015).

By analysing the regulations regarding partnership within Indonesian labour law and other regulations related to the partnership model, this paper argues that the main reason for vast cases of misclassified partnership models is the legal loophole in the partnership itself. Indonesian labour law does not recognise the term 'partnership' at all. This term is actually known in Law Number 20 of 2008 regarding Micro, Small, and Medium Enterprises. Yet, it is defined in a different context from the partnership model that is now commonly found in practice. With this hypothesis, this article will discuss the phenomenon of the partnership model by analysing the labour law and other regulations in Indonesia. The research questions in this study are, first, what is causing the increased use of partnership models in Indonesia and how does it transform into a "misclassified partnership." Second, how partnership models are regulated in Indonesia and whether there is a legal loophole that may cause misclassified partnerships. Third, what is the impact of misclassified partnerships on workers? Besides these three research questions, this paper will also explore how the partnership model is regulated in other countries and to what extent it may be contextual to be replicated in

Indonesia. This research aims to stir a discussion on the need for regulations for partnership relations so that the protection of workers as aspired to by the constitution can be achieved.

2. Research Methods

This research is using the doctrinal legal research, which can be defined simply as research that asks what the law is in a particular area. The researcher is using statutory approach, done by reviewing all regulations related with partnership in Indonesia, in order to provide a juridical basis for this matter. This paper is also utilising a previous writing to build a research framework (Kusuma et al., 2021), which are able to examine the impact of legal loophole of partnership model on workers in Indonesia.

The researcher is applying qualitative research methodology, which is a subjective form of research relying on the analysis of controlled observations of the researcher (Woods, 2005). The data collection in this research is primarily a desk review of documents, done by identifying, analysing, and classifying relevant legal frameworks and other related documents. Data in this paper was collected by exploring both primary and secondary legal materials. The primary legal materials consisted of statutory regulations that have binding legal force, such as 1) Law Number 13 of 2003 on Manpower; 2) Law Number 20 of 2008 on Small, Micro, and Medium Enterprises; and 3) Law Number 11 of 2020 on Job Creation Law. While secondary legal materials in this study included numerous documents, research reports, scientific journals, and articles concerning partnership models in Indonesia and internationally.

3. Results and Discussion

3.1. Precarious Labour Market and the Increase of Misclassified Partnership

Before discussing about misclassified partnership, we must first address the overall condition of Indonesian labour market. With a population of 272 million, Statistics Indonesia (BPS) data indicates that around 139,81 million people are in the labour force, with 131,03 million people working and 6,88 million (6.49%) unemployed (BPS, 2021). However, most Indonesians are working in the informal sector, with the number soaring as high as 59,62 per cent (78,14 million people), compared to the formal sector, which employs around 40,38 per cent of the labour force (52,92 million people) (BPS, 2021).

The high number of people who work in the informal sector is undoubtedly making the labour market in Indonesia more precarious. Precarious work can be defined as the absence of aspects in the standard employment relationship that supports the decommodification of labour, such as a sufficient wage throughout work and non-work periods to reduce pressures to sell labour under unfavourable market conditions. Low income, insufficient and changeable hours, short-term contracts, and limited social protection benefits are all connected with precarious work. These qualities are common in, but not limited to, non-traditional types of employment, such as part-time, temporary, and zero-hour contracts, as well as dependent self-employment (Rubery et al., 2018).

In Indonesia, more and more workers are pushed into the non-standard employment relationship, such as being in the temporary employment contract, outsourcing, or even freelance. But the issue of precarity in the labour market is not exclusively an Indonesian problem. In the United States, for example, since the 1970s, a lot of standard employment has been curtailed by the proliferation of contract labour or work conducted outside the regulatory framework of employment (Dubal, 2017). In the past decades, we have seen many working arrangements moving away from the standard employment, which is characterised by full-time, permanent contracts, into the more temporary, short-term, part-time, and informal arrangements (Harvey et al., 2016). Unfortunately, people working under non-standard employment got reduced benefits and protection that usually accompany conventional, standard employment (Izzati, 2021).

