

Critical Insights into Gig Economy: A Peninsular Malaysia Case Study

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Abstract

The rise of the gig workers has transformed the employment landscape, presenting both opportunities and challenges for workers globally. It has disrupted the traditional meaning of 'employee' with ambiguous and complex aspects, especially gig workers' status. Practically, gig workers are individuals working under a contract for service with flexibility and independence elements that give them a sense of autonomy in performing their work. This study delves into the specific case of Peninsular Malaysia, investigating the issues and challenges gig workers face in the thriving market. The research adopts both library research and qualitative research methods, including interviews using a semi-structured approach. A total of 10 respondents were interviewed using a semi-structured method. The findings revealed that the challenges dwell in the issues of gig workers, which require high-time intervention of governance, policies, and legislation; there is still no definition of gig workers. There is a lack of social protection, an absence of employment contracts, an absence of price regulatory control, poor operational services, a gap between platform owners and the government, and a piecemeal institutional framework. Hence, this study offered recommendations on how to improve the enforcement.

Keywords: *Contract For Service, Employment Law, Gig Economy, Gig Workers, Informal Sector.*

Introduction

As of year-to-date, it is reported that in Malaysia, about four million individuals, over a quarter of Malaysia's workforce, primarily young adults aged 25 to 44, are involved in the gig economy industry.¹ The Budget 2021, 2022, and 2023 reports mentioned the growing importance of the gig economy. According to a 2011 Employees Provident Fund (EPF) study, four out of ten Malaysian workers will be gig workers within five years, double the global average.² Further, a survey conducted by Zurich Insurance in 2020 shows that there were more than two million gig workers registered under the Malaysian Digital Economy Corporation.³ In the industrial platform, 'gig' is a

Yosuke Uchiyama, Fumitaka Furuoka, and Md Nasrudin Md Akhir, "Gig Workers, Social Protection and Labour Market Inequality: Lessons from Malaysia", *Jurnal Ekonomi Malaysia*, 5z.3 (2022), p. 4.

Ainatul Fathiyah Abdul Rahim et.al., "Strengthening the Gig Economy: Future of Digital Labor Workforce Platform Post-Covid-1t", *GADING (Online) Journal for Social Sciences*, 24.04 (2021), p. 17; Nurul Hidayah Ahamad Nawawi et.al., "Understanding The Presence of the Gig Economy in Malaysia", *Malaysian Journal of Consumer and Family Economics*, 31 (2023), p. 275.

Nursilah Ahmad, "Gig Workers: The New Employment Form in the New

well-known term for hiring, for example, a musician for a short-term performance or a one-off show.⁴ In fact, the term itself originated from music field, where its intended meaning was 'engagement'.⁵ The term

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‘gig’ has recently been associated with the employment landscape, particularly during the COVID-19 pandemic.⁷

The gig-economy usually includes two forms of work: ‘crowd work’ and ‘work-on-demand’ via applications.⁷ The first term refers to work done through an online platform, while the second is where traditional work is assigned through an application (app) managed by a firm that sets specific service standards. There are various expressions of the concept of the gig economy, also known as the sharing economy, collaborative economy, digital economy, crowd economy, and peer economy.⁸ It is described as a sharing platform between labourers and the online platform owner for the benefit of both parties.^t They are known as non-standard workers, which include part-timers, freelancers, independent contractors, and project-based

Economy”, *Ulum Islamiyyah*, 33.S4 (2021), p. 134.

Martin Cloonan and John Williamson, “Musicians as Workers and the Gig Economy”, *Popular Music and Society*, 4z.4 (2023), p. 355.

Ivona Huđek and Karin Ćirec, “The Terminology and the Concept of the Gig Economy”, *Ekonomski Pregled*, 74.1 (2023), p. 3z.

Borui Fang, Ewilly Jie Ying Liew, Andrei O.J. Kwok, Pei-Lee Teh., “Perceptions, Emotions and Motivations of Gig Workers: Insights from Malaysia”, in Roger Jiao and Min Xie, *IEEE International Conference on Industrial Engineering and Engineering Management*, Kuala Lumpur, Malaysia: Institute of Electrical and Electronics Engineers (2022), MMXXII-DECEMBER, p. 1058.

Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowd Work and Labour Protection in the ‘Gig-Economy’”, *SSRN Electronic Journal*, (2015), p.2; Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowd Work and Labour Protection in the ‘Gig-Economy’”, *Comparative Labor Law & Policy Journal*, Forthcoming, Bocconi Legal Studies Research Paper No. 2z82z02, (October 28, 2015); C Svetlana Dimitrova, “reique Cardon, Antonio A. Casilli, Qu’est-Ce Que Le Digital Labor?”, *Questions de Communication*, 30, (201z), p. 408.

Bernd Waas, Vera Pavlou, and Elena Gramano, “Digital Economy and the Law: Introduction to This Special Issue”, *Work Organisation, Labour and Globalisation*, 12.2 (2018), p. 7.

Zhi Ming Tan et.al., “The Ethical Debate about the Gig Economy: A Review and Critical Analysis”, *Technology in Society*, z5 (2021), p. 2.

workers – those who make a living by taking on-demand employment – and are part of the gig economy.¹⁰

In Malaysia, gig workers, known as non-standard workers, are not included under the definition of ‘worker’ under the Employment Act 1t55 (EA 1t55). ‘A contract of service with their employer binds workers’ under this legislation. Workers receive numerous benefits, including fixed wages, medical, and leave benefits. Many other legislations protect a ‘worker’ including the Industrial Relations Act 1t4z, Social Security Act 1tzt, National Skills Development Act 200z, Occupational Safety and Health Act 1tt4, Minimum Wages Order 2012, Minimum Retirement Age Act 2012, and the Contract Act 1t50. Meanwhile, gig workers are subject to the Self-Employed Social Security Act 2017, the Contract Law Act 1t50, and part of the Occupational Safety and Health Act 1tt4.

