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Legal Protection for Gig Workers: A New Business Imperative in the Transportation Sector

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Abstract

Studies on the gig economy and the legal status of its workers have proliferated in recent years. However, there is still much to be learned about how to regulate this relatively new job market. The government has made efforts to support e-hailing and p-hailing workers, particularly regarding social security. For example, they introduced a voluntary contribution plan under the Employees' Provident Fund for retirement savings and the Self-Employment Social Security Scheme, which offers some protections for work-related injuries. Despite these efforts, they appear to be insufficient and ineffective due to the absence of an appropriate regulatory body overseeing these workers' issues. This article argues for the imperative need for a governing legal framework to address e-hailing and p-hailing workers' rights and prevent Platform Providers from exploiting workers' livelihoods due to the absence of laws. The research employs both doctrinal and qualitative research methods, including interviews using a semi-structured approach. A total of 10 respondents were interviewed for this research. The findings suggest that a solid legal framework, including specific laws and regulatory bodies, is essential to govern the e-hailing and p-hailing ecosystem.

Keywords: Gig Workers; Legal Status; E-Hailing and P-Hailing; Contract for Service; Social Protection.

Introduction

The gig economy in Malaysia has experienced rapid growth, particularly in the transportation sector, known as e-hailing and p-hailing. Various factors have driven this growth and has significantly influenced the employment landscape. According to statistics published by the Department of Statistics Malaysia, the gig economy workforce has increased by 31%, surpassing the growth rate of the

traditional workforce.¹ While the term ‘gig’ was originally associated with the music industry, its current meaning, specifically in the context of the gig economy, has been redefined to describe digital platforms that offer flexible, service-based, and on-demand work arrangements.² Platforms such as Grab and Foodpanda in Malaysia exemplify this flexible working arrangement, attracting a large number of workers to the transportation sector.

The widespread acceptance of the gig economy can be attributed to its flexibility, relatively low barriers to entry, and personal factors such as financial needs, unemployment, and the desire for job autonomy.³ However, despite the temporary solutions it provides, issues have emerged, particularly highlighted by the COVID-19 pandemic. It has become evident that gig workers lack access to social protections such as minimum wage, sick leave, and healthcare.⁴

The absence of social protections for gig workers can be attributed to their legal status under Malaysian labor laws. Gig workers are not considered employees under these laws, primarily due to the nature of the gig economy, which does not adhere to traditional employment requirements, such as formal contracts of service.⁵ The Employment Act 1955 and the Industrial Relations Act 1967, two key labor laws in Malaysia, only recognize employment relationships established through contracts of service.⁶ In traditional employment, the employment relationship becomes

¹ Ainal Fathiyah Abdul Rahim and others, ‘Strengthening the Gig Economy: Future of Digital Labor Workforce Platform Post-Covid-19’ (2021) 24 *Gading Journal for Social Sciences* <<https://ir.uitm.edu.my/id/eprint/56810/>>.[20].

² Martin Cloonan and John Williamson, ‘Musicians as Workers and the Gig Economy’ (2023) 46 *Routledge Taylor & Francis Group: Popular Music and Society*.[355].

Brad Greenwood, Gordon Burtch and Seth Carnahan, ‘Unknowns of the Gig-Economy’ (2017) 60 *Communications of the ACM*.[27].

³ Siti Nur Aisyah Muhyi, Shida Irwana Omar and Syuhada Farhana Adnan, ‘The Drivers Force The Gig Workers Into Gig Economy: The Case of Malaysia’ (2023) 11 *Journal of Business and Social Development*.[3].

⁴ Arif Novianto, Anindya Dessi Wulansari and Yeremias Keban, ‘Searching for a Better Job: Indonesian Gig Workers and the Limits of Decent Work Agendas’ (2023) 17 *Work Organisation Labour & Globalisation* <10.13169/workorglaboglob.17.2.0071>.[73].

⁵ Salmie Jemon, Mohd Safri Saiman and Muhammad Puad Bebit, ‘A Knight Without Shining Armour: The Paradox of Being a Gig Worker in Malaysia’ (2021) 11 *International Journal of Academic Research in Business and Social Sciences*.[264].

⁶ Employment Act 1955, s 2; Industrial Relations Act 1967, s 2.

legally binding when the employer agrees to employ and the employee accepts the employment, committing to serve the employer. Malaysia has used employment theories such as the control test to determine the employment relationship.⁷ They look at factors like how much control the employer has over the worker, how much the worker's role is part of the main business, and how much the worker depends on the employer financially. This contrasts with the gig economy, where purportedly no formal employment relationship is established. Gig workers in Malaysia are currently classified as independent contractors, which distinguishes them from traditional employees.⁸

As a result of not being recognized by labor laws, gig workers are deprived of benefits and social protections enjoyed by traditional employees.⁹ However, the government realizes the importance of these workers for Malaysia's economy, regardless of the legal status issue. Several initiatives have been taken to rectify the issue of unprotected gig workers.