On the other side, Indonesian labour regulations are known to be rigid, at least from the business perspective. This rigidity is making businesses do everything possible to avoid being bound by employment relationship as the costs are considered too high, and thus, classifying its workers into partnership model is a 'solution' to this issue. To make things worse, the Indonesian government tends to believe in the notion of rigidity of labour law, hence trying to loosen it up through the

revision of the Manpower Law (Law Number 13 of 2003) in the Job Creation Law (Law Number 11 of 2020). The reduced state control over labour law in Job Creation Law can be clearly seen in many provisions, from the term of the fixed-term contract to paid leave. The effort to deregulate the labour law through Job Creation Law will lead to a more flexible labour market, then make labour more precarious (Pulignano, 2019). In this labour market condition, precariousness becomes the alternative to unemployment, which make more people willing to accept any available job, even with reduced benefit (Rubery et al., 2018), such as the job with a partnership model that offers no employment protection whatsoever.

As mentioned before, the partnership model in Indonesia was first popularised by Go-Jek, Grab, and other gig economy platforms like Uber and Maxim. Most of these platforms call their riders *mitra* (an Indonesian word for “partner”) to emphasise that their relationship is a partnership, not an employment relationship. This behaviour is similar to how other gig platforms: AMTurk called their crowdworker ‘turkers’, TaskRabbit called their handyman ‘taskers’, or Deliveroo called their delivery personnel ‘riders’. Accordingly, most of these gig workers are then classified as ‘independent contractors’ in their contract with platform companies, meaning that they do not have any employment relationship with the platform since they are considered ‘self-employed’ (Leighton, 2016; Todolí-Signes, 2017).

Scholars have argued that the classification of independent contractor in the gig economy might be incorrect. One of the main arguments is proven towards the hollow notion of flexibility and freedom that was heavily promised by the partnership or independent contractor model in the gig economy. As an independent contractor, it will be assumed that workers will have the freedom to control their work, and they will be free to choose when to work or which task to accept. Yet, research has shown that platform control via algorithmic management heavily limits workers’ autonomy (Gramano, 2018). For example, platforms advertise the freedom of choice to pick what kind of work they want and choose when to work, but it may appear that workers must work long hours and at peak times to get high earnings and maintain good ratings in order to be assigned the next gig, and therefore often left with little choice but to accept whichever task is offered (Duggan et al., 2019; Rachmawati et al., 2021). As a result, it is rare to find workers who actually have freedom and flexibility on how and when they want to conduct their work.

The following argument is about control. Plenty of research has proved that platforms hold a high level of control over their partners or independent contractors. This high degree of control is becoming one of the critical arguments to challenge the status quo of working relationships in the gig economy in court. International Lawyers Assisting Workers Network (ILAW) reported at least 34 key judicial decisions from all over the world, litigating the state of the employment relationship in the gig economy (ILAW, 2021). Most of the cases challenge the notion of ‘independent contractor’ against platform companies like Uber (in Australia, Brazil, France, UK, USA, and Uruguay); Foodora (in Australia and Canada); Deliveroo (Netherlands); Just Eat (Italy); and many other platforms. Most of these recent court decisions are in favour of workers. For example, UK Supreme Court in 2021 decided that drivers that work for Uber are in a “position of subordination and dependency to Uber” and “are substantially and directly controlled by Uber”. Therefore, the Supreme Court believes drivers should be classified as “workers”, not “self-employed.”

It is worth noting that the labour control of capital has become one of the key features that define employment relationship in the modern legal regimes for labour and employment for a long time (Wu et al., 2019). Delhommer (2020) stated that one of the bases of an employment relationship is that employees agree to be economically dependent on their employers by relinquishing control over many aspects of their work lives (and, to some extent, their economic futures). In return, employers must provide workers with a degree of economic security (Delhommer, 2020). Yet, under the partnership model offered by the gig economy, the gig companies are trying to win it two ways. On the one hand, the platforms retain control over workers, and on the other hand, they deny employers’ responsibility.

This is where the issue of misclassification of the partnership model started. ‘Misclassified partnership’ can be defined as a situation where a job that should be considered an employment relationship is instead misclassified into ‘partnership’. Many scholars have long regarded the relationship between platforms and workers in the gig economy as a misclassified partnership

(Sprague, 2015). This issue became even worse in the Indonesian context because the spread of misclassified partnership goes beyond gig economy platforms. The precarious job market, urgent need for workers to get some jobs amid high unemployment and informality, and the lack of government supervision have made many companies in other sectors adopt the partnership model into their business practices. In the shipping and e-commerce industries, for instance, most couriers who works to ship goods from e-commerce to consumer are classified as partners, and their working relationships are partnership models, not employment relationships. It is believed that the misclassified partnership model is now ubiquitous in many start-up companies in Indonesia (Novianto, 2021), hence, its prevalence in the courier or shipping industry might only be a tip of an iceberg.