No specific definition explains gig workers’ legal status since Malaysian labor laws do not recognise them.¹¹ This is due to the nature of the gig economy, which does not meet the main factor in determining the legal status of employees under the definition provided in the labour laws.¹² It is acceptable that having a specific definition of gig workers would be challenging since the industry comprises various sectors. Although all these platform-related workers would generally be considered gig workers, their nature of work is different.¹³ Each sector has its definition of workers, which defines workers

Namir Anani, “Paving the Way for the Future of Work”, Canadian Public Policy, (2018), p. 171; Si Qiao, Guan Huang, and Anthony Gar On Yeh, “Who Are the Gig Workers? Evidence from Mapping the Residential Locations of Ride-Hailing Drivers by a Big Data Approach”, *Cities*, 132 (2023), p. 3.

Nurhidayah Abdullah, et.al, “Gig Economy Workers: Challenges Pandemic to Endemic.” in Muzalwana Abdul Talib, Ahmad Farid Osman, Elya Nabila Abdul Bahri (eds), *Post-Pandemic Economic and Social Development Recovery, Challenges and Policy in Malaysia*, London: Routledge, (2025).

Salmie Jemon et.al., “A Knight Without Shining Armour: The Paradox of Being a Gig Worker in Malaysia”, *International Journal of Academic Research in Business and Social Sciences*, 11.11 (2021), p. 2z3.

Adrián Todolí-Signes, “The “Gig Economy”: Employee, Self-Employed or the Need for a Special Employment Regulation?”, *Transfer*, 23.2 (2017), p. 1t5.

in the gig economy complex.¹⁴

The consequences of not being recognised under labour laws prevent gig workers from benefiting from the social protection that traditional employees enjoy.¹⁵ This was until the government took the initiative to introduce the i-Saraan scheme and Self-Employed Social Security Scheme to assist gig workers’ social protection. Even so, these initiatives are ineffective because they are voluntary schemes, which means that gig workers can opt not to contribute to the scheme.^{1z} As discussed earlier, there are various sectors in the gig economy, which further leads to the realisation that due to those differences in nature, the governing bodies that possess the power to enforce laws on them are scattered. Even if we take one example from the transportation sector, explicitly e-hailing and p-hailing, several ministries might involve human resources, transportation, communication, and finance.

This study explores the challenges and issues of gig workers in

Peninsular Malaysia, where the business activity centre is explored. The problem statement is carefully explained through in-depth interviews by gathering responses from policymakers and legal practitioners related to employment law, rider associations, p-hailing drivers, and platform owners. A policy recommendation is proposed after critically evaluating the existing issues and challenges.

Nurhidayah Abdullah et.al., “The Gig Economy Enigma: Uncovering the True Nature of Workers” in Bahaaeddin Alareeni & Allam Hamdan, *Navigating the Technological Tide: The Evolution and Challenges of Business Model Innovation*, Proceedings of the International Conference on Business and Technology (ICBT2024), Volume 1 (pp 21-30), Springer Cham, 2024.

Mohsin Ali et.al., “Are Gig Workers Protected? A Possible Solution”, *International Journal of Economics and Finance Studies*, 15.3 (2023), p. 284; Nursilah Ahmad, “Gig Economy: The Promise of Platform Work”, e-Proceedings of The 10th Islamic Banking, Accounting and Finance International Conference 2020 (iBAF2020) “Navigating the New Normal in Islamic Finance and Wealth Management” 10th – 11th November 2020, Malaysia Organized by: Faculty of Economics and Muamalat, USIM, p. 321-331.

Khairunnisa Abd Samad et.al., “Is the Well-Being of Gig Workers in Malaysia Better? The Reality of Pain and Gain”, *International Review of Applied Economics* (Routledge, 2023), p. 518.

Research Method

The primary aim of this study positively recommends using research methodology that gauges and profoundly captures respondents’ insight and view on the implementation process. The qualitative methodology can explore multiple explanations in the context of this study. The qualitative nature of this research also intends to obtain an in-depth understanding of the subject matter with a closer emphasis on the individual views by interviewing them. Hence, it allows the researcher to study the phenomenon in its natural setting to understand the multiple realities based on the meaning people bring to them.

Ten respondents have been chosen for the interview sessions which includes two employment law practitioners, two platform operators, one policymaker, two rider associations, and three p-hailing drivers. The current respondents, selected for their relevant experiences and expertise, have provided comprehensive insights. Their responses reached a point of saturation, where no new significant themes or perspectives emerged, ensuring that the data collected is robust and reflective of the study's aims. The data collection process took approximately three months to complete. The interviews conducted for data collection took approximately 60 minutes to 120 minutes. Some sessions were conducted physically, and some were conducted online, depending on the availability of each respondent. The entire interview session was recorded using the Teams platform with the respondents' consent. This study was conducted adhere to the code of ethics of University of Malaya. The respondents were requested to complete the consent form indicating that they were consented to be interviewed to fulfil the purpose of the study. It has been made aware to the respondents that their participation was voluntary, and they may choose to withdraw from the interview at any time if they found any question to be sensitive or did not want to continue the interview session. LP, PO, PM, RA, and PD abbreviations were used to represent legal practitioners, platform operators, policymakers, Riders' Associations, and p-hailing drivers, respective-

Manual thematic analysis was used to analyse the in-depth interviews further.

Definition of Employee under Malaysian Employment Act 1955

Among all those mentioned above and other available labor statutes in Malaysia, the EA 1955 is the principal legislation regulating employment law, including employee relations. Like most labour statutes, EA 1955 considers the legal employment relationship based on a contract of service or employment. A contract of service is defined in the EA 1955 as an agreement established between an individual who agrees to hire another person who also agrees to be in the service of the person who is hiring. The employment agreement concluded by the parties will constitute the employer-employee relationship, which enables them to be legally recognised under the labour laws in Malaysia.