First, the i-Saraan scheme was introduced by the Employees Provident Fund Board (EPF), offering a voluntary contribution plan for gig workers.¹⁰ Another notable initiative is the Self-Employment Social Security Scheme, where gig workers are entitled to social security protection by contributing 20%, with the government covering the remaining amount.¹¹

In recent developments, the Prime Minister of Malaysia has announced the establishment of a Commission for gig workers to address social security,

⁷ Jashpal Kaur Bhatt, 'The Legal Implications of the Changing Nature of Employment in Malaysia' (2004) 2 UiTM Law Review.[23].

⁸ Mohd Shahril Nizam Md Radzi and others, 'Protecting Gig Workers' Interests in Malaysia Through Registered Association Under Societies Act 1966' (2022) 30 IIUM Law Journal <<https://doi.org/10.31436/iiumlj.v30iS1.702>>. [168].

⁹ Maheran Makhtar, Zuhairah ARIFF Abd Ghadas and Md Mahbubul Haque, 'Analysis of Workers' Rights in The On-Demand Economy with Special Reference to Vertical Inequality' (2022) 30 IIUM Law Journal.[129].

¹⁰ Fithriah Ab Rahim and others, 'Understanding Factors Influencing Voluntary Contribution of "I-Saraan" among Malaysian: A Conceptual Model' (2022) 12 International Journal of Academic Research in Business and Social Sciences.[1672].

¹¹ Nina Naquiah and others, 'Awareness Towards Social Security Protection Among Food Delivery Riders in Selangor and Kuala Lumpur' (2023) 8 Malaysian Journal of Computing.[1431].

employment relationships, and career development issues.¹² The Commission aims to protect the rights of 1.12 million gig workers, advising the Minister on policies, implementing and enforcing laws, and ensuring compliance with industry standards.¹³

Recent data from the Department of Statistics Malaysia (DOSM) highlights the substantial presence of informal workers, including a significant portion engaged in gig work. As of April 2024, DOSM reported approximately 3 million individuals operating within the informal employment sphere, with a notable portion comprising gig workers.¹⁴ The surge in demand for delivery services witnessed in 2020, amidst Movement Control Order restrictions, emphasizes the growing reliance on gig workers within the economy.¹⁵ This surge can be attributed to the restricted movement of people during the pandemic, emphasizing the indispensable role gig workers played in facilitating essential services.

This article highlights the existing labor laws of Malaysia, which do not recognize gig workers as employees, depriving them of social welfare and protection. It emphasizes the imperative need for a governing legal framework to address e-hailing and p-hailing workers' rights and prevent Platform Providers from exploiting the absence of law to exploit workers' livelihoods. A solid legal framework and a specific law and body are needed to govern the e-hailing and p-hailing ecosystem. This article aims to provide recommendations on key policies to consider in establishing a legal framework to cater to the basic needs and protections of gig workers, specifically those in e-hailing and p-hailing sectors.

¹² Bernama, 'Establishment of Commission Ensures Gig Workers Receive Due Protection, Benefits' (*Bernama.com*, 2024) <<https://bernama.com/en/news.php?id=2275458>> accessed 15 May 2024.

¹³ *Ibid.*

¹⁴ Department of Statistics Malaysia, 'Labour Markets' (*OpenDOSM*) <<https://open.dosm.gov.my/dashboard/labour-market>> accessed 7 June 2024.

¹⁵ Nazruzila Razniza Mohd Nadzri and Kamal Halili Hassan, 'Covid-19 Outbreak: Opportunity or Risk for Gig Economy Workers' (2020) 57 *INTI Journal*.

Literature Review

The gig economy concept, which has become highly visible in the past decade, refers to a new form of short-term, on-demand work by companies for independent contractors.¹⁶ This phenomenon can be traced back to the aftermath of the 2008 global financial crisis, which resulted in widespread job losses and economic instability.¹⁷ Seizing upon this shifting landscape, many businesses realized the opportunity to tap into a pool of unemployed individuals, effectively creating a new employment category. Furthermore, the recent COVID-19 pandemic accelerated the gig economy's growth, as the economic fallout led to an unprecedented demand for job opportunities.¹⁸ This surge in demand highlighted the benefits of gig work in securing income in an uncertain economic landscape.

The gig economy, particularly within the transportation sector, has experienced remarkable growth. This growth can be attributed to the increasing need for mobility in modern communities, where access to transportation services, especially private car rides, has become more vital. In Malaysia, the transportation sector in the gig economy, better known as e-hailing services, describes the shared mobility service facilitated by applications.¹⁹ These e-hailing services, such as Uber and Grab, have significantly increased the demand for ride services, further intensifying competition in the taxi industry and public transportation.²⁰ Moreover, e-hailing services often offer competitive rates, if not lower than those of conventional transportation modes.²¹ The rise of e-hailing services addresses inadequacies and inefficiencies

¹⁶ Valerio De Stefano, 'The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowd-work, and Labor Protection in the "Gig Economy"' (2016) 37 Comparative Labor Law Journal.

