

## **Legislative Provisions Concerning Social Security for Online Ojek Drivers in Indonesia**

**Imam Nurhadi**

Universitas Muhammadiyah Tangerang, Indonesia  
imamnurhadi.nurhadi10@gmail.com

**Submitted:** 22<sup>nd</sup> January 2023 | **Edited:** 01<sup>st</sup> April 2023 | **Issued:** 01<sup>st</sup> May 2023

**Cited on:** Nurhadi, I. (2023). Legislative Provisions Concerning Social Security for Online Ojek Drivers in Indonesia. *AKADEMIK: Jurnal Mahasiswa Humanis*, 3(2), 90-100.

### **ABSTRACT**

Indonesia's dense population is one of the triggers for the development of online transportation. In addition, many of Indonesia's workforce has low competence or non-skills, so the online motorcycle taxi profession is an option to be able to make ends meet. On the other hand, the status of online ojek drivers is partners, so there is no binding legal principle to be able to fight for the driver's welfare rights. Based on this background, this study aims to describe social security for online drivers based on aspects of legislation, so that it can be used as input for online transportation service providers to be able to make appropriate social security policies. To answer this, this research uses a qualitative approach with descriptive analysis. The method used to reveal the research phenomenon is the literature review method. Meanwhile, the data source used in this study is the law on work social security. The research topic is social security for online drivers in Indonesia. The results of the study show that in general the state has regulated labor welfare, as explained in Article 34 of the 1945 Act. However, specifically, the government has not provided regulations or laws that explain employment guarantees for workers in the online transportation sector. This condition is a loophole for online transportation entrepreneurs not to provide social security for their partners (online drivers).

**Keywords:** Law, Online Driver, Social Security, Online Transportation, Welfare

### **INTRODUCTION**

The rapid development in the field of online transportation in Indonesia began with the emergence of several pioneering companies such as the Karya Anak Bangsa application with the Gojek application which was the first road opener in Indonesia. Not long after that, other companies engaged in the same field also contributed to developments in online transportation business competition.

Article 1 paragraph (3) of the 1945 Constitution, states that Indonesia is a state based on law. One of the ways in which Indonesia's framework as a rule of law is interpreted is by realizing the fifth precept (Yorisca, 2020), which emphasizes social justice, including in the field of labor relations justice. Definitely it is described that the employment

relationship is a relationship that exists between employers and workers based on work agreements both for a certain time or not, which contains elements of wages, orders, and work (Michella & Edalmen, 2022). The legal instrument as the main basis, the constitution of article 27 paragraph (2) which reads: "Every citizen has the right to work and a living that is worthy of humanity". Existing legal instruments are realized to guarantee the right to work and a decent life (Hanifah, 2020)

In principle, the rights that the law itself tries to protect against workers include the right to guarantee work safety and health, the right to a living wage, and the right to social security (Kahpi, 2018). The companies engaged in technology that have been mentioned are able to establish hundreds of thousands of partnerships with drivers. Theoretically, the notion of a partnership relationship is a business strategy carried out by two or more parties within a certain period of time to gain mutual benefits with the principle of mutual need and mutual support (Raharjo, 2019). Because it is a business strategy, the success of the partnership is largely determined by the existence of compliance between partners in carrying out business ethics (Sari & Sastrawati, 2021).

## THEORY

In civil law, partnership relations in partnership agreements are subject to the form of civil partnership regulated in Article 1618 of the Civil Code up to Article 1641 of the Civil Code. Apart from that, there is specifically Government Regulation Number 44 of 1997 concerning Partnerships (PP Partnership). Other than that as part of a contractual relationship agreement or *beating* which gives rise to an alliance between the two parties, then the principles of the agreement in general apply to the parties and must fulfill the conditions of the validity of the agreement as stipulated in article 1320 of the Indonesian Civil Law, and the partnership agreement that is legally made will be valid as a law for the parties who make it (Khalid, 2019).

At a practical level, the partnership relationship that exists between the driver and the company creates a problem of its own (Mawanda & Muhshi, 2019). The existence of this partnership has a different meaning from that regulated by government regulations regarding partnerships. In article 2 it is stated: "Partnerships in the context of business linkages are organized through patterns that are in accordance with the nature and objectives of the business being partnered with given the widest possible partnership

opportunities to Small Businesses, by the Government and the business world." This definition regulates parties who are domiciled as a company, both legal entities and non-legal entities. But in the form of a transportation partnership relationship *online* placing companies in partnership with individuals (Alawiyah & Gultom, 2023). Because of this partnership relationship with individuals, the engagement that is formed is often closely associated in the form of an employment relationship between employer and employee. The closeness of these two things ultimately creates a demand for the fulfillment of protection for the individual partners (Rozan & Syawali, 2022), one of which is in the field of social security which is part of fulfilling rights from labor law.