As for how labour laws work, individuals must have their employment based on the contract of service, which is essential in determining their legal status.¹⁷ To have the right to be recognised and thus protected by labour laws, individuals must observe whether their status as employees falls within the definition provided under the EA 1955. It has been provided that employee means any person or class of persons:

included in any category in the First Schedule to the extent specified therein, or

in respect of whom the Minister makes an order under subsection (3) or section 2A.

The EA 1955, in emphasizing that the status of an employee will only be legally recognized with the existence of the element of the contract of service, mentioned that:

Any person, irrespective of his occupation, who has entered a contract of service with an employer under which such person's wages

17 Patrick Dieuaide and Christian Azais, "Platforms of Work, Labour, and Employment Relationship: The Grey Zones of a Digital Governance", *Frontiers in Sociology*, 5 (2020), p. 11.

do not exceed two thousand ringgit a month.

Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer...

The provisions illustrate that individuals will be considered employees when they enter a contract of service and receive a monthly wage of not more than two thousand ringgits. Individuals will also be recognized as employees regardless of how much wage they receive as long as a contract of service establishes the employment relationship.¹⁸ It falls under any of the categories provided in the EA 1955,

which includes works related to manual labor, operation or maintenance of any mechanically propelled vehicle, supervising other employees engaged in manual labor, working as workers in a vessel registered in Malaysia, and working as a domestic servant.

The above illustrates how a contract of service plays a vital role in determining the legal status of employees under Malaysian labor laws. Individuals who engage in any service or work without having agreed under the service of a contract are considered independent contractors and not employees. This is not the case for gig workers in Peninsular Malaysia.

Legal Status of Employees in Malaysia

According to Malaysian labor laws, acknowledging an employment status significantly regulates statutory rights, protections, and legal claims as the contract of service entered into will give the employer the right to control the employee and establish the employer's responsibility towards his employee during working hours. In the case of *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1ttz] 4 CLJ z87, Gopal Sri Ram JCA, in giving judgement, stated that the more control an employer has upon an individual, it is more likely that the individual is an employee for the employer's business.

18 Rafizah Abu Hassan et.al., "Amendments to the Employment Act 1t55: An Analysis of the Key Changes with Reference to International Labour Standards – A Positive Improvement for Malaysia's Employment Regime?", *International Journal of Academic Research in Business and Social Sciences*, 13.1 (2023), p. 157.

However, the control aspect cannot be the only measure in deciding an employee's status. There must be a reference to the contract terms to know precisely each party's responsibility and functions. Furthermore, individuals must be recognized as workmen under the Industrial Relations Act (IRA) to have legal standing to bring an action to the Industrial Court. The Act provides that a person must be qualified as a workman to have the capacity to appear before the Industrial Court. In the case of *Dr A Dutt v Assunta Hospital* [1t81] 1 MLJ 304, the issue was whether the appellant was a workman under the definition of the IRA. The Federal Court held that it was for the Industrial Court to decide on the status of a workman as it was a mixed question of fact and law. However, the primary matter to be discussed was the duty of the workman rather than deciding on the status of employment on the surface.

Furthermore, in the case of *David Vanniasingham Ramanathan*

Subang Jaya Medical Centre Sdn Bhd [2013] 1 ILR z1z, the claimant who was working with the respondent as a consultant general surgeon for 20 years was held not to be a workman, thus excluded from the rights and protection under the IRA. The Industrial Court also dismissed his claim of unfair dismissal due to his employment status as an independent contractor, and he had no legal standing to bring the action in the Industrial Court.

Based on the existing labour laws in Malaysia, gig workers are not recognised as legal employees due to the fact there is no recognition to their status. Thus, gig workers have no rights and protections under Malaysian labour laws. As a result, gig workers must face various issues and challenges regarding employment, from legal to economic matters. For example, gig workers are vulnerable to exploitation by platform provider.^{1t}

Since the platform provider only act as intermediaries to provide a supply and demand cycle system between the gig workers and customers, they can discharge any risks and liabilities and transfer

^{1t} Siti Nur Aisyah Muhyi, Shida Irwana Omar, and Shuhada Farhana Adnan, "The Drivers Force the Gig Workers into Gig Economy: The Case of Malaysia", *Journal of Business and Social Development*, 11.1 (2023), p. 1.

them to the other two parties. The platform provide has the power to control the system or platform used by the gig workers, and this allows them to exploit the gig workers' labour by offering unreasonable and

unfair remuneration and resulting in a group of gig workers who have to work at least 10 hours a day in order to get an acceptable level of income to support their family.²⁰

The New EA 1955 Amendment

It is worth noting that in October 2021, the Employment (Amendment) Bill 2021 (the Bill) was presented for its first reading in Parliament. The Bill proposed a few amendments to the EA 1955, and one of the fundamental changes was the definition of employee and employer under the EA 1955. The Bill proposed a new section that provides for the presumption of employment (the Bill, 2021). The House of Senate passed the Bill, which was gazetted in May 2022.

It was proposed under section 101c of EA 1955 that the presumption of employment be made in the absence of any written agreement indicating the contract of service between employee and employer. There are several elements to be satisfied to constitute the presumption. For the employee, it includes the employer controlling the manner and hours of work of the employee; the work is proven to be an integral part of the employer's business, the work executed for the benefit of the employer, and, in return, the employee receives payment which constitutes the employee's primary source of income. The amendment's enforcement is very interesting since it can affect gig workers' employment status, especially in e-hailing and p-hailing sectors such as Grab and Foodpanda. It may put gig workers within the scope of the definition of employee under the EA 1955, entitling them to the same benefits and protections currently enjoyed by traditional employees.