3.2. Legal Loophole on Partnership Model

Besides the precarious labour market, which induces misclassified partnership prevalence, another primary catalyst of this issue is the legal loophole in the partnership model itself. There are two arguments that will be presented here. First, the narrow scope of labour law, which is unable to facilitate a partnership model. Second, the mismatch of the partnership model in Law Number 20 of 2008 regarding Micro, Small, and Medium Enterprises with the current partnership model in the labour market.

The core regulation on Indonesian labour is Law Number 13 of 2003 on Manpower. This regulation does not recognise the term partnership at all because the foundation of Manpower Law is the employment relationship. The law has defined the employment relationship as a relationship between an entrepreneur and a worker based on a work agreement containing the elements of the job, wage, and work order. At the same time, a work agreement itself is defined as an agreement between a worker and an entrepreneur or an employer that specifies the work requirements, rights, and obligations of the parties. Therefore, under Indonesian labour law, the existence of a work agreement is absolutely essential to see whether one legal relationship can be categorised as a working relationship or not. To make it clearer, Article 50 of Manpower Law stipulates that an employment relationship occurs because of a work agreement between the employer and the worker.

To be considered a work agreement, the legal document that bounds two parties must have at least four elements: work, command, time, and pay/wages (Azis et al., 2019). The element of “work” means that there must be work contracted in any work agreement and must be stipulated clearly. The person who made the employment agreement must be the one who’s doing the work. At the same time, “command” means that the worker shall be subject to the employer’s command in performing the contracted work. It means that a worker will be under the employer’s authority in carrying out his work. Component of “time” means that an employment relationship must be conducted within the time specified in the employment agreement or the laws and regulations. And last is the element of “pay/wages”, meaning that any employment agreement must have a component that specifies the employer’s obligation to pay wages as a counterpart of the work (Shalihah, 2017).

It must be noted that this narrow definition of the employment relationship and work agreement were devised in the law that was issued in 2003, long before the idea that work can be conducted via the internet even existed. Hence, this became the loophole used by gig companies to not classify their workforce as workers under the employment agreement but instead call them partners under the partnership agreement. The gig platforms argue that their relationship with the service providers cannot be considered an employment relationship because the elements of “command” and “wages” are not fulfilled. They further defended that they are not giving the direct command to their ‘partners’ as the command came directly from customers through their applications, and there are no pay/wages elements in the relationship since the platform never gives any salary to drivers, and the payment itself comes from their customer orders. Platforms even carefully choose a distinct term to call their workers to detach themselves from the legal responsibility of being seen as employees. For example, Go-Jek and Grab both called their worker “*mitra*” (an Indonesian word for “partner”) to emphasise that their relationship is a partnership and not an employment relationship. As mentioned in the previous section, this kind of classification (or, in this sense, misclassification) has been challenged in courts around the world. However, no cases have been brought to court in Indonesia

regarding this issue. Hence, from the labour law perspective, there is still a considerable void in the partnership model.

This brings us to the second part of the discussion, which is the fact that the term '*kemitraan*' is able to be found in other regulations, namely Law Number 20 of 2008 on Small, Micro, and Medium Enterprises. It defines *kemitraan* or partnership as "cooperation in business linkages, either directly or indirectly, on the basis of the principle of mutual need, trust, strengthening, and benefit, which involve Micro, Small, and Medium Enterprises with Large Enterprises". Halilintarsyah (2021) argue that in terms of gig relationship, the platforms can be considered Large Enterprise, while the service providers can be considered Micro Enterprises, therefore, their relationship meets the definition of partnership set out in the Law (Halilintarsyah, 2021). The partnership model under Law Number 20 of 2008 is further elaborated in Government Regulation Number 7 of 2021, which states that a partnership must fulfil four main principles: mutual need, mutual trust, mutual strength, and mutual win. In contrast, Novianto et al (2021) stated that was exactly not the case with the partnership model within the gig economy, as the relationship was not even remotely equal and showed clear dominance of the platform companies over their partners (Novianto et al., 2021).