According to Law Number 24 of 2011 concerning the Social Security Administrative Body, social security is administered by the Social Security Administering Body. The form of social security provided by the state is Health BPJS which is generally applicable to all people, and Employment BPJS which is the right of workers. BPJS Employment consists of four programs, namely work accident insurance, old age security, pension security; and death benefits. Partnership relationships that uphold the principle of equality and relationship efforts that provide 'mutualism symbiosis' to the parties, so there is no position that places one party as an employer and the other is a worker (Prananda & Aidi, 2019). So that companies are not obliged to register drivers as BPJS Employment workers as stipulated in article 15 paragraph (1) of the BPJS law (Wicaksono, 2020). Besides that, the need for social security for employment for drivers is an urgency, because until 2022 the number of traffic accidents in Indonesia is still very high, reaching 1 million incidents every day, dominated by productive ages.

## **METHOD**

The method in this research is normative legal research. The approach method that will be used in this study is a normative juridical approach in the form of understanding norms, rules and principles with literature studies. This study uses basic data in the form of secondary data, which is obtained from official documents, books from various literature related to the object of research. The nature of this research is descriptive, namely by revealing legal truths related to social security protection for online transportation drivers as workers outside the employment relationship.

## RESULTS

### Legal Protection of Labor Social Security

Today we can see one of the workers in the informal sector, namely transportation services *online*. Facts on the ground, that transportation drivers *online* have not enjoyed decent work and status as informal workers (Utami, et al., 2020). Increased income after becoming a transport driver *online* not accompanied by progress in work relations and aspects of protecting workers for their performance as drivers (Nugraha, 2020). On the other hand, the asset value of a transportation application provider company *online* rose sharply to tens of trillions of rupiah.

There are several conditions for transport drivers *online* which Prakarsa managed to summarize in its 2017 survey results. First, transport driver working hours *online* which is not fair. Second, earnings are not as good as reported. Increased transportation revenue *online* when converted to net income it turns out to be insignificant when compared to the sacrifice of working hours due to transportation operational costs *online* from also high. Third, weak job protection. Referring to Law Number 22 of 2009 concerning Traffic and Transportation, motorbikes are not included in the category of public transportation. This is a separate discourse in the problem of two-wheeled transportation. In addition, the highest number of traffic accidents in Indonesia are still caused by two-wheeled vehicles. Fourth, the employment relationship gap. There is a high relationship gap between application provider owners and transportation drivers *online* or partners (Kamim & Khandiq, 2019). Hence the transport driver *online* cannot claim their rights as workers and they are conditioned by the status of workers in the informal sector because their work relationship is in the form of partners (Wicaksono, 2020). Fifth, health and employment social security such as BPJS is inadequate. Transport Driver *online* most do not have any social security as online motorcycle taxi drivers. Of those who have social security, the majority are participants in the national health insurance either independently or as participants who receive contribution assistance from the government. Only 23% of transport drivers *online* who have accident insurance, but the ownership of the guarantee also comes from where they worked before. This means that social security is not carried out by online transportation application companies. Drivers only get insurance on conditions when they are carrying out their job of transporting passengers or picking up orders. whereas when they drive when they are not

carrying out their duties as drivers, they do not get accident insurance. Facts show the priority the government achieves *universal health coverage* needs serious attention in terms of the transportation sector *online* or other informal sector.

The number of conflicts between transportation providers causes job risks as transportation drivers *online* relatively high (Maria, 2019). Transport drivers *online* also cannot be separated from facing a high risk of road accidents (Hartoyo, et al., 2022). Transport drivers *online* almost half do not have any social security. Responding to this, the government through the BPJS issued a policy namely that BPJS Employment classifies the informal sector, namely in the categorization of non-wage earners. According to BPJS Ketenagakerjaan, workers who are categorized as outside work relationships or based on partnerships do not include wage earners, including online motorcycle taxi drivers.

The embodiment of the mandate of Article 34 of the 1945 constitution was actualized by the government by implementing and implementing the Employment BPJS National Social Security System. The purpose of the establishment of BPJS is in an effort to provide protection for all workers to overcome risks that will be faced in unforeseen conditions.