Furthermore, if the new section assumes that gig workers are

employees, they will be entitled to be covered under the Employees'

20 Siti Nurazira Mohd Daud et.al., "Adapting to the Gig Economy: Determinants of Financial Resilience among "Giggers"", *Economic Analysis and Policy*, 81 (2024), p. 75z.

Social Security Act 1955. It can be said that this amendment aims to address the decision in the case of *Loh Guet Ching v Myteksi Sdn Bhd (berniaga atas nama Grab)* (Judicial Review Application No. WA-25-2tz-10/2020), where the High Court held that gig workers are not recognised as employees under Malaysian labour law. Therefore, even though there is no clear indication whether the application of section 101c of EA 1955 would include gig workers in EA 1955's definition of employee, it could be the first step for the courts to determine their employment status.

Social Protection System

A wide range of social protection is being provided for traditional employees under the labour laws of Malaysia. First, employees are entitled to several paid annual and sick leave, depending on their tenure of employment. In terms of medical care, the employees are entitled to sixty days in each calendar year with certification from a registered medical practitioner or medical officer paid sick leave if hospitalization is necessary. Furthermore, all female employees are entitled to 98 consecutive days of paid maternity leave, which covers up to five pregnancies.

Moreover, every employee shall be entitled to 11 gazetted public holidays, five of which are the National Day, the Birthday of Yang-Di Pertuan Agong, the Birthday of the Ruler or Yang di-Pertua Negeri or Federal Territory Day (all of which varies in different states), Workers' Day and Malaysia Day while the employer is free to choose the remaining six gazetted public holidays to make up the 11 days. The chosen days must be effectively communicated to the employees through notice or as stated in the employment contract. If an employee must work on a public holiday, the payment is at least three times his daily pay rate.

Comparatively, traditional employees enjoy one day's rest and are not required to work under their contract of service. The employer may decide on a rest day from time to time. If the employee is required to work on a rest day, he must be paid a minimum of double

his daily rate. In addition, there is a benefit of overtime in which any number of work hours exceeding the regular hours of work is considered overtime. If an employee works overtime, he must be paid a minimum of 1 ½ of his hourly rate of pay. Furthermore, the employees are protected against sexual harassment, where the provision applies to all employees regardless of whether they fall under the purview of the EA 1955.

In the matter of termination or lay-off benefits, either the employee or the employer may issue a notice or payment in lieu of notice in order to terminate the contract of service between parties in which the period of such notice depends on the employee's tenure of employment. Under the Employees Provident Fund Act 1951, the regulations have been provided for the retirement contributions where employer as well as employee which falls under the meaning provided in this Act shall be liable to pay monthly contributions to the wages at the rate set out in the Third Schedule. Not only that, but the employees are protected against certain incidents via the Social Security Organisation (SOCSO).

According to the current Human Resources Minister, gig workers are not entitled to receive the protection provided under the Work Act 1955, Labour Ordinance (Sabah Chapter 77), and Labour Ordinance (Sarawak Chapter 7z). The current policy directive for the informal economy sector in Malaysia which the Ministry of Human Resources is spearheading require every individual who are self-employed, including gig workers, to contribute to the Self-Employed Social Security Scheme (SKSPS). The objective of the policy is to ensure that all sectors are covered with insurance which further addresses the challenges faced by gig workers, who currently lack specific policies or legislation to safeguard their welfare.

According to SOCSO, 374,000 self-employed individuals in Malaysia have SKSPS protection, of which 315,107 are active p-hailing riders and 58,893 are e-hailing workers. P-hailing riders refer to food and parcel delivery riders, whereas e-hailing workers refer to drivers working for ride-hailing organizations. Proposing a solid regulatory framework for the informal economy sector to better structure this group's employment and social benefits is highly recommended. Meanwhile, for non-employees, all the above protections and benefits do not apply. Additionally, gig workers are not eligible to obtain social security benefits as enjoyed by traditional employees such as the Employee Provident Fund (EPF) and medical insurance provided by SOCSO.

These social security benefits are optional, not mandatory. To make things worse, they are not entitled to the protection of rights and fundamental principles under any regulation at the workplace. Working in gig economy sectors offered individuals autonomy and flexibility, but the disadvantages outweighed the benefits.²¹ Gig workers are constantly at the risk of being exposed to many unfavorable possibilities, as mentioned above, and since the gig economy is gradually contributing to the country's economic growth and undoubtedly will expand more in the future, which should be enough reasons for policymakers to concentrate on revising current labour laws in Malaysia.

Employment Contract: Contract of Service or Contract for Service

The contract of service under common law is focused on the employer-employee relationship to differentiate an employee from a self-employed individual. It is a legal contract and a basis for determining employment status. The nature of the legal employment relationship between employer and employee under common law is established by agreed terms and conditions concluded by both parties—common law principles authorise a freedom to contract. Hence, the parties to the contract can produce any employment agreement indicating their rights and responsibilities, which both parties can agree upon.²²

Aldijana Bunjak, Matej Černe, and Aleš Popovič, "Absorbed in Technology but Digitally Overloaded: Interplay Effects on Gig Workers" *Burnout and Creativity*, Information and Management, 58.8 (2021), p. 3.

Nguyen Le Thu, “Legal Considerations for Determination of Employment Relation and Employment Contract,” VNU Journal of Science: Legal Studies,

The contract of service has been defined in various ways. However, one similarity derived from all the definitions is that it is a voluntary agreement between individuals as an employee provides labour prospects and is under the employer’s control regarding remuneration. In contrast, a contract for services refers to a relationship akin to an agency. A person engaged via a contract for services is not an employee—for example, a property agent who helps to sell your house.