Beside the fact that partnership in gig economy are indeed not presenting the equal relationship between two parties involved, we also assert that in general, it is unfit to contextualise the terms and provision regarding partnership on Law Number 20 of 2008 jo. Law Number 11 of 2020 with the partnership model that we previously discussed. For example, Article 26 of the law stated that "partnership is implemented with the following pattern: a) nucleus-plasma; b) subcontract; c) franchise; d) general trading; e) distribution and agency; f) supply chain; g) other forms of partnership (which then elaborated in the explanation section that other forms mean: profit sharing, operational cooperation, business joint ventures, and outsourcing)." These types of partnerships are clearly contextual to the relationship between Micro, Small, and Medium Enterprises with Large Enterprises within the business relation setting, not the working relationship between the individual service provider and company.

Hence, it is safe to say that until now, there is an apparent legal loophole in the partnership model within the Indonesian regulatory environment. This is concerning since no regulation means no protection is given to workers under this partnership model. The lack of definition of the partnership model itself is also problematic since this led to the unprecedented extension of the partnership model into many working relationships in many other sectors. Ultimately, the partnership model becomes a disguised employment relationship, used by companies as a strategy to avoid any legal requirements and consequences.

3.3. The Impact of Misclassified Partnership on Workers

Several research points out that the partnership model's classification negatively impacted workers' working conditions. For example, Rachmawati et al. (2021) found that gig workers under the partnership model mostly worked for 12 hours a day on average (Rachmawati et al., 2021). A survey conducted by Fatmawati et al. (2019) of Go-Jek drivers in Jakarta, Yogyakarta, and Banyuwangi shows an even higher number of working hours. It stated that 40.62% of the workers surveyed worked 9-12 hours per day, while 28.13% worked 13-16 hours per day. Even a tiny per cent of workers (5.73%) admitted to spending more than 16 hours per day doing the gig (Fatmawati et al., 2019). These numbers exceed the normal working time determined by Law Number 13 of 2003 on Manpower jo. Law Number 11 of 2020 on Job Creation Law, which regulated that the working hours are maximum of seven or eight hours a day, for a total of 40 hours a week.

Previously, Irawan et al., (2022) argues that app-based companies have been 'super exploitative' towards drivers, giving an example of the platforms' partnership agreement. The partnership agreement between Go-Jek and the drivers provides the platform full power to set and change the fare unilaterally, the rate drivers get, and the profit-sharing percentage. This means that the platform can alter the price and drivers' rate at any time to remain competitive (Irawan et al., 2022). Another highly problematic matter in the partnership model is the normalisation of the piecework payment system. Historically, piecework was the payment system most aligned to capitalist relations of production (Pradella, 2014). Piecework was commonly used in the garment industry in the late nineteenth and early twentieth century, but it was largely abolished by the global labour struggles through legal standardisation of the minimum wage (Dubal, 2020). However, the partnership model

in the gig economy seems to bring back piecework. Therefore, it is concerning that the partnership model, which proved exploitative in the gig economy, is now spreading into other industries in Indonesia. In the latest interview, which sparked controversy, the Minister of Manpower, Ida Fauziyah, even admitted that most start-up companies in Indonesia are implementing a partnership model in their work system (Kumparan, 2022).

The growing number of misclassified partnership models will be unavoidable as long as the legal loophole exists. At the same time, no rules clearly define the limits of partnership model or which institution is obliged to oversee these partnerships. As a result, a widening area of working relationships can be misclassified into partnership models. This practice will be seen as an advantage from the business perspective, because it distance the companies from the obligation to pay salary in accordance with minimum wage, overtime pay, employment insurance, maternity leave and other obligations set by the labour law. On the other hand, workers will remain trapped in this model as long as the Indonesian labour market conditions have not improved.

