

Legal Protection for Online Transportation Drivers: An Approach to Gender Inclusiveness in Indonesia

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Abstract: In line with the employment numbers the online transportation industries have created, many problems are still related to its workers. Legal protection is needed to regulate this industry for promoting gender inclusiveness. By using the sociology of law concept and gender theory, the objective of this research is to have a comprehensive understanding of the reason for the urgency of legal protection in the scope of the online transportation industry and how it can be correlated with promoting gender-inclusiveness implementation. This article used the juridical-empirical research method. This research used a statutory approach using primary data from interviews, ministries, and departments in Indonesia and secondary data from scientific journals and books. The research found that legal protection can be the social engineering for changing societies' mindsets and behavior toward the drivers of the online transportation industry. Also, the law is considered social control by policy-makers to implement gender-inclusiveness in Indonesia. This study shows that legal regulations designed as social engineering and social control can transform the gig economy ecosystem into a safer, fairer, and gender-inclusive workspace for female drivers.

Keywords: gender-inclusiveness; gender theory; legal protection; online transportation industry; sociology of law

Abstrak: Sejalan dengan jumlah lapangan kerja yang diciptakan oleh industri transportasi online, masih banyak permasalahan yang berkaitan dengan pekerjaannya. Perlindungan hukum diperlukan untuk mengatur industri ini guna mendorong inklusivitas gender. Dengan menggunakan konsep sosiologi hukum dan teori gender, penelitian ini bertujuan untuk memahami alasan pentingnya perlindungan hukum dalam lingkup industri transportasi online dan bagaimana korelasinya dengan mendorong penerapan inklusi gender. Artikel ini menggunakan metode penelitian yuridis-empiris. Penelitian ini menggunakan *statutory approach* dengan menggunakan data primer yang diperoleh dari wawancara, data kementerian, departemen Republik Indonesia, data sekunder dari jurnal ilmiah dan buku. Penelitian ini menemukan bahwa perlindungan hukum dapat menjadi rekayasa sosial untuk mengubah pola pikir dan perilaku masyarakat terhadap para driver di industri transportasi online. Selain itu, undang-undang juga dianggap sebagai kontrol sosial oleh para pengambil kebijakan untuk menerapkan inklusivitas gender di Indonesia. Penelitian ini menunjukkan bahwa regulasi hukum yang dirancang sebagai rekayasa sosial dan kontrol sosial dapat mentransformasi ekosistem *gig economy* menjadi ruang kerja yang

lebih aman, adil, dan inklusif gender bagi pengemudi perempuan.

Kata Kunci: inklusivitas gender; teori gender; perlindungan hukum; industri transportasi online; sosiologi hukum;

A. Introduction

Since early 2015, millions of workers in Indonesia's growing app-based transportation business have been employed under precarious conditions. The country's digital economy is expanding rapidly, driven by its large market. In 2018, Indonesia had 1807 active startups, making it the largest among ASEAN members and the sixth largest globally.¹ Indonesia has attracted numerous emerging technology firms that have strategically targeted the country's expansive market, considering the significant presence of millennials, who comprise a substantial chunk of Indonesia's consumer base. According to data, internet users in Indonesia continue to increase yearly, even in 2021, by 11% from 2020, from 175.4 to 202.6 million.² Compared with Indonesian people, the internet penetration rate prediction will stand at almost 80% of the total population in 2022.³ The vast digital market has become a haven for online industry players to fulfil market demands.

One online industry that has grown massively in the last five years is an industry engaged in the gig economy that applies the sharing economy concept.⁴ That concept is a business that integrates several components, such as lodging, mobility, commodities, skills, clothing, food, knowledge and employment, medical care, legal, insurance, money, and services, onto a single

¹ Sri Adiningsih et al., *Transformasi Ekonomi Berbasis Digital di Indonesia: Lahirnya Tren Baru Teknologi, Bisnis, Ekonomi, dan Kebijakan di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2019), 58–114.

² Pratiwi Agustini, "Warganet Meningkat, Indonesia Perlu Tingkatkan Nilai Budaya di Internet," *Ditjen Aplikasi Informatika*, September 12, 2021, <https://aptika.kominfo.go.id/2021/09/warganet-meningkat-indonesia-perlu-tingkatkan-nilai-budaya-di-internet/>.

³ Komdigi RI, "Dirjen PPI: Survei Penetrasi Pengguna Internet di Indonesia Bagian Penting dari Transformasi Digital," *komdigi.go.id*, November 10, 2020, <https://www.komdigi.go.id/berita/berita-kominfo/detail/dirjen-ppi-survei-penetrasi-pengguna-internet-di-indonesia-bagian-penting-dari-transformasi-digital>.