¹⁷ Vedant Choudhary and Shambhulinganand S Shireshi, 'Analysing the Gig Economy in India and Exploring Various Effective Regulatory Methods to Improve the Plight of the Workers' (2022) 57 Journal of Asian and African Studies.[1344].

¹⁸ Aastha Behl and others, 'Barriers to Entry of Gig Workers in the Gig Platforms: Exploring the Dark Side of the Gig Economy' (2022) 74 Aslib Journal of Information Management.

¹⁹ Land Public Transport Act 2010, First Schedule.

²⁰ Salman Salim and others, 'A Review on the Background of E-Hailing Drivers in Malaysia and Their Awareness with Regulations' (2020) 616 IOP Conference Series: Earth and Environmental Science.

²¹ *Ibid.*

in traditional transportation systems.²² By bridging these gaps, e-hailing platforms provide travelers with a viable, convenient, and affordable alternative. People shift their preference to this form of transportation due to the high motorization rate on the road, widespread traffic congestion, parking problems, and deficiencies in public transport infrastructure.²³ In essence, the rise of e-hailing services represents a paradigm shift in how people approach transportation, offering a flexible and accessible mode of travel that addresses many shortcomings of traditional transportation modes.

Gig workers perform their tasks without the protection of employment contracts, depriving them of benefits traditional employees enjoy, such as minimum wage guarantees, fixed hours, paid holidays and sick leave, and job stability.²⁴ Instead, they are engaged on a task-by-task basis, providing their services to companies only as needed. While this flexibility benefits companies by reducing labor costs and allowing them to scale their workforce according to demand, it simultaneously exacerbates the precariousness of workers, especially those in low-skill occupations.²⁵ Moreover, the nature of gig economy work usually requires extensive time spent outdoors, making workers susceptible to hazards such as road accidents and health-related risks. This also means that gig workers are at risk of having to pay medical expenses on their own, as they are not entitled to social security benefits.

Similar issues are happening in Malaysia, where gig workers face exploitation, precariousness, and inequality. One of the most pressing concerns revolves around the vulnerability of gig workers to exploitation concerning wages and working hours due to the absence of regulations or policies to provide adequate safeguards

²² Ahmad Sahir Jais and Azizan Marzuki, 'E-Hailing Services in Malaysia: Current Practices and Future Outlook' (2020) 18 Planning Malaysia.

²³ *Ibid.*

²⁴ Jamie Woodcock and Mark Graham, *The Gig Economy: A Critical Introduction* (Polity Press 2019).

²⁵ James Muldoon and Paul Raekstad, 'Algorithmic Domination in the Gig Economy' (2022) 22 European Journal of Political Theory.[590].

to the workers.²⁶ Consequently, many gig workers find themselves forced to endure prolonged work hours to secure sufficient income to sustain their livelihoods.²⁷ The gig workers' employment status issue has garnered attention across various forums. Establishing the legal standing of gig workers is imperative to provide better welfare and security to them, given that existing employment laws only extend protections to traditional employees, leaving independent contractors unprotected.²⁸ Facing the disadvantages and precariousness as mentioned above, it becomes apparent that gig workers should be entitled to benefits and rights, including fair wages and social security. The principles such as the right to fair pay, safe working conditions, and access to social security discussed above are essential for workers. However, these rights are often out of reach for gig workers because they are classified as independent contractors. Thus, only by addressing these fundamental issues can policymakers move forward to provide a more just and inclusive labor landscape.

The advent of the gig economy has sparked vigorous debate among Western scholars regarding the employment status of gig workers, leading to the consideration of various approaches to resolving the complexities of this issue. One proposed solution involves establishing a new category of worker tailored specifically for gig workers.²⁹ Another considers the development of new legal frameworks designed to ascertain the employee status of individuals.³⁰ While there has also been a proposal to broaden the scope of existing labor statutes to encompass all workers, regardless of their employment status.³¹

In the United Kingdom, the Supreme Court's ruling in *Uber BV and Others v Aslam and Others*³² recognized the significant control Uber exerts over its

²⁶ Murali Loganathan, 'Assessing Social Sustainability in the Gig Economy' (2022) 65 Indian Journal of Labour Economics.

²⁷ Muhyi, Omar and Adnan (n 3).

²⁸ Radzi and others (n 8).

²⁹ Megan Carboni, 'A New Class of Worker for the Sharing Economy' (2016) 22 Richmond Journal of Law & Technology <<http://scholarship.richmond.edu/jolt/vol22/iss4/2>>.[8].