Scholars might have debated whether gig work relationship should be regulated within the traditional employment relationship framework (Aloisi, 2016) or within an innovative paradigm that reaches beyond this scheme (Delhommer, 2020). Goods et al (2019), for example, point out difficulties in regulating the gig economy due to the specificities of gig work, for example, ‘multi-apping’, where workers are engaged by multiple platforms concurrently, and as a result making it hard to decide which platform would be considered an employer in the employment relationship (Goods et al., 2019) This makes regulation especially complex and the application of classic employment regulation difficult (Kaine & Josserand, 2019).

However, there is no debate over the need to regulate the partnership model itself. Allowing the partnership model to expand without moderation from proper regulation will only expose workers, which have lower bargaining positions in this relationship, prone to exploitation. Therefore, it is crystal clear that regulation to address the issue of partnership in working relationship is highly needed in Indonesia. Unfortunately, there has been very limited effort by the lawmakers to revisit this under Indonesian labour law. Even the recent revision of Manpower Law through Job Creation Law (Law Number 11 of 2020) does not touch slightly on the issue of gig work and partnership model.

3.4. Lesson Learned from other Countries

The issue of misclassified partnership, especially after the rising popularity of the gig economy, is not limited to Indonesia. Other countries have also faced a similar problem, and some have found a way to deal with it. In general, there are two ways used by countries to solve the misclassified partnership or self-employment issues: 1) through court; 2) by enacting or revising regulations. The court model has been used extensively, especially in countries with common law traditions. A prominent example can be seen in the United Kingdom. As mentioned earlier, in 2021, the UK Supreme Court classified Uber drivers as ‘workers’. Consequently, Uber drivers should be guaranteed a national minimum wage and bound by working time regulations in the UK.

The United Kingdom is not the only country whose court is leaning to classify gig workers as workers. Even before the UK Supreme Court ruling, some countries have been issued a similar decision. For example, the Spanish Supreme Court ruled in 2020 that Glovo food delivery riders should be classified as employees. The court reason that the platform set the terms of their employment, set the rates unilaterally, and integrated the rider’s work into the company’s operations. Also in 2020, the French *Court de Cassation* reclassified the contractual relationship between Uber and its driver as an employment contract, not a partnership contract. As explained by Aloisi (2020), the Court held that the driver could not be classified as a commercial partner with independent access to the market or clients because, despite the workers' freedom to choose their own work schedules, the platform had the authority to set prices, organise the performance of work, monitor its execution, and impose sanctions on drivers (Aloisi, 2022).

While the court decisions above might be used as a reflection of how the court played a pivotal role in setting up a new playing field for companies who use partnership relations with their workers, it must be noted that the different legal traditions in Indonesia might make it challenging to go into the same direction. Therefore, it is beneficial to see countries that have tried to deal with the

misclassified partnership by enacting new regulation or revising their previous labour regulation to be more proper in protecting workers under the partnership model. More interestingly, some countries with notable court decisions as mentioned above are also progressing toward enacting law and regulations to deal with this issue.

The first example is France. In 2016, France revised The Act of 8 August 2016 on work, modernisation of social dialogue, and securing of career path, and adopting an intermediate method to protect workers under the partnership model. The act stated that self-employed workers who are economically and technically dependent on the online platform are entitled to post-accident benefits, further training paid for by the platform, and, on request, a certificate of professional experience. The workers can also form and be members of a trade union and have the right to use collective means to protect their interests (Zödi & Török, 2021). In May 2021, Spain passed a new law known as the *Ley Rider*, which made all activities consisting of the delivery and distribution of any consumer product or merchandise in exchange for remuneration and under the direct, indirect or implicit direction of a company using algorithms or platforms fall within the scope of statutory employment law (Aloisi, 2022). The third example is the US. While the US does not have a federal law on this matter, California, one of its states, addresses the issue of misclassified partnership by extending the 'ABC test'. California's ABC test presumes that workers under any type of relationship are employees, unless the employer can prove that: A) the worker is free from control or direction in the performance of the work; B) the work is done outside the usual course of the company's business and is done off the premises of the business; and C) the worker is customarily engaged in an independent trade (Dubal, 2022).

These are the examples that the government can consider to start regulating the partnership model based on the Indonesian context. Not by copying it per se, since several research has suggested that *sui generis* regulatory responses for this issue are ultimately doomed to fail (Aloisi, 2022). Essentially, it is about time for the government to start filling legal loopholes in the partnership model by looking at a way under Indonesian circumstances. There are plenty of things to consider, such as the precarity of the labour market in Indonesia and the fact that this type of work has become the main occupation and primary income for most of its workers.