⁴ Muhammad Umar, Yan Xu, and Sultan Sikandar Mirza, "The Impact of COVID-19 on Gig Economy," *Economic Research-Ekonomska Istraživanja* 34, no. 1 (2021): 2284–96, <https://doi.org/10.1080/1331677X.2020.1862688>.

platform to provide accessibility for a wider community.⁵ Companies such as PT Gojek Indonesia, Grab Holdings Inc., Taximaxim, and Shopee Pte. Ltd. use the sharing economy business framework in the online transportation sector. The development of PT Gojek Indonesia and Grab Holdings Inc. are extraordinary and have been included in the Decacorn company startup category with an extensive market reach in Indonesia.⁶ Furthermore, the Demographic Institute of Universitas Indonesia stated that the economic contribution of PT Gojek Indonesia's digital ecosystem is 1.6% of Indonesia's GDP, or around Rp.249 trillion (US\$ 16 billion) in 2021.⁷ In line, an online transportation drivers' association in Indonesia called *Gabungan Aksi Roda Dua* (GARDA) stated that in 2020, there were four million drivers in Indonesia.⁸ According to Budi Setiyadi, Director General of Land Transportation, online transportation driving is a noble profession.

This employment number is indeed a positive thing because an online transportation industry can at least reduce the unemployment rate in people of productive age in Indonesia.⁹ Also, it can increase the number of females working in online transportation companies.¹⁰ While online transportation is generally regarded as advantageous for the community's well-being, it also presents new challenges for the populace and the Indonesian government. Significantly, under the context of the uncertainties surrounding the professional relationship between the driver and the company. Moreover, the

⁵ Steven Kane Curtis and Oksana Mont, "Sharing Economy Business Models for Sustainability," *Journal of Cleaner Production* 266 (2020): 121519, <https://doi.org/10.1016/j.jclepro.2020.121519>.

⁶ Reska K. Nistanto and Reza Wahyudi, "Go-Jek Jadi Startup 'Decacorn' Pertama Indonesia," *Tekno.Kompas.Com*, April 5, 2019, <https://tekno.kompas.com/read/2019/04/05/09371537/gojek-jadi-startup-decacorn-pertama-indonesia>.

⁷ Paksi Walandouw and Alfindra Primaldhi, "Gojek Ecosystem's Contribution to Support National Economic Recovery During the 2020-2021 Pandemic" (Depok, 2021), <https://ldfebui.org/eng/research/selected-researches/gojek-ecosystems-contribution-to-support-national-economic-recovery-during-the-2020-2021-pandemic/>.

⁸ Nur Damayanti, "Strategi Bertahan Pengemudi Ojol di Masa Pandemi COVID-19 di Kota Makassar," *Emik 4*, no. 1 (2021): 70–83, <https://doi.org/10.46918/emikv4i1.853>.

⁹ Suhartono Winoto, "Effect of Online Transportation on Open Unemployment and Employment Opportunities," in *Proceedings of the Annual International Conference of Business and Public Administration (AICoBPA 2018)*, vol. 93 (Paris: Atlantis Press, 2019), 229–33, <https://doi.org/10.2991/aicobpa-18.2019.52>.

¹⁰ Nadhif Fadhlan Musyaffa et al., "How the Company that Develops Innovation and Digital Technology Encourages the Gender Equality in Indonesia: ShopeeFood as a Case Study," *International Journal of Multicultural and Multireligious Understanding* 10, no. 1 (2023): 1–5, <https://ijmmu.com/index.php/ijmmu/article/view/4286>.

sexual harassment risk in the workplace towards women online transportation drivers.

These problems cause women to be reluctant to work in the online transportation industry. So, the gender disparity between male and female drivers regarding the number of drivers is enormous, especially in Indonesia's cities.¹¹ So, this study seeks to answer two problem formulations: 1) Why the legal protection for online transportation drivers is essential? Moreover, 2) How can legal protection for online transportation drivers promote gender-inclusiveness in the scope of workers in Indonesia?

This research can be analyzed from the perspective of sociology of law and gender theory. The sociology of law is a subject that discusses how the law can change the order of society, well known as social engineering.¹² Laws can change the fabric of society,¹³ from the lack of women's participation in the workplace to gender equality within the realm of the online transportation sector. With the existence of various legal products that protect the rights and obligations as well as welfare for online drivers, especially women drivers, it will avoid exploitation as well as be protected from all acts of gender-based violence. Thus, the gender disparity between men and women decreases along with the sense of security created by legal regulations that align with gender justice.