³⁰ Jennifer Pinsof, 'A New Take on an Old Problem: Employee Misclassification in the Modern Gig-Economy' (2016) 22 Michigan Telecommunications and Technology Law Review <<http://repository.law.umich.edu/mttlr/vol22/iss2/6>>.[370].

³¹ Carboni (n 29).

³² Uber BV v Aslam and Others [2021] UKSC 5.

drivers, leading to drivers' classification as "workers." This grants them specific employment rights, such as the national minimum wage and paid annual leave, without categorizing them as full employees. The court introduced the "dependent contractors" concept, allowing limited employment benefits. This case illustrates the UK's approach to recognizing gig workers' employment rights on a case-by-case basis, considering the specifics of each platform's relationship with its workers.

In Malaysia, gig workers are not included in the Employment Act 1955, making them unequal to traditional employees and further depriving labor rights and protection.³³ Gig workers are often classified as independent contractors, a classification that separates them from the conventional concept of traditional employment. In Malaysia, this classification is largely based on the terms and duties set out in the agreements between platform providers and gig workers. Unlike traditional employees, gig workers are bound by contract terms that specify the services they need to provide, without creating a formal employment relationship. Furthermore, service providers prefer to utilize independent contractors to perform gig services since it is more affordable and efficient. By employing independent contractors or gig workers to execute tasks, service providers can potentially optimize their operations, streamlining processes, and reducing costs.

In the judicial review of the High Court case of *Loh Guet Ching v Mytekxi Sdn Bhd* (business carried under the name of Grab),³⁴ the court addressed the employment status of e-hailing drivers. The High Court ruled that e-hailing drivers do not fall within the definition of "workmen" under the Industrial Relations Act 1967, as the relationship between Grab and its drivers is a commercial agreement. Consequently, e-hailing drivers are considered independent contractors and do not have the right to challenge unfair dismissal claims before the Industrial Court.

³³ Asiah Bidin and others, 'Legal Protections of Gig Workers in Employment', *Law Politics and Society: The Unravelling of Malaysia and Indonesia Potentiality* (Airlangga University Press 2021), [104].

³⁴ *Loh Guet Ching v. MyTeksi Sdn Bhd* (operating as Grab) [2022] 1 LNS 2388.

The comparative analysis of these judicial outcomes reveals a stark contrast between the legal recognition of gig workers in the UK and Malaysia. The UK has shown a progressive approach by recognizing the unique status of gig workers through the concept of dependent contractors. This classification grants drivers certain employment rights, such as the national minimum wage and paid annual leave, without fully categorizing them as employees. This recognition allows for limited employment benefits while maintaining some flexibility in gig work arrangements.

In contrast, Malaysia strictly interprets gig workers as independent contractors based on the commercial nature of their contracts with platforms like Grab. This classification denies them the status of “workmen” under the Industrial Relations Act 1967, excluding them from employment protections and the right to challenge unfair dismissals before the Industrial Court.

Analysis and Findings

Table 1 shows the interviews conducted for this research.

Table 1. Details of interviews with the participants

Participant	Affiliation	Sector	Date of interview	Mode of interview
P1	Deputy President of a Malaysian Association for P-hailing workers & a gig worker	Association for gig worker riders	18 April 2023	Online
P2	Deputy President of the Malaysia Association for Grab workers & a gig worker	Association for gig worker riders	19 May 2023	Face to face
P3	Secretary of the E-hailing Workers' Welfare Association and former gig worker	Association for gig worker riders	24th May 2023	Face to face
P4	Head of Labour Policies Department at the Ministry of Human Resources	Regulator/ Government	14th June 2023	Face to face

P5	Deputy Head of Public Affairs of an e-hailing platform	Platform Providers	21st June 2023	Online
P6	Advocate & Solicitor	Legal expert	24th July 2023	Online
P7	Advocate & Solicitor	Legal expert	16th June 2023	Online
P8	Rider	Gig worker	3rd June 2023	Face to face
P9	Rider	Gig worker	3rd June 2023	Face to face
P10	Rider	Gig worker	3rd June 2023	Face to face

Source: Author's contribution

The findings from the interviews are discussed below across four sectors: the gig workers association and gig workers, the regulator, the platform, and legal experts. The interview questions were tailored to each sector, and a summary of these questions is provided under each sector's findings discussion.

Interviews with Gig Workers Associations and Gig Workers

The interviewees from the gig workers association and gig workers (P1, P2, P3, P8, P9, and P10), including associations advocating for their rights and the riders themselves, were questioned about the issues and challenges faced by riders and the benefits that should be provided to ease their situation.

The primary issue highlighted by gig workers was the non-standardized compensation rates set by e-hailing platforms. These rates were changed arbitrarily without consultation, and the platforms unilaterally abandoned previous rates. Moreover, different e-hailing companies had varying practices regarding the rates provided to riders.