4. Conclusion

Based on the discussion above, it can be concluded that the partnership model within the Indonesian employment context has been extending beyond over the past decade and has grown into the 'misclassified partnership'. Misclassified partnership is a situation where a job that should be considered an employment relationship is instead misclassified into 'partnership'. This paper argues that the growth of misclassified partnership in Indonesia is caused by two things. First, the widening of the precarious labour market in Indonesia, making more people willing to accept any available job, even with a reduced benefit; such as the job with the partnership model. Second, an apparent legal loophole in the partnership model. Law Number 13 of 2003 on Manpower does not recognise the terms partnership at all, hence, the worker under the partnership model cannot be protected under Indonesian labour regulation. While Law Number 20 of 2008 on Micro, Small, and Medium Enterprises actually recognises the term '*kemitraan*', the context regulated under this law is not suitable for the partnership model between individuals and companies in the work setting as discussed in this paper. The two issues above have caused a growing misclassified partnership, which impacted to the working conditions of workers. There is a great potential that people who worked under the misclassified partnership are exploited, because they are not protected by law. Looking ahead, there is an urgent need for stricter regulations regarding the partnership model to avoid misclassification. Allowing the partnership model to expand without moderation from proper regulation will only become a time bomb and worsen this issue even further.

References

- Abdi, A. P. (2021). *Kurir Shopee Express Mogok Kerja akibat Pemangkasan Upah*. Tirto.id. Retrieved 9 June 2022 from <https://tirto.id/kurir-shopee-express-mogok-kerja-akibat-pemangkasan-upah-gccu>

- Aloisi, A. (2016). Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms. *Comparative Labor Law & Policy Journal*, 37(3), 653-690. <https://doi.org/10.2139/ssrn.2637485>
- Aloisi, A. (2022). Platform work in Europe: Lessons learned, legal developments and challenges ahead. *European Labour Law Journal*, 13(1), 4-29. <https://doi.org/10.1177/20319525211062557>
- Azis, A., Handriani, A., & Basri, H. (2019). Perlindungan Hukum Hak Pekerja Pada Perjanjian Kerja Waktu Tertentu Dalam Ketenagakerjaan. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*, 10(1), 59-74. <https://doi.org/10.32493/jdmhkdmhk.v10i1.3175>
- Bergvall-Kåreborn, B., & Howcroft, D. (2014). Amazon Mechanical Turk and the commodification of labour. *New Technology, Work and Employment*, 29(3), 213-223. <https://doi.org/10.1111/ntwe.12038>
- BPS, I. S. (2021). *Berita Resmi Statistik: Keadaan Ketenagakerjaan Indonesia Februari 2021* https://www.turc.or.id/wp-content/uploads/2018/06/BPS_Berita-Resmi-Statsitik_Keadaan-Ketenagakerjaan-Indonesia-Februari-2018.pdf
- Butler, S. (2017). *Deliveroo accused of 'creating vocabulary' to avoid calling couriers employees*. The Guardian. Retrieved 13 February 2022 from <https://www.theguardian.com/business/2017/apr/05/deliveroo-couriers-employees-managers>
- De Stefano, V. (2016). The rise of the just-in-time workforce: On-demand work, crowdwork, and labor protection in the gig-economy. *Comparative Labor Law & Policy Journal*, 37(3), 471-504. <https://doi.org/10.2139/ssrn.2682602>
- Delhommer, S. (2020). Effect of State and Local Sexual Orientation Anti-Discrimination Laws on Labor Market Differentials. Available at SSRN 3625193. <https://doi.org/10.2139/ssrn.3625193>
- Dubal, V. B. (2017). Wage slave or Entrepreneur?: Contesting the dualism of legal worker identities. *California Law Review*, 65-123. <https://ssrn.com/abstract=2796728>
- Dubal, V. B. (2020). *Digital Piecework*. Dissent. Retrieved June 14, 2022 from <https://www.dissentmagazine.org/article/digital-piecework>
- Dubal, V. B. (2022). Economic Security & the Regulation of Gig Work in California: From AB5 to Proposition 22. *European Labour Law Journal*, 13(1), 51-65. <https://doi.org/10.1177/20319525211063111>
- Duggan, J., Sherman, U., Carbery, R., & McDonnell, A. (2019). Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM. *Human Resource Management Journal*, 30(1), 114-132. <https://doi.org/10.1111/1748-8583.12258>
- Fanggidae, V., Sagala, M. P., & Ningrum, D. R. (2018). *On-Demand transport workers in Indonesia*. <https://www.justjobsnetwork.org/wp-content/uploads/2018/03/toward-understanding-sharing-economy.pdf>
- Fatmawati, D., Isbah, M. F., & Kusumaningtyas, A. P. (2019). Pekerja Muda dan Ancaman Deskilling-Skill Trap di Sektor Transportasi Berbasis Daring. *Jurnal Studi Pemuda*, 8(1), 29-45. <https://doi.org/10.22146/studipemudaugm.45301>