To better illustrate the difference between a contract of service or for services, it could be referred to the Federal Court in *Hoh Ki-ang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1ttz] 4 CLJ z87, where Gopal Sri Ram JCA explained that to determine an employment relationship, it is essential to take into consideration the degree of control, of which an employer exercises over a claimant. The higher degree of control the employer has over the employee, the higher the chance for the person to be the employee of the company. His Lordship further elaborated that this may not be the sole measure as the contract terms between the employer and employee should be first ascertained to determine the nature of the latter’s duties and functions.

EA 1t55 illustrated a clear distinction where the former needs a contract of service to give individuals legal status as employees. The question is whether a contract of service is truly a vital component in determining the status of an employee under labour laws. The EA 1t55 propounds that gig workers should be considered self-employed individuals or independent contractors. In contrast to the contract of service, gig workers are hired on a contract for service basis to perform a particular task. They are ordered by the employers on what to do and not how to do the task, which is free from being controlled by the employers.²³ This is different from the contract of service, where the employers can tell employees what and how to do a specific task.

37.2 (2021), p. 43.

Nurfarahin Harun, Noraliza Mohamad Ali, and Nur Layali Mohd Ali Khan, “An Experimental Measure of Malaysia’s Gig Workers Using Labour Force Survey”, *Statistical Journal of the IAOS*, 3z.4 (2020), p. tzt.

As for the gig economy, determining the worker’s status as independent contractors without in-depth analysis is unreasonable and unfair. They should not recognise gig workers as legal employees for reasons such as having flexible hours or work and allegedly having their own business, like suggesting that the company that provides a platform for gig workers has no responsibility towards the gig workers.²⁴ For example, Grabfood riders employed by Grab Holdings Inc. (Grab) are denied employment, although their tasks are one of Grab’s most integral parts of the business activity.

The Piecemeal of The Institutional Framework

As gig workers are not recognised as employees or workmen under the labour laws, this lacuna has drawn attention from various bodies, including government institutions. A few years back, the Malaysian government started to take the initiative to provide some relief to gig workers since they are not entitled to the rights and social security that traditional employees enjoy.

In 2018, the Ministry of Finance, through EPF, introduced a scheme called i-Saraan, which is a voluntary contribution plan to allow self-employed individuals, including gig workers, to accumulate savings for retirement while receiving an exclusive incentive up to 15% of the total contribution capped at RM250 per year from the government.²⁵ The government increased the incentive to RM300 annually in 2023 and RM500 annually in 2024. In addition, the contribu-

David Peetz, “Flexibility, the ‘Gig Economy’ and the Employment Relationship”, in *The Realities and Futures of Work*, 201t, p. 15t.

Fithriah Ab Rahim, Hanudin Amin, Nazarina Jamil, and Norhamiza Ishak, “Understanding Factors Influencing Voluntary Contribution of ‘I-Saraan’ among Malaysian: A Conceptual Model,” *International Journal of Academic Research in Business and Social Sciences*, 12.10, 2022, p. 1z72. See also Muhammad Eddy Aizad, Shafinar Ismail, and Khairunnisa Abd Samad, “Measuring Financial Planning for Retirement of Gig Workers in Malaysia: A Pilot Study,” *Information Management and Business Review*, 15.3(I) (2023), p. 32z; Muhammad Eddy Aizad Anuar, Shafinar Ismail, and Khairunnisa Abd Samad, “Financial Planning for Retirement: A Proposed Conceptual Framework,” *International Journal of Academic Research in Accounting, Finance and Management Sciences*, 13.1 (2023), p. 17t.

tors will enjoy an annual dividend on top of the said incentives.

This is one of the first initiatives the government took, along with the Self-Employment Social Security Scheme (SESSS) introduced in 2017 by SOCSO. This scheme was created to protect individuals who are considered self-employed under the purview of the Self-Employment Social Security Act 2017. Initially, this scheme was only to cover the transportation sector, but due to the gig economy’s growth and digitalization, it has been extended to cover 1t other sectors.^{2z} It provides employment-related protections for the contributors, which include accident-related injuries during the execution of work activities as well as occupational diseases as provided under the Fifth Schedule of the Employees’ Social Security Act 1tz. The protections provided include cash benefits, which will be given to the contributors alongside medical treatment, physical rehabilitation, and vocational training.

Recently, the government has started another initiative relevant

to the SESSS by introducing the SPS Padanan Caruman scheme, in which gig workers are one of the 20 targeted categories for social security protection. This scheme requires gig workers to contribute a mere 20% of the total contribution rate, and the government will cover another 80%. This allows gig workers to be protected for 12 months after payment.

In July 2023, the Deputy Prime Minister, Datuk Seri Ahmad Zahid Hamidi, proposed establishing a commission to regulate the economy, namely the Malaysian Gig Economy Commission (SEGiM). The main objective of SEGiM is to address the issues in the gig ecosystem and take care of the welfare of consumers, vendors, workers, and platform providers. However, the government recently stated that it had no intention to establish SEGiM. The Ministry of Human Resources mentioned that establishing SEGiM was not feasible, and its functions would overlap with existing and newly established bodies, such as the National Digital Economy Council and the Sharing

Nina Naquiah et.al., “Awareness Towards Social Security Protection Among Food Delivery Riders in Selangor and Kuala Lumpur”, *Malaysian Journal of Computing*, 8.1 (2023), p. 1428.

Economy Committee under the Ministry of Communications and Digital. The regulations about the gig economy have been built in piecemeal throughout the initiatives taken and proposed. However, proper legal enforcement is unlikely to be developed soon as it is an area of rapid change and development.