The interviewees emphasized the need for standardization, fairness, and transparency in the rates they received. P3 expressed concern that the rates for riders had not been increased despite the rising cost of living, significantly reducing their earning power, especially since the Covid-19 pandemic. P1, P2,

and P3 criticized the government for not regulating or monitoring the rates paid by the Platform Providers to the riders, advocating for an industry-standard rate that is fair to the riders.

Another challenge highlighted was ranking riders based on key performance indicators (KPIs), which determine the amount of work they receive. Various criteria, including the acceptance rate of orders influence KPIs. If a rider rejects an order, their KPIs decrease, affecting their ranking and the amount of work they receive.

P1 explained, “The criteria is called acceptance rate (order acceptance rate). Let’s say we don’t accept one order, it will affect the rating ... That’s what happens when, for example, it is a rainy day, that’s a problem for us”.

The gig worker interviewees also noted that when guidelines or laws are deliberated, representatives from the gig sector are not consulted. They argued that all stakeholders, including riders, should be consulted to ensure that guidelines are balanced and fair to all stakeholders.

While certain e-hailing platforms did benefit riders, such as discounts on medical check-ups, changing black oil, and tires, riders often did not take advantage of these benefits, focusing instead on the monetary gain from gig jobs. P1 and P2 suggested that this was due to riders not being formally informed of the benefits, as everything is online and not in hard copy. Additionally, e-hailing platforms had varying practices, and not all provided these benefits. Furthermore, regarding dispute resolution, certain e-hailing companies had customer service for riders that handled most issues, but there was no dedicated department for dispute resolution.

Regarding social security provided by SOCSO (the social security government organization in Malaysia) for self-employed workers, which requires riders to make self-payments, many workers were reluctant to pay for this private social security. Despite the government making it compulsory for self-employed workers to take up social security through self-payments, many workers were unwilling to do so. Recently, there have been recommendations that license renewal for riders should only be allowed once they have taken up social security.

The gig workers interviewed believed that this requirement would increase the uptake of social security among riders.

In contrast, P3 commented that the social security provided by the government was ‘toothless’ because it did not offer any protection other than for accidents.

The gig workers interviewed believed that the government is responsible for developing an appropriate blueprint for the entire gig economy, rather than creating solutions piecemeal. P3 suggested that this blueprint should include several key points for gig workers. These include ensuring the flexibility of work, allowing gig workers to manage their schedules and work hours according to their needs. Additionally, the blueprint should establish a Standard Operating Procedure for both platforms and workers to ensure consistent and fair practices. Another important aspect is providing an avenue for gig workers to exit the sector, such as through upskilling or training programs that equip them with the necessary skills for alternative career paths. Finally, the blueprint should include the establishment of adequate wage rates to ensure that gig workers are fairly compensated for their labor, reflecting the value of their contributions and sustaining their livelihoods.

Interview with the Regulator

The regulator was asked about the adequacy of current laws on social security and future plans for improving the law, as well as whether separate legislation should be enacted to cater to the specific needs of gig workers.

In response, P4 first addressed the current laws. Regarding health and safety, P4 stated that e-hailing platforms are responsible for ensuring the health and safety of gig workers under the Occupational Safety and Health Act 1994. This act places the responsibility on platforms to ensure a safe environment and adherence to adequate health standards. Regarding social security, P4 commented that there is SOCSO, an insurance scheme provided by the government for gig workers as long as they take it up and make self-payments.

Regarding future plans, P4 noted that guidelines were being prepared for gig workers to provide guidance for the industry on the regulator’s vision. These

guidelines include training and career advancement for gig workers and requirements for platforms to have grievance procedures and mechanisms. Regarding the enactment of a new Act, P4 commented that the government had made positive moves towards creating one.

P4 observed that unlike Canada Ontario's Digital Platform Workers Rights Act 2022, which has enacted a minimum wage for gig workers, this requirement would not be favorably received by gig workers in Malaysia because the minimum wage in Malaysia is quite low and would not be sufficient for gig workers. P4 lastly commented that having a dedicated commission for the gig economy would be a positive development for the future.

Interviews with the Platform Providers

The representative of the Platform Providers was asked about the formalization of work with gig workers, the benefits provided to them, their commitment to protecting the rights of gig workers, and their opinion on the government formulating a policy to provide social security for gig workers.

Regarding the formalization of work and benefits provided to gig workers, P5 stated that gig workers, as freelancers, must agree to certain work terms and conditions before they begin working with the platform. A code of conduct is also provided to gig workers and is available online on the Platform Providers' website. The Platform Providers has remedial actions for breaches of the code of conduct by gig workers, depending on the severity of the breach. They also have a customer service department where gig workers can go for any issues or problems they have. Before gig workers start, they undergo onboarding training, where the benefits are explained and later updated through WhatsApp if there are any changes. Platforms provide personal accident insurance for gig workers, which is free for them, but it only covers bodily harm and death, not the cost of repairing the vehicle. The Platform Providers works with SOCSO to encourage more gig workers to sign up for social security. However, the Platform Providers does not provide superannuation (EPF) benefits.