- Frost, J. (2016). *Uber and the Gig Economy: Can the Legal World Keep up*. 13 SciTech Law. 4. Retrieved 17 November 2021 from https://www.americanbar.org/groups/science_technology/publications/scitech_lawyer/2017/winter/uber_and_gig_economy_can_legal_world_keep_up.ssologout/
- Goods, C., Veen, A., & Barratt, T. (2019). "Is your gig any good?" Analysing job quality in the Australian platform-based food-delivery sector. *Journal of Industrial Relations*, 61(4), 502-527. <https://doi.org/10.1177/0022185618817069>
- Gramano, E. (2018). Humans as a Service. The Promise and Perils of Work in the Gig Economy. *Work Organisation, Labour & Globalisation*, 12(2), 99-102. <https://doi.org/10.13169/workorglaboglob.12.2.0099>
- Halilintarsyah, O. (2021). Ojek Online, Pekerja atau Mitra? *Jurnal Persaingan Usaha*, 2, 64-74. <https://doi.org/10.55869/kppu.v2i.24>
- Harvey, G., Rhodes, C., Vachhani, S. J., & Williams, K. (2016). Neo-villeiny and the service sector: the case of hyper flexible and precarious work in fitness centres. *Work, Employment and Society*, 31(1), 19-35. <https://doi.org/10.1177/0950017016638023>
- ILAW. (2021). *Taken for a Ride: Litigating the Digital Platform Model*. <https://www.ilawnetwork.com/issue-briefs-reports/taken-for-a-ride-litigating-the-digital-platform-model/>
- Irawan, M. Z., Belgiawan, P. F., Joewono, T. B., Bastariantio, F. F., Rizki, M., & Ilahi, A. (2022). Exploring Activity-Travel Behavior Changes during the Beginning of COVID-19 Pandemic in Indonesia. *Transportation*, 49(2), 529-553. <https://doi.org/10.1007/s11116-021-10185-5>
- Izzati, N. R. (2021). Eksistensi Yuridis dan Empiris Hubungan Kerja Non-Standar dalam Hukum Ketenagakerjaan Indonesia. *Masalah-Masalah Hukum*, 50(3), 290-303. <https://doi.org/10.14710/mmh.50.3.2021.290-303>
- Izzati, N. R., Putri, T. E., Darmawan, P., Asmara, A. A., Kusumaningtyas, A. P., & Simanjuntak, R. T. (2021). *Fairwork Indonesia Ratings 2021: Labour Standards in the Gig Economy* (Fairwork Ratings, Issue. https://fair.work/wp-content/uploads/sites/131/2021/12/211209_Fairwork_Report_Indonesia-2021.pdf
- Kaine, S., & Josserand, E. (2019). The organisation and experience of work in the gig economy. *Journal of Industrial Relations*, 61(4), 479-501. <https://doi.org/10.1177/0022185619865480>
- Kumparan. (2022). *Banyak Startup PHK Karyawan, Ini Kata Menaker*. Kumparan Bisnis. Retrieved June 14, 2022 from https://kumparan.com/kumparanbisnis/banyak-startup-phk-karyawan-ini-kata-menaker-1yE3Tahk1pd/full?utm_medium=post&utm_source=Twitter&utm_campaign=int
- Kusuma, B. A., Karjoko, L., Ayu, A. K. J. I. G., Handayani, K. R., & Hayat, M. J. (2021). Establishment of Indonesian Maritime Power: Regulation of Transnational Organized Crime on Illegal, Unreported, and Unregulated (IUU) Fishing. [https://www.ijcjs.com/IJCJS_abdul_kadir_Indoensia_22M-04-014_Ready_to_print_\(251-266\).pdf](https://www.ijcjs.com/IJCJS_abdul_kadir_Indoensia_22M-04-014_Ready_to_print_(251-266).pdf)
- Leighton, P. (2016). Professional self-employment, new power and the sharing economy: Some cautionary tales from Uber. *Journal of Management & Organization*, 22(6), 859-874. <https://doi.org/10.1017/jmo.2016.30>