Comparative Analysis of The Definition of Gig Workers in Different Jurisdictions

The recognition of gig workers in different countries varies according to their jurisdiction. An example would be our neighboring Asian country, Indonesia, which has one of the largest populations and an expanding gig of workers, particularly in the transportation segment.²⁷ In Indonesia, the gig workers are not considered employees because they do not fulfil the requirements for establishing a proper employment relationship.²⁸ This may be further referred to the transportation sectors in Indonesia, where it has been provided that the relationship between drivers and platform providers is simply a business partnership and not an employment relationship.^{2t} With a population of 272 million, 5t.z2 per cent are working in the informal sectors, far exceeding the formal sectors.³⁰ However, the laws cannot cope with the fast-growing gig economy and fail to address the issues of gig workers’ fundamental rights.

In the United Kingdom, the United Kingdom Department of

Business Energy & Industrial Strategy, based on the discussions with the Institute for Employment Studies, portrays the gig economy

Alex De Ruyter and Riani Rachmawati, “Understanding the Working Conditions of Gig Workers and Decent Work: Evidence from Indonesia’s Online Ojek Riders”, *Sozialpolitik.Ch*, 2/2020, (2020), p. 5.

Treviliana Eka Putri, Paska Darmawan, and Richard Heeks, “What Is Fair? The Experience of Indonesian Gig Workers”, *Digital Geography and Society*, 5 (2023), p. 1.

Riani Rachmawati et.al., “Urban Gig Workers in Indonesia during Covid-1t the Experience of Online “ojek” Drivers”, *Work Organisation, Labour and Globalisation*, 15.1 (2021), p. 33.

Nabiyla Risfa Izzati and Mas Muhammad Gibran Sesunan, “Misclassified Partnership’ and the Impact of Legal Loophole on Workers”, *Bestuur*, 10.1 (2022), p. 5t.

as an industry that involves the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis. The essential keywords in this definition would be using digital platforms and remuneration based on the task executed. In the Supreme Court case of *UberBV v Aslam* [2021] UKSC5, it was decided that the Uber drivers are indeed workers of Uber based on the high degree of control and regulation imposed by Uber on them.³¹ They are entitled to a few rights, including minimum wage, and paid annual leave.

However, the case does not generalise the decision to all gig workers. For instance, in the case of *The Independent Workers Union of Great Britain v The Central Arbitration Committee* [2023] UKSC 43, the plaintiff fought for Deliveroo riders to be recognised as workers and to have the right to form a union and to bargain collectively in terms of better pay and working conditions. However, the Supreme Court held that they are independent contractors since they have a right to appoint a substitute to execute their tasks if they are unable or do not want to do so.

The amount of gig workers in India is huge due to the country’s population.³² Amid the COVID-1t pandemic, India legislated the Code of Social Security 2020 to extend social security benefits to all working forces, whether in the organized or unorganized sectors. In India, a gig economy worker performs work or participates in a work arrangement and earns from such activities outside the traditional employer-employee relationship. However, in different provisions, the Code of Social Security 2020 has defined various other employment sectors, such as home-based workers, platform workers, and self-employed workers. It could be inferred that gig workers are being defined loosely as they do not differ much from the definitions

Dina Maria (Denine) Smit and Grey Stopforth, “An Overview of Categories of Vulnerability among On-Demand Workers in the Gig Economy (Part 2)”, *Law, Democracy and Development*, 27 (2023), p. 152.

Chitra Dey, Rameshwar Shivadas Ture, and Swarnalakshmi Ravi, “Emerging World of Gig Economy: Promises and Challenges in the Indian Context”, *NHRD Network Journal*, 15.1 (2022), p. 73.

of other sectors mentioned above. Although it may be vulnerable to conflict in the future, it could be considered an important step taken by India to have an initial definition of gig workers, which they may revise accordingly.

Even with the Code of Social Security 2020, one state in India, Rajasthan, passed a bill called the Rajasthan Platform-Based Gig Workers (Registration and Welfare) to address the issues concerning the gig workers in Rajasthan. One of the objectives was to establish a board to care for platform-based gig workers’ welfare. The gig workers were defined as persons who perform work or participate in a work arrangement

and earn from such activities outside of the traditional employer-employee relationship and who work on a contract that results in a given rate of payment based on terms and conditions laid down in such contract and includes all piece-rate work. As discussed above, the approaches taken by the three countries are distinct. Indonesia considers the gig workers to be in a partnership relationship with the platform providers; the United Kingdom decides the status of the gig workers based on the level of control the platform providers have against the workers, while India, the state of Rajasthan to be specific, has established an Act to cater the needs and welfare of the gig workers.

Findings and Analysis

Peninsular Malaysia's gig economy faces many difficulties, such as unclear worker status, a lack of social protection, absent formal employment contracts, insufficient price regulation control, sub-par operational services, a gulf between platform owners and the government, and a disjointed institutional framework.³³ It will take extensive work to address these problems by defining terms clearly, strengthening social protections, enacting fair employment practices, controlling pricing, fostering better stakeholder relations, and building a robust institutional framework that protects the rights and

Maheran Makhtar, Zuhairah Ariff Abd Ghadas, and Mahbulul Haque, "Analysis of Workers' Rights in the On-Demand Economy with Special Reference to Vertical Inequality", *IIUM Law Journal*, 30.S1 (2022), p. 144.

welfare of gig workers.

Due to no clear legal framework, gig workers frequently find themselves in a hazardous situation with fewer protections and entitlements than regular employees. In order to address these issues and guarantee the equitable treatment and protection of gig workers in this changing employment environment, a comprehensive understanding of the gig economy and the creation of specialised legal and regulatory measures are necessary.

Undefined Status of Gig Workers

The absence of specific gig economy law contributes to the lack of clarity regarding the employment status of gig workers. A dedicated legislation would define their rights, responsibilities, and legal standing. The respondents were asked about their understanding of gig workers and how these platform workers are defined.

One of the platform operators shared his view of gig workers as such:

'...basically, we feel that gig workers are neither freelancers nor are they employers or employees.' (PO1)

An advocate explained gig workers better, though with some loose contextual details. She has this to offer:

'...gig as we all know it means something which is temporary...so when we talk about someone who is a gig worker, that is a very loose term. It basically means that they are not employees; they are, for all intents and purposes, independent contractors.' (LP2.)