P5 indicated that the Platform Providers offers several benefits for gig workers, such as discounts on oil changes, tire changes, and even education opportunities. There are also options for gig workers to take insurance for their family, offered by the platform, and all are available on the platform's website.

Regarding customer fares and commissions for gig workers, P5 commented that it is a balancing act because customers do not want high fares while riders want higher commissions. The Platform Providers tries to balance the needs of all parties, which is how the rates are determined. P5 further stated that if the government sets a floor price on rates for gig workers, the Platform Providers will abide, but customers may not be happy as they must pay higher fares.

On the topic of minimum wages, P5 opined that imposing a minimum wage would not benefit them, as gig workers usually earn much higher than the minimum wage threshold.

P5 mentioned that Platform Providers worldwide have guidelines focusing on fair working conditions, safety, inclusion, and transparency. P5 emphasized the importance of flexibility, financial security (including sustainable earnings, insurance, and savings), professional development (such as upskilling and reskilling programs), and fair working conditions (ensuring safety, inclusion, and transparency).

Regarding government guidelines, P5 viewed this as a positive initiative but emphasized the need for the right people with the right knowledge to pilot it. P5 suggested that all stakeholders should be included before imposing any guidelines on the industry. P5 noted that the government has not engaged them to discuss any drafted guidelines. P5 believed that initiatives on guidelines often focus heavily on gig workers, particularly riders, while the gig economy is much larger. P5 suggested that the ministry should engage with both the industry and gig workers when drafting guidelines. However, P5 expressed concern that the ministry typically engages with associations representing gig workers, which P5 viewed as being very political. P5 suggested that the ministry hold town hall meetings to gather feedback from individual gig workers if they want to make a difference.

Regarding the type of guidelines for the industry, P5 believed that the gig economy should have light regulations that can be reviewed often, perhaps annually, to accommodate industry changes. P5 argued against heavy regulations similar to those imposed on other industries. Concerning an independent Act, P5 believed that it would require substantial effort, as gig workers come in many varieties. However, any Act drafted should not penalize or negatively impact platform businesses.

Interviews with the Legal Experts

Lastly, two legal experts were asked what minimum legal rights gig workers should have. P6 believed that since gig workers contribute to the economy, they should be given baseline protection, though not at the same level as traditional employees. For example, maternity leave could be provided for shorter periods, like 20-30 days instead of the full 60 days, along with some medical care and public holidays. P6 also suggested that the government should consider mandating EPF (superannuation) contributions by gig workers, which is currently voluntary. Social security through SOCSO is mandated and necessary.

P6 noted that gig workers want a fair and transparent compensation calculation method. P6 believed that a new Act specifically for gig workers is ideal, as the current Employment Act 1955 cannot accommodate them. As an immediate remedial measure before a new Act is passed, P6 suggested regulations that do not require debate. However, P6 cautioned that soft law and voluntary regulations may not compel Platform Providers to provide adequate protection for gig workers. P6 emphasized the need for hard law and the establishment of a commission solely for the gig economy.

P7, on the other hand, believed that self-regulation should be the approach for platforms. Since gig workers are not employees under the Employment Act 1955, they require other regulations for protection. P7 suggested that self-regulation and market competition could lead to platforms offering better incentives to attract the right workers.

The findings indicate that most interviewees agreed that there should be guidelines leading to an Act set by the government for the industry. These guidelines

would establish standards on rates, work benefits, social security, and possibly EPF, after thorough consultation with all stakeholders of the gig economy.

Discussion

The gig economy has become a significant part of Malaysia's job market, particularly in the transportation sector, known as e-hailing and p-hailing, with companies like Grab and Foodpanda dominating the market. This model offers flexibility and ease of entry, appealing to individuals seeking financial independence. However, it also exposes significant gaps in legal protections for gig workers, who are not recognized as employees under current labor laws. This discussion examines the necessity of a comprehensive legal framework to safeguard gig workers' rights in Malaysia, supported by insights from interviews with various stakeholders.

The gig economy in Malaysia has experienced substantial growth, witnessing a 31% increase in its workforce, surpassing the growth rate of the traditional workforce.³⁵ This sector's popularity stems from its flexible nature and accessibility. For many, gig work solves financial challenges and unemployment, granting them autonomy over their work schedules. However, the COVID-19 pandemic has depicted the vulnerability of gig workers.³⁶ Independent contractors lack access to crucial social protections like minimum wage, sick leave, and healthcare benefits.