The issue of protection for online transportation drivers still needs further study. The author finds that there have been several articles discussing this case. First, the discussion regarding the classification of sharing economy workers as either contracted workers or employees is explained using the formal economic model.¹⁴ This classification limits the rights and powers of companies and workers not to harm both parties. According to Alferys,¹⁵ formal

¹¹ Puteri Nur Anisa Larasati, Tutik Sulistyowati, and Sulismadi Sulismadi, "Gender Inequality against Female Online Ojek Driver (Case Study on Grab Queen Community in Malang City)," *Jurnal Perempuan dan Anak* 4, no. 2 (2021): 86–103, <https://doi.org/10.22219/jpa.v4i2.19166>.

¹² Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-pengalaman di Indonesia* (Yogyakarta: Genta Publishing, 2009), 111–12.

¹³ Soesi Idayanti, *Sosiologi Hukum* (Bantul: Penerbit Tanah Air Beta, 2020), 73–77.

¹⁴ Andrei Hagiú and Julian Wright, "The Status of Workers and Platforms in the Sharing Economy," *Journal of Economics & Management Strategy* 28, no. 1 (2019): 97–108, <https://doi.org/10.1111/jems.12299>.

¹⁵ Laura Alferys, Francie Lund, and Rachel Moussié, "Approaches to Social Protection for Informal Workers: Aligning Productivist and Human Rights-based Approaches," *International Social Security Review* 70, no. 4 (2017): 67–85, <https://doi.org/10.1111/issr.12153>.

workers are low-income and disadvantaged. Therefore, using a productivist approach, he tries to provide human rights protection to workers by providing social protection.

Then, based on Snider,¹⁶ the author explained, using a neoliberal capitalist approach, that the losses created by the sharing economy system are a form of exploitation that has reduced the quality of life for millions of people. Also, Todoli-Signes,¹⁷ explained that technology in this sharing economy system is a new form of work that creates legal uncertainty for its workers. This system poses a new challenge to traditional labor laws and standards.

According to Stewart and Stanford,¹⁸ policy-makers should enhance and fortify the gig working policy structure in five key areas: enforcing current legislation, elucidating and broadening the scope of work, establishing a new classification for self-employed workers, granting rights to workers, and reevaluating the notion of employer. In Indonesia, the protection issue for online transportation drivers is still experiencing a legal vacuum that discusses the partnership pattern between workers and companies. Therefore, Yuniastuti et al.¹⁹ suggest a social protection framework tailored to workers' needs in the digitization age supported by a fair partnership policy model.

This article has the same subject as the previous articles, namely discussing the problems informal workers face in the sharing economy sector and efforts to resolve the injustices they face. However, due to the lack of articles discussing the relationship between informal workers, the sharing economy system, and gender inclusivity, this article will focus on legal protection efforts for online transportation drivers, especially female drivers, to create gender inclusiveness with case studies specified in Indonesia.

¹⁶ Laureen Snider, "Enabling Exploitation: Law in the Gig Economy," *Critical Criminology* 26, no. 4 (2018): 563–77, <https://doi.org/10.1007/s10612-018-9416-9>.

¹⁷ Adrián Todolí-Signes, "The 'Gig Economy': Employee, Self-Employed or the Need for a Special Employment Regulation?," *Transfer: European Review of Labour and Research* 23, no. 2 (2017): 193–205, <https://doi.org/10.1177/1024258917701381>.

¹⁸ Andrew Stewart and Jim Stanford, "Regulating Work in the Gig Economy: What Are the Options?," *The Economic and Labour Relations Review* 28, no. 3 (2017): 420–37, <https://doi.org/10.1177/1035304617722461>.

¹⁹ Endang Yuniastuti, Bambang Shergi Laksmono, and Wahyu Sardjono, "Initiating Social Protection Scheme in the Sharing Economy Industry (Case of Indonesia Go-Jek Rider)," *International Journal of Management* 10, no. 5 (2019): 128–44, <https://doi.org/10.34218/IJM.10.5.2019.012>.

B. Method

The research methodology used in the composition of this paper is juridical-empirical research. The data sources included in this composition consist of primary and secondary data. Primary data was collected through interviews and the acquisition of official data from the ministries and departments of the Republic of Indonesia. Then, a comprehensive examination of scientific publications, legal statutes, scientific literature, and other resources available accomplished the acquisition of secondary data. The methodology applied to this study is a statutory or qualitative approach.