- Novianto, A. (2021). *The partnership trap in the Indonesian gig economy*. Developing Economics. Retrieved 18 December 2021 from <https://developingeconomics.org/2021/06/20/the-partnership-trap-in-the-indonesian-gig-economy/>
- Novianto, A., Wulansari, A. D., & Hernawan, A. (2021). *Riset: empat alasan kemitraan Gojek, Grab, hingga Maxim merugikan para Ojol*. The Conversation. Retrieved June 14, 2022 from <https://theconversation.com/riset-empat-alasan-kemitraan-gojek-grab-hingga-maxim-merugikan-para-ojol-159832>
- Pradella, L. (2014). *Globalization and the Critique of Political Economy: New Insights from Marx's Writings*. Routledge. <https://doi.org/10.4324/9781315813165>
- Pulignano, V. (2019). Work in deregulated labour markets: a research agenda for precariousness. *ETUI Research Paper-Working Paper*. <https://doi.org/10.2139/ssrn.3350980>
- Rachmawati, R., Safitri, Zakia, L., Lupita, A., & Ruyter, A. D. (2021). Urban gig workers in Indonesia during COVID-19- The experience of online 'ojek' drivers. *Work Organisation, Labour & Globalisation Vol. 15*(No. 1), 31-45. <https://doi.org/10.13169/workorglaboglob.15.1.0031>
- Rubery, J., Grimshaw, D., Keizer, A., & Johnson, M. (2018). Challenges and contradictions in the 'normalising' of precarious work. *Work, Employment and Society, 32*(3), 509-527. <https://doi.org/10.1177/0950017017751790>
- Shalihah, F. (2017). Perjanjian Kerja Waktu Tertentu (Pkw) Dalam Hubungan Kerja Menurut Hukum Ketenagakerjaan Indonesia Dalam Perspektif Ham. *UIR Law Review, 1*(2), 149–160. <https://doi.org/10.25299/uirrev.2017.1.02.955>
- Sprague, R. (2015). Worker (Mis)Classification in the Sharing Economy: Trying to Fit Square Pegs into Round Holes. *ABA Journal of Labor & Employment Law, 31*(1), 53-76. <https://doi.org/10.2139/ssrn.2606600>
- Stewart, A., & Stanford, J. (2017). Regulating Work in the Gig Economy: What Are the Options? *The Economic and Labour Relations Review, 28*(3), 420–437. <https://doi.org/10.1177/1035304617722461>
- Tekeli-Yesil, S., & Kiran, S. (2020). A Neglected Issue in Hospital Emergency and Disaster Planning: Non-Standard Employment in Hospitals. *International Journal of Disaster Risk Reduction, 51*(December 2020), 101823. <https://doi.org/10.1016/j.ijdr.2020.101823>
- Todolí-Signes, A. (2017). The 'gig economy': employee, self-employed or the need for a special employment regulation? *Transfer: European Review of Labour and Research, 23*(2), 193–205. <https://doi.org/10.1177/1024258917701381>
- Woods, P. (2005). *Successful Writing for Qualitative Researchers*. Routledge. <https://doi.org/10.4324/9780203983201>
- Wu, Q., Zhang, H., Li, Z., & Liu, K. (2019). Labor control in the gig economy: Evidence from Uber in China. *Journal of Industrial Relations, 61*(4), 574-596. <https://doi.org/10.1177/0022185619854472>
- Zödi, Z., & Török, B. (2021). Constitutional Values in the Gig-Economy? Why Labor Law Fails at Platform Work, and What Can We Do about It? *Societies, 11*(3). <https://doi.org/10.3390/soc11030086>