The primary challenge lies in the legal classification of gig workers. According to the Employment Act 1955 and the Industrial Relations Act 1967, gig workers do not fit the traditional employment framework, leading to their exclusion from employee benefits and protections. Their employment operates on a task-by-task basis without a formal employment relationship, highlighting the necessity for a new legal framework tailored to the unique characteristics of gig work.

Acknowledging these challenges, the Malaysian government has initiated several measures. The Employees Provident Fund (EPF) introduced the i-Saraan

³⁵ Rahim and others (n 1).

³⁶ Nursilah Ahmad, 'Mapping Gig Workers As the New Economy Post Covid-19', *Seminar Antarabangsa Islam dan Sains (SAIS)* (2020).[879].

scheme, a voluntary contribution plan for gig workers. Additionally, the Self-Employment Social Security Scheme offers social security coverage with partial government funding. Despite the Prime Minister's announcement of a commission for gig workers to address issues such as social security and employment relationships, these efforts have been limited in scope and impact due to the absence of a dedicated regulatory body to enforce standards and protections.

The interviews with various stakeholders, including gig workers, associations, regulators, Platform Providers, and legal experts, highlight the pressing need for substantial reforms. Gig workers and their associations have identified several critical issues, such as non-standardized compensation rates and lack of benefits. They advocate for standardized, fair, and transparent compensation rates and emphasize the importance of their inclusion in policy-making processes. Many gig workers are unaware of available benefits due to poor platform communication, and existing dispute resolution mechanisms are often insufficient.

Moreover, regulators recognized the shortcomings of current laws and emphasized the need to create new guidelines, which could result in a dedicated Act for gig workers. They mentioned that existing health and safety regulations, such as the Occupational Safety and Health Act 1994, could be expanded to include gig workers. However, they also noted that setting a minimum wage for gig workers might not be practical due to Malaysia's low minimum wage threshold.

Platform Providers noted the need to balance customer fares and gig worker commissions. They supported having light regulations that are regularly reviewed to keep up with industry changes and stressed the importance of including all stakeholders in policy-making. They also emphasized that heavy regulations could harm their business operations and reduce the flexibility of the gig economy.

While legal experts offered various views on how best to protect gig workers. Some argued for baseline protections similar to those for traditional employees, while others believed that self-regulation and market competition could ensure fair treatment for gig workers. There was a general consensus on the need for a new legal framework tailored to the unique needs of the gig economy.

The findings show a clear agreement on the need for a comprehensive legal framework to govern the gig economy in Malaysia. This framework should recognize gig workers as employees to ensure they receive the same protections as traditional employees, such as minimum wage, sick leave, and healthcare benefits. Implementing standardized, fair, and transparent compensation rates across all platforms is essential to protect gig workers from arbitrary rate changes. Extending social security benefits to gig workers, possibly through mandatory contributions to schemes like the EPF and SOCSO, would provide a much-needed safety net.

Inclusive policy-making processes that involve gig worker representatives are crucial for developing balanced and effective regulations. Establishing a dedicated body to oversee the gig economy would ensure that these regulations are enforced, and gig workers' rights are protected. Additionally, policies should maintain the flexibility that attracts workers to the gig economy while providing avenues for career development and upskilling.

While government initiatives have progressed, they do not provide comprehensive protections. Interviews with stakeholders show the urgent need for a new legal framework that recognizes gig workers as employees and ensures their rights and protections. By addressing these fundamental issues, policymakers can create a fairer and more inclusive labor landscape for gig workers in Malaysia. Establishing a commission dedicated to gig workers is a positive step toward this goal, but it must be supported by a solid legal framework that ensures fair treatment and protection for all gig workers.

Policy Recommendations

These policy recommendations are intended to serve as an overview to develop a crucial framework to safeguard the rights and wellbeing of gig workers, particularly those in the e-hailing and p-hailing sectors. They are intended to serve as a foundation towards nurturing an equitable ecosystem for all stakeholders involved in the gig economy. By portraying the fundamental principles and

standards, these recommendations aim to address the evolving needs and challenges of gig workers, fostering a conducive environment for sustainable growth and mutual prosperity.

Right to the payment transparency

Platform providers should clearly explain the wage structure and payment methods to gig workers, whether they are based on piece rates, bulk payments, or achievement-based incentives. Each completed service by a gig worker must be compensated according to the terms outlined in the contract between the two parties, ensuring that the payment meets or exceeds the minimum wage rate mandated by the Minimum Wage Order 2022. Furthermore, it is the Platform Providers' responsibility to meticulously account for all accrued wages owed to gig workers upon the termination of their contract. This ensures that gig workers receive fair compensation for the services rendered and promotes accountability within the gig economy.

Social security

The Platform Providers should enroll all gig workers under the Employee Social Security Scheme, ensuring their access to social security benefits. Additionally, the company can negotiate with the Gig Workers Association to establish mutually agreed-upon methods and rates for contribution payments. This collaborative approach allows for fair and transparent determination of contribution terms, benefiting both gig workers and the Platform Providers while fostering a supportive and inclusive gig economy ecosystem.