The substance of social security is long-term and short-term (Hartoyo, et al., 2022), long-term categorization, namely old age security, death, termination of employment and pension security. Mutual cooperation-based social security funding that is carried out jointly by the community with forced efforts if they become members of the social security. Regular social security is carried out only to those who are able and willing to pay without the principle of mutual cooperation. Coercion of social security contributions such as taxes is a must for the continuity of market mechanisms (no coercion) fails to meet the goals of social security. Commercial insurance can only provide guarantees to those who are willing and able to buy it (Ganie, 2023)

The number of informal sector workers reached 72.67 million people. Even though there are already many informal groups that are guaranteed in the Central and Regional Contribution Assistance Recipients and Non-Workers groups. Informal workers contribute to participation in the proper implementation of employment schemes. Currently, the government, through voluntary participation schemes with work accident or death benefits, is making efforts to provide lower contributions. Based on BPJS Health

data, the target for JKN participation in 2019 is 254 million people (95% of the estimated population of Indonesia in 2019), looking at current figures it seems that this target is still almost impossible to achieve.

The implementation of Social Security managed by BPJS must play an active role in efforts to realize the aspirations of employment protection which will have a positive impact on efforts to improve work discipline and increase labor productivity. Employers before the enactment of Law Number 13 of 2003 concerning Manpower in Article 1 point 1 also regulates Social Security. Initially, this Worker's Social Security was an embodiment of Government Regulation Number 33 of 1997 as outlined in Article 3, which stated that Companies are required to organize a Worker's Insurance program either by insuring their workers who work in a work bond with the company in the accident insurance program. employment and death insurance, as well as by fulfilling its obligations in the old age savings program to the organizing body”.

The embodiment of achieving participation in efforts to increase and create peace and stability in working for companies where workers carry out their duties. The government through the BPJS gives obligations to companies to register these workers as members of the BPJS social security both in the form of health insurance and in the form of risk of accidents and even death of workers.

The problems experienced by informal sector workers are minimal financial access and inadequate understanding of social security as a challenge for Employment BPJS to improve participant recruitment and expand membership coverage without complicating registration for workers. BPJS Employment also carries out various collaborations with various parties, one of which is with GO-JEK service providers *on-demand* application-based in Indonesia and Bank Mandiri which provides easy facilities for workers to make participant contribution payments. As one of the efforts to accelerate the achievement of national participation targets in social security in Indonesia.

### **Labor Social Security Regulations**

Indonesia targets that in 2019 all residents will receive health insurance. However, data from the Monitoring and Evaluation System of the National Social Security Council in September 2017, showed that the number of National Health Insurance-Indonesian Health Card participants had only reached 69.72%. This means that there are still 30.3% who do not have health insurance.

After the enactment of Law Number 24 of 2011 concerning the Social Security Administering Body, practically social security for workers in Indonesia became the domain of the BPJS. The Central Statistics Agency (BPS) noted that as of August 2017 in Indonesia, there were 69.02 million people (57.03%) working in the informal sector. Unfortunately, the BPJS Law does not regulate the position of informal workers. Whereas in Article 28H paragraph (3) of the 1945 Constitution it is stated that everyone has the right to obtain social security. Article 3 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation also states that the 1945 Constitution is the basic law in Legislation.

In its position as the basic constitution, the BPJS Law must comply with Article 28H paragraph (3) of the 1945 Constitution. As for this discrepancy, the BPJS Law only understands workers as people who work by receiving salaries, wages, or other forms of compensation. This is different from the understanding of workers contained in Law Number 3 of 1992 concerning Workers' Social Security. Article 1 of the Social Security Law understands workers as everyone who is capable of doing work, both inside and outside of work relations, in order to produce goods or services to meet the needs of society.

Regarding workers outside of work relations which are mentioned in the Social Security Law, an explanation can be obtained in Permenakertrans No. 24 of 2006 which refers to the Social Security Law, states that workers who do work outside of work or informal relations are workers who carry out economic activities without the help of others. That the majority of workers in Indonesia today are in the informal sector.

Looking at the conditions of informal sector workers as described above, it is necessary to have regulations that accommodate informal workers in order to obtain welfare and legal certainty. As mandated by the 1945 Constitution Article 34 point (2), "The state develops a social security system for all people and empowers people who are weak and incapable in accordance with human dignity." In addition, we can see the legal basis for implementing an employment social security program for workers who do work outside of work relations, which can be seen in the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: PER-24/MEN/VI/2006 concerning Guidelines for the Workers' Social Security Program. who performs work outside of employment relations.