Meanwhile, a policymaker defined gig workers as such:

'Refer to the EA 1t55, it does not cover these gig workers because they are considered non-employees. In the case of an employee, their agreement is said to be a contract of service. But for this gig worker, it is more of a contract for services. This means that they work for a specific purpose only, and they contract with specific service providers such as Grab, Food panda, Lalamove, and so on.' (PM1)

Absence of Social Protection

Without a specialised legal framework, gig workers could not be

entitled to the same social protections as regular employees. A gig economy bill might require and govern these kinds of safeguards. Concerns over employment security, access to social safeguards, and the possibility of exploitation are raised by gig work.

An advocate vocally stressed legislation needs for gig workers, especially in social protection. He further argued:

‘...need to do something...should legislate it straight away...for this special category, some minimum EPF (employees provident fund) contributions.’ (LP1)

One of the platform operators voiced out his perspective as such:

‘...SOCSO (Social Security Organization) is good...but its implementation...the government said we cannot involve the company because it was not governed under the EA 1t55.’ (RA1)

While a policymaker from the Ministry of Human Resources sternly proposed:

‘We propose that these gig workers must mandatorily contribute and not make it as an option. Now, this is an option.’ (PM1)

Supporting the proposal made above, a Riders’ Association representative vocalised his stance:

‘...Ok, let me add on social security... Act 800 EIS is not even for the gig economy...SOCSO only covers job disaster schemes...so there is a need for shared responsibility.’ (RA1)

He further added:

‘...we want the current Act to be improved or even better than the existing Act 4 of SOCSO...not only for disaster protection during work...the proposed contribution option should be made progressive and flexible, in line with the DNA of gig workers.’ (RA1)

Lack of Price Regulatory Control

Legislation specific to the gig economy may result in a lack of regulation over pricing mechanisms. A dedicated Act could address this by setting guidelines for fair compensation and pricing structures.

One of the platform riders raised the issue of standard price

control by saying:

‘...there must be a floor price, for example, the first 5KM = RM7.00.’

(PD1)

The Rider’s Association representative firmly expressed his concerns as such:

‘It’s only now that The Land Public Transport Agency (APAD) publicly wants to control, monitor the rider’s income so that there is no oppression. The current issue is the ‘control’ statement, but what is the implementation? For me, the first implementation is the setting of a new floor price plan that can control the welfare of the rider’s income so that there is no oppression from the companies. When there is a floor

price plan, it is a guideline to the government so that there is no further reduction in the wage rate and there are no issues of strike like before.’ (RA1)

On the other hand, another Rider’s Association representative voiced his frustration with policymaking where the government failed to include the stakeholders. The situation has caused further predicaments on price regulatory control:

‘Another problem is when the government makes a policy or Act, they do not involve us and do not involve stakeholders. It is just between an agency and a company. Same goes with e-hailing. They would like to release the Act but there is no negotiation with the stakeholders. So, when there is no such thing, the government just listens to the company. The Act that produced seems to be biased towards the company.’ (RA2)

Poor Operational Services

Gig economy legislation could mandate platforms to provide certain operational services and support to gig workers, ensuring a fair and safe working environment.

One of the concerns raised by the Rider’s Association representative was to have a standard digital map reference for riders as a guideline:

‘One of them is that the company has to update the digital map according to Waze or Google Maps as its guideline, then we can work better and stabilised our income.’ (RA1)

The rider was affected by the Key Performance Index (KPI) like a standard worker on which his wages were dependent; this is an-

other major concern raised:

‘KPI... always changes... changes often. Sometimes, every two months, the company changes. First, one of the criteria is called acceptance rate (order acceptance rate). Let’s say we don’t accept an order; it will affect our rating for the acceptance rate earlier. That’s what happens during rainy days; that’s a problem for us.’ (RA2)

Further supporting the comments:

‘.....Technically, our rating will be affected with or without orders... For example, in case of an accident, if we request for a break, next thing we know, our KPIs will fall because we ask for a break.’ (RA2)

Missing Link Between Platform Providers and Government

The absence of a clear legal framework can exacerbate the current disconnect between platform owners and government agencies. A gig economy law might close this gap by outlining both parties’ regulatory obligations and responsibilities.

‘The government has to take responsibility by making a Blueprint for the gig economy... As long as there is no blueprint or a new Gig Act, this thing will not end.’ (RA2)

Responding to the above argument, a policymaker from the Ministry of Human Resources offered his insight as such:

‘The Ministry of Human Resources has prepared a special guideline for p-hailing... but for E-hailing, there is none because they do not want to be governed.’ (PM1)

Piecemeal Institutional Framework

The absence of a dedicated law may result in an inadequate institutional framework. A comprehensive gig economy law would establish legal and regulatory infrastructure to address gig workers' unique challenges.

One of the proponents vocalised his caution in such a manner:

‘...The current acts are too old and no longer practical for the current work environment.’ (RA1)

Creating a new Act aligned with the sentiments expressed by

the Rider's Association representative poses a challenging encounter, as emphasised by a policymaker:

‘...To have a new Act means you need to include economic sharing. However, to formulate this Act is going to be very challenging.’ (PM1)

In conclusion, the absence of dedicated gig economy legislation has led to ambiguity regarding the employment status of gig workers, prompting varying perspectives from platform operators, advocates, and policymakers.³⁴ The lack of social protection measures and price regulatory control further compounds gig workers' challenges, as highlighted by stakeholders in the field.

The call for legislative action is pronounced, especially in social protection. Advocates and Rider's Association representatives emphasise the need for legislation that mandates contributions and ensures fair treatment for gig workers. The challenges in operational services, such as the absence of standard guidelines for digital maps and the fluctuating nature of KPI criteria, underscore the need for comprehensive gig economy regulation to ensure a fair and stable working environment.