Occupational health and safety aspects

Platform providers should be obligated to follow safety and health standards as per the Occupational Safety and Health Act 1994.³⁷ This means they must make

³⁷ Occupational Safety and Health Act 1994, Part IV.

policy statements and internal rules about health and safety. They also need to create a work culture that puts gig workers' safety and wellbeing first, ensuring the work environment is safe and healthy. By doing this, Platform Providers will follow the rules and protect the welfare of gig workers, creating a workplace that cares about health and safety.

Collective bargaining and associational rights

Platform Providers are advised to establish internal consultation mechanisms to address concerns about gig workers' employment. In cases where internal negotiations do not yield resolutions, parties can engage the Malaysian Industrial Relations Department (JPPM) for conciliation, facilitating an amicable resolution process. Furthermore, disputes involving unresolved financial claims following conciliation can be referred to the Department of Labor (JTK) for further intervention. This escalation mechanism ensures that any disputes regarding financial matters are appropriately addressed, promoting fairness and accountability within the gig economy framework.

Grievance mechanism

Platform Providers must establish an internal method for gig workers to lodge complaints concerning their work conditions. Upon receiving complaints, the Platform Providers must conduct thorough investigations and address the grievances internally. The Gig Workers Association can represent Gig workers during these investigations. Detailed investigation records must be maintained and furnished to the relevant agency upon request. If a resolution is not achieved, disputes related to financial claims can be escalated to the Department of Labor (JTK) for further intervention and resolution. This process ensures that grievances raised by gig workers are duly addressed and resolved, fostering transparency and accountability within the gig economy ecosystem.

Alternatively, setting up a special tribunal for gig workers can be one of the mechanisms used to handle specific problems and disputes in the gig economy.

This tribunal may act as another way for gig workers to deal with grievances, giving them a formal and organized platform to address issues like non-payment, unfair dismissal, and unsafe working conditions. Current labor laws in Malaysia do not adequately protect gig workers, leaving them open to exploitation. A tribunal can fill this gap by providing a fair way for gig workers to raise their concerns and seek justice.

Training and guidance for career advancement

Platform Providers should offer gig workers training programs to enhance their skills and capabilities through upskilling, thereby equipping them with valuable competencies for future endeavours. Additionally, Platform Providers are suggested to provide training opportunities that empower gig workers to explore alternative career paths through reskilling, offering improved stability and advancement prospects.

By investing in the upskilling and reskilling of gig workers, Platform Providers contribute to their personal growth and bolster the resilience and adaptability of the workforce within the gig economy. This proactive approach aligns with the broader goal of fostering sustainable employment practices and facilitating upward mobility for gig workers beyond their current roles.

Establishing a dedicated Commission for gig workers is crucial to enforce and effectively enforce the recommended policies for gig workers. Such a Commission will provide regulatory oversight, ensuring that policies related to payment transparency, social security, occupational health and safety, collective bargaining, grievance mechanisms, and career advancement are upheld. It would advocate for gig workers, representing their interests in policy discussions and negotiations, monitoring compliance with regulations, and taking enforcement actions against non-compliant Platform Providers. Additionally, the Commission would offer support and resources, such as legal assistance and training programs, collect data and conduct research to inform policy development, and provide a formal grievance mechanism for dispute resolution. By staying aware of emerging

trends and proposing innovative solutions, the Commission would ensure that gig workers' rights and protections remain relevant, promoting fair and equitable working conditions in the gig economy.

Conclusion

The fast growth of the gig economy, especially in Malaysia's transportation sector, has changed how people work, offering flexible and on-demand job opportunities. However, this rapid expansion has revealed big gaps in gig workers' legal protections and social security. These workers, often called independent contractors, miss out on the rights and benefits that regular employees get under current labor laws, such as the Employment Act 1955 and the Industrial Relations Act 1967. This situation leaves gig workers open to exploitation, unfair pay, and a lack of social protections.

The findings illustrate the need for a policy to create a solid legal framework for gig workers in Malaysia. In particular, policy should make sure that gig workers' basic needs like fair wages, health and safety at work, and ways to address grievances are met. For sectors such as e-hailing and p-hailing, specific regulations can offer protections suited to these workers' roles, while still allowing for the flexibility that is central to the gig economy. Interviews with various stakeholders, including gig workers, associations, regulators, Platform Providers, and legal experts, show that everyone agrees on the need for major changes. These changes shall aim to recognize gig workers' status in Malaysia, ensuring they receive fair wages, social security benefits, and protections against exploitation. Furthermore, if the Commission for gig workers mentioned above is successfully established, Malaysia will be the first country to create such a commission, as no other country has done so yet. This plan should have a positive impact on gig workers' well-being, especially in terms of their respective rights and protection.

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