In this case transportation *online* is an agreement relationship that is a partnership, not an employment relationship, therefore the company is exempt from the obligation to meet the minimum wage, overtime pay, social security (health, pension and employment, as well as holiday allowances). And as it is known that the participation of informal workers in social security is only voluntary (Cicik, et al., 2022). However, basically everyone, apart from Employers, Employees and Recipients of Contribution Assistance, who meets the requirements for participation in the Social Security program is required to register himself and his family members as Participants with the BPJS, in accordance with the Social Security program that he participates in. Therefore, transport driver *online* must register themselves as participants with BPJS. Transport driver *online* including as non-recipient participants.

Regulation of the Minister of Manpower Number 1 of 2016 concerning Procedures for Implementing Work Accident Benefit, Death Benefit and Old Age Benefits for Non-Wage Participants (Permenaker No. 1/2016) as amended by Minister of Manpower Regulation Number 21 of 2017 concerning Amendments to Regulations Minister of Manpower Number 1 of 2016 concerning Procedures for Implementing Work Accident Benefit, Death Benefit, and Old Age Benefit for Non-Paid Participants (Permenaker No. 21/2017). Article 3 Permenaker No 1/2016 "Participants who are not wage earners must take part in 2 (two) programs, namely JKK and JKM and can join the JHT program voluntarily.

Furthermore, regarding which social security programs are mandatory as participants who are not wage earners, it can be seen in the respective provisions of laws and regulations, including Work Accident Benefits and Death Benefits, Old Age Benefits, Pension Benefits, and Health Benefits.

When viewed from the aspect of legal certainty, legal certainty is the existence of clear scenarios of behavior that are general in nature and apply to bind all citizens, including the form of legal consequences. Legal certainty also means what can be determined from law, in concrete matters. Regulations regarding Social Security that are spread across various legislative products have thoroughly regulated both workers in employment relations and those in the informal sector so that the behavioral scenarios that must be taken by the parties are clear so that the policy is able to reflect the principle of legal certainty.

Meanwhile, in terms of the aspect of legal protection, according to Azhar Usman, legal protection is "all efforts that guarantee legal certainty to provide protection to related parties, besides that legal protection is a protection provided by the government to protect and guarantee the rights and the interests of the parties, so that the rights and obligations of each party will arise. Attempts have been made by the state to fulfill the right to a guaranteed and safe working environment to protect BPU workers who do not have the role of an employer to take care of their social security as workers. So that social security becomes an obligation and right simultaneously to be owned by BPU workers or employees to provide protection from risks that may be obtained in the work process.

The experience of many countries, none of which is able to force all informal sector workers to pay regular premiums. So that there are various theories developed by experts to reach the informal sector. Therefore to overcome it in two ways: First, the government provides full class 3 premium subsidies to all informal sector workers. This is the fastest, easiest, and most efficient option.

## CONCLUSION

Based on the results of the study, it is necessary to have social security for workers, both with formal and informal employee status. Even though it is not specifically regulated, the state has provided a legal basis through the 1945 constitution article 34 paragraph 2. Employers and workers must synergize in providing such social security in an employment relationship, but later this does not apply to online driver relationships. with the company because it is only based on a partnership relationship. This partnership relationship is then classified as the informal employment sector. Although the participation rate is still low.

Then, the government must continue to seek accommodation with the existence of Permenaker No 21 of 2017 concerning Tata How to Organize the Work Accident Benefit, Death Benefit, and Old Age Benefit Programs for Non-Wage Beneficiary Participants. As an informal worker group, the Company has no obligation to register Drivers as Social Security Participants, but this is mandatory for online motorcycle taxi drivers to register themselves. Thus, it provides an overview of how the state has endeavored to guarantee legal certainty to the parties to both the Company and the Driver

regarding the rights and obligations of the agreement underlying the relationship between the two.