A thoughtful and comprehensive legislative approach is necessary to solve these problems. To design legislation that is both protective and flexible enough to accommodate the ever-changing gig economy, policymakers must consider the opinions of all relevant parties, including platform operators and gig workers. In addition to being required by law, creating a gig economy law is an essential first step toward guaranteeing the rights, welfare, and equitable treatment of gig workers in the rapidly changing workplace.

Law Enforcement and Comprehensive Governance

Enforcing and governing the proposed gig economy law is paramount to address the urgent need for legislative action. Advocates and Rider's Association representatives stress the importance of regulations that mandate contributions for social protection and guaran-

Łucja Kobrań-Gąsiorowska, “The Legal Status of Gig Workers”, *Kwartalnik Prawa Międzynarodowego*, II.II (2023), p. 14.

tee equitable treatment for gig workers. Establishing and enforcing such legislation provides a legal obligation and a pivotal measure to safeguard the well-being, rights, and fair treatment of gig workers in today's evolving work environment.³⁵ According to the ILO Global Commission on the Future of Work, *Work for a Brighter Future 201t*, regardless of employment status, including gig workers, the acknowledgement of core labour standards emphasised safety and health issues standards and wages and hours.

One of the main issues facing the gig economy ecosystem is the absence of specific legislation to regulate the ecosystem among the gig workers, the platform owner, and the customer. This situation is in tandem with the statement by the rider association: ‘The acts are too old and no longer practical for the current work environment.’ (RA1). The current Act only covers the standard worker, not gig workers. There is still no specific Act or institutional framework that governs the ecosystem at the government level, and they are piecemeal.

The situation worsened when there was no definition of gig economy worker. They are not considered workers; thus, they have no social protection. The current amendment to section 101c of the EA 1t55 poses many more challenges to its interpretation as it will be based on the presumption of the work, which requires a higher degree of proof to show that they are under the EA 1t55. The social protection available is voluntary, not compulsory, which to them is burdensome. One of the riders affirmed that he did not subscribe to the safety due to ‘...high commitment, my wife is sick, and my kids are still small and uncertain income’ (PD1). In the worst-case scenario, the government’s lack of intervention had loosened the platform owner’s grip; no single regulation governed their modus operandi, which was inadvertently open to discrimination and un- regulated mechanisms.

Mohd Shahril Nizam Md Radzi et.al., “Protecting Gig Workers” Interests in Malaysia Through Registered Association Under Societies Act 1tzz”, *IIUM Law Journal*, 30.S1 (2022), p. 178.

Clear Rules and Standards

The challenges in operational services, including the absence of clear guidelines for digital maps and the unpredictable nature of KPI criteria, emphasise the critical necessity for robust gig economy legislation. Such legislation should address these operational hurdles and establish rules and standards for gig workers. This comprehensive approach is vital to ensure a fair and stable working environment. Furthermore, the law should encompass provisions for price regulatory control, offering a structured framework for fair compensation and pricing mechanisms. In synthesising these elements, a well-crafted gig economy law becomes the cornerstone for providing clarity, stability, and equitable conditions for gig workers, fostering a more sustainable and just gig economy.

As the Malaysian Reserve (TMR) reported in January 2024, the government and technology partners with aligned interests need to collaborate in safeguarding the welfare of gig workers in the expanding digital economy. This necessitates innovation, policy adaptations, and a strong partnership between the public and private sectors to explore lasting solutions, including social protection, financial accessibility, and security. A Ministry of Human Resources representative highlighted that government regulations are needed to balance the gig economy and its governance. However, being too strict with rules and standards might push gig workers further away from the formal economy, as he mentioned, ‘...we need to strike a balance. As the government, we issue guidelines to guide service providers in understanding the way forward. However, if the regulations are too strict, there is a risk that they might evade compliance...’ (PM1).

Concluding Remarks

From the analysis and discussion above, there is a need for the Malaysian government to enhance and strengthen its institutional capacity and capability in managing the issues and challenges to the gig economy worker, especially those in transportation. The absence of a specific regulatory framework for gig workers in Malaysia has critically impacted the welfare of this informal economy sector.

Amending the existing interpretation of employees in the relevant statutes is practically difficult to achieve. Therefore, instead of trying to fit the gig workers into the definition of employees, the government can consider establishing or introducing a new category of workers: independent employees. It is an intermediary class between employees and independent workers. By doing this, the laws should focus on controlling the power of the platform provider towards the workers. Dependent workers should not be as flexible and autonomous as independent workers, yet they are still not subject to the same level as employees. Another recommendation would be to constitute an agreement between the platform provider and gig workers. Contract laws may govern the agreement. It may be good to establish agreeable between the two parties. For example, the agreement may provide some rights and protections for gig workers, but they will be compensated by the company having some control over them. It is quite challenging to initiate legislative reforms, but if it is well prepared, it will ease critical issues in gig economy.

A practical solution to bridge the gap between the government

and gig economy service providers is the formation of a collaborative task force. This task force should consist of representatives from the government, gig worker associations, platform owners, and other relevant stakeholders. The primary objective would be to collectively draft and refine regulations that address the unique needs and challenges of gig workers while considering the operational concerns of platform owners. Regular meetings and open communication channels would enable the continuous adaptation of regulations to the evolving dynamics of the gig economy. This collaborative approach ensures that all parties have a voice in the regulatory framework, promoting a sense of ownership and compliance within the gig economy ecosystem. The current policy is insufficient; the government must mandate it as legislation. In this legislation, the definition of the gig economy is crucial and determines its rights and obligations as their source of power. It is recommended to have a specific department of gig economy for transportation under the existing ministry is sufficient to complete the gig economy ecosystem.

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