C. Result and Discussion

The development of the online transportation service sector impacts the need to re-evaluate the relationship between workers and companies. This phenomenon requires a new law that can advocate for workers' rights, especially women workers, to create gender inclusiveness. This article will focus on the sociology of law concept and gender theory, which will be used as an analytical instrument. The sociology of law is a subfield of sociology that examines the function of law in society, specifically focusing on the interplay between law and society. It uses empirical and analytical methods to explore the reciprocal impact of social issues and the legal system.²⁰ The sociology of law develops assuming that the legal process occurs in a social system or network called society.²¹

Experts in various definitions describe the sociology of law. Hermann Ulrich Kantorowicz described that concept as an effort to investigate social life through a legal perspective, primarily investigating the interrelation between law and other social sectors, including politics, finance, engineering, art, and religion. The object of the sociology of law is the rules of social life in society and their conflict with the norms, which include law. The rules of the community's social life are in the form of economic and social structures of humanity,

²⁰ Kaijus Ervasti, "Sociology of Law as a Multidisciplinary Field of Research," *Scandinavian Studies in Law* 53 (2008): 137–50.

²¹ Abraham Abraham, "How Sociology Perspective Influence Law with a Social Contexts? A Book Review 'Pokok-pokok Sosiologi Hukum', Prof Dr Soerjono Soekanto SH MA, Rajawali Pers, 269 Pages, ISBN 979-421-131-1," *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (2021): 251–56, <https://doi.org/10.15294/ijals.v3i2.34788>.

including habits, domination, ownership, contracts, and inheritance.²² Max Weber explained that the sociology of law is tasked with studying and explaining human behavior from a causal perspective.²³ Human behavior is the domain of investigation for jurisprudence.²⁴ In addition, Schuyt²⁵ added that what is at the center of the study of the sociology of law is how the role of law in society is in overcoming the problem of the distribution of life opportunities, which basically cannot be separated from the class structure in society. The unequal division of life opportunities will lead to inequality and injustice. Therefore, this sociology of law is used to reveal the cause of the imbalance between the expectations of order in society and the order that occurs in reality.²⁶

The sociology of law is relevant to the concept of hegemony coined by Gramsci. Gramsci's thoughts originated from his dream of forming a classless society. Gramsci wanted the workers not to be dominated and exploited by the bourgeoisie. Gramsci said that hegemony is a spontaneous agreement regarding aspects of social life given by the majority of society to the fundamental dominant group. However, these fundamental dominant groups cannot achieve national power and become hegemonic if they only pay attention to their class interests.²⁷ Therefore, the fundamental dominants must also facilitate the demands and interests of the people. This concept of hegemony not only explains the fact of the workers' agreement with the bourgeoisie but also explains the process and mobilization of the creation of this agreement. This concept shows that social class also influences hegemonic control.²⁸

²² Agostino Carrino, "The Sociological Philosophy of Law as an Alternative to Normativism," in *A Treatise of Legal Philosophy and General Jurisprudence* (Dordrecht: Springer Netherlands, 2016), 133–55, https://doi.org/10.1007/978-94-007-1479-3_3.

²³ Sally Ewing, "Formal Justice and the Spirit of Capitalism: Max Weber's Sociology of Law," ed. Alan Sica, *Law & Society Review* 21, no. 3 (1987): 487–512, <https://doi.org/10.2307/3053379>.

²⁴ Nicholas Sergeyevitch Timasheff, "What Is 'Sociology of Law?'," *American Journal of Sociology* 43, no. 2 (1937): 225–35, <https://doi.org/10.1086/217681>.

²⁵ C. J. M. Schuyt, "The Paradox of Welfare and Insurance," *The Geneva Papers on Risk and Insurance - Issues and Practice* 20, no. 4 (1995): 430–38, <https://doi.org/10.1057/gpp.1995.37>.

²⁶ Serlika Arprita, *Sosiologi Hukum* (Jakarta: Kencana, 2021), 51–70.

²⁷ T J Jackson Lears, "The Concept of Cultural Hegemony: Problems and Possibilities," *The American Historical Review* 90, no. 3 (1985): 567–593, <https://doi.org/10.2307/1860957>.

²⁸ Derek Boothman, "The Sources for Gramsci's Concept of Hegemony," *Rethinking Marxism* 20, no. 2 (2008): 201–15, <https://doi.org/10.1080/08935690801916942>.

Hegemony facilitates a socially active view of legal institutions and norms that laws and norms that emerge in society are not only "law in action" as a quick response to social phenomena in the narrow sense but also in the sense of considering these social phenomena as dynamic social processes. The efforts of social forces to fight for hegemony result in social change and legal awareness of the community and affect the content of the law.²⁹

In analyzing legal protection for female drivers in the online transportation industry, it is important to consider gender theory. Gender theory emphasizes that gender differences are not only biological but also social and cultural constructions that often cause inequality between men and women in various aspects of life, including the world of work. According to gender theory, women's positions in society are often more vulnerable due to the patriarchal culture that places men in dominant positions.³⁰ It is reflected in the various additional risks experienced by women in the workplace, such as discrimination, exploitation, and sexual violence.³¹ Therefore, gender-responsive legal protection is very important to ensure that women get equal rights, protection, and opportunities in the world of work, including in the online transportation industry.