## REFERENCES

- Alawiyah, T., & Gultom, E. R. (2023). Perjanjian Kerjasama Kemitraan PT. GO-JEK Dengan Driver Berdasarkan Undang-Undang NO. 13 TAHUN 2003 tentang Ketenagakerjaan. *UNES Law Review*, 5(3), 713-724.
- Cicih, L. H. M., Hayati, A. F., & Ardh, M. R. E. (2022). Partisipasi Pekerja Dalam Jaminan Sosial. *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial*, 8(2).
- Ganie, A. J., & SE, S. (2023). *Hukum Asuransi Indonesia*. Sinar Grafika.
- Hanifah, I. (2020). Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum. *Jurnal Legislasi Indonesia*, 17(2), 193-208.
- Hartoyo, L. A. K., Denny, H. M., & Lestantyo, D. (2022). Studi Mengenai Persepsi Safety Driving pada Pengemudi Ojek Online. *Jurnal Ilmiah Permas: Jurnal Ilmiah STIKES Kendal*, 12(4), 939-946.
- Kahpi, A. (2018). Pengupahan: Tinjauan Terhadap Permasalahan Ketenagakerjaan Di Indonesia. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*, 5(2), 67.
- Kamim, A. B. M., & Khandiq, M. R. (2019). Mitra Pengemudi Gojek dalam Jeratan Ekonomi Berbagi Melalui Platform. *Jurnal Studi Pemuda*, 8(1), 57-74.
- Khalid, Z. (2019). Analisis Juridis Kedudukan Perjanjian Kemitraan Antara Pengemudi Jasa Angkutan Online Dan Perusahaan Provider Ditinjau Dari Aspek Hukum Keperdataan. *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 18(3), 114-123.
- Maria, A. (2019). ASPEK HUKUM TRANSPORTASI BERBASIS APLIKASI DALAM PERSPEKTIF HUKUM INDONESIA. *Jurnal Bina Mulia Hukum*, 3(2), 176-187.
- Mawanda, M. K., & Muhshi, A. (2019). Perlindungan hukum mitra ojek daring di Indonesia. *Lentera Hukum*, 6(1), 33-52.
- Michella, M., & Edalmen, E. (2022). Pengaruh Penghargaan, Lingkungan Kerja, dan Hubungan Kerja terhadap Kepuasan Kerja Karyawan. *Jurnal Manajerial Dan Kewirausahaan*, 4(4), 987-996.
- Nugraha, F. (2020). Dampak Perkembangan Industri Transportasi Online Terhadap Sosial Ekonomi Pengemudinya Di Kota Banda Aceh. *Jurnal Economica Didactica*, 1(2), 40-52.
- Prananda, R. R., & Aidi, Z. (2019). Tinjauan Yuridis Kedudukan Pengemudi Transportasi Online Dalam Perjanjian Kemitraan Dengan Perusahaan Penyedia Aplikasi Transportasi Online. *Law, Development and Justice Review*, 2(2), 135-162.
- Raharjo, T. W. (2019). *Penguatan Strategi Pemasaran dan Daya Saing UMKM Berbasis Kemitraan Desa Wisata*. Jakad Media Publishing.
- Rozan, N. N., & Syawali, H. (2022, January). Tanggung Jawab Driver Ojek Online Akibat Jual Beli Akun Driver terhadap Perjanjian Kerjasama Kemitraan dengan Perusahaan Pemilik Platform Transportasi Online Ditinjau dari Buku III Kitab Undang-Undang Hukum Perdata. In *Bandung Conference Series: Law Studies* (Vol. 2, No. 1, pp. 443-449).

- Saputra, E., Mutiawati, A. I., & Langadhy, L. (2022). Analisis Kepesertaan Jaminan Sosial Ketenagakerjaan di Usaha Mikro dan Kecil. *CEMERLANG: Jurnal Manajemen dan Ekonomi Bisnis*, 2(4), 80-94.
- Sari, R., & Sastrawati, N. (2021). Sistem kemitraan Perusahaan Transportasi Online Grab dalam Perspektif Hukum Islam. *Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah*, 184-197.
- Utami, T. R., Amrina, N., Jonfita, A. C., & Azhar, M. (2020). Rekonstruksi Peran Pemerintah Dalam Memberikan Perlindungan Hukum Bagi Pengemudi Transportasi Online. *Administrative Law and Governance Journal*, 3(4), 578-593.
- Wicaksono, D. A. (2020). Gamifikasi sistem kerja dan siasat pengemudi Gojek. *Calathu: Jurnal Ilmu Komunikasi*, 2(2), 132-144.
- Wicaksono, M. A. S. (2020). Penerapan Sanksi Penghentian Operasional Sementara dan Putus Mitra Sepihak Oleh PT. Gojek Indonesia Ditinjau dari Pasal 1243 Kitab Undang-Undang Hukum Perdata. *UNISKA LAW REVIEW*, 1(1), 1-20.
- Yorisca, Y. (2020). Pembangunan Hukum Yang Berkelanjutan: Langkah Penjaminan Hukum Dalam Mencapai Pembangunan Nasional Yang Berkelanjutan. *Jurnal Legislasi Indonesia*, 17(1), 98-111.