The Problems in the Online Transportation Industries

Firstly, the obscurities in the scope of the working relationship between driver and company, as also stated by Halilintarsyah, 2021, pp. 64-74,³² from Indonesia's Business Competition Supervisory Commission (*KPPU*). Initially, the relationship between the company and the online driver should refer to a partnership relationship with an equal position with the managing company.³³

²⁹ Alan Hunt, "Perspectives in the Sociology of Law," *The Sociological Review* 23, no. 1_suppl (1975): 22-44, <https://doi.org/10.1111/j.1467-954X.1975.tb00030.x>

³⁰ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 2006), 9-46.

³¹ Mansour Fakhri, *Analisis Gender & Transformasi Sosial* (Yogyakarta: Insist Press, 2008), 30-33.

³² Oka Halilintarsyah, "Ojek Online, Pekerja Atau Mitra?," *Jurnal Persaingan Usaha* 2 (2021): 64-74, <https://doi.org/10.55869/kppu.v2i.24>.

³³ Biro Komunikasi dan Informasi Publik, "Pemerintah Usulkan Tarif Ojek Online yang Menguntungkan Semua Pihak," Kementerian Perhubungan Republik Indonesia, March 28, 2018, <https://dephub.go.id/post/read/pemerintah-usulkan-tarif-ojek-online-yang-menguntungkan-semua-pihak>

However, the interactions that exist show the existence of a power hierarchy.³⁴ Based on the partnership cooperation of PT Gojek Indonesia, Grab Holdings Inc., Taximaxim, and Shopee Pte. Ltd. is reflected in the size of the bargaining position of the company so that it can regulate the determination of introductory rates and deposits and unilaterally set sanctions.³⁵

Decisions regarding the determination of tariffs, sanctions, bonuses, orders, algorithms, and partnership working mechanisms are decided unilaterally by the company without considering the drivers' voice.³⁶ The impact of this unilateral decision³⁷ made 84.83% of online driver respondents assess that policy changes regarding tariffs, bonuses, discounts, sanctions, and suspension tend to be detrimental to the drivers and benefit platform companies.³⁸ Suspension is a sanction for a violation by deactivating a driver account so it cannot be reused temporarily or permanently.³⁹ This problem is happening in online transportation drivers for passengers and goods delivery.⁴⁰ So, instead of creating freedom for online drivers, partnership relationships give partners or gig workers a super-exploitative working relationship.⁴¹ The company uses the "partner" status to avoid the implemen-

³⁴ Maulandy Rizky Bayu Kencana, "Ada Regulasi, Bagaimana Nasib Pengemudi Ojek Online Sebagai Mitra?," *Liputan6*, January 8, 2019, <https://www.liputan6.com/bisnis/read/3866081/ada-regulasi-bagaimana-nasib-pengemudi-ojek-online-sebagai-mitra>.

³⁵ Editor of VOI, "The Polemic of Lowering Gojek Driver Incentives Like the Iceberg Phenomenon the Problem of Ojol's Partnership Status," *Voice of Indonesia*, June 8, 2021, <https://voi.id/en/bernas/57608>.

³⁶ Wahyu Alfy Lutfihyanto, "Sistem Kemitraan Ojek Online Bermasalah dan Merugikan Ojol, Ini Penjelasan Peneliti," *Portal Sulut*, May 1, 2021, <https://portalsulut.pikiran-rakyat.com/nasional/pr-851853327/sistem-kemitraan-ojek-online-bermasalah-dan-merugikan-ojol-ini-penjelasan-peneliti?page=all>.

³⁷ Kustin Ayuwuragil, "5 Masalah Kesejahteraan yang Dikeluhkan Sopir Ojek 'Online,'" *CNN Indonesia*, April 11, 2018, <https://www.cnnindonesia.com/teknologi/20180410195433-185-289823/5-masalah-kesejahteraan-yang-dikeluhkan-sopir-ojek-online>.

³⁸ Dany Saputra, "Driver Ojol Minta Pemerintah Atasi Masalah Kemitraan hingga Payung Hukum," *Ekonomi Bisnis*, April 15, 2022, <https://ekonomi.bisnis.com/read/20220415/98/1523185/driver-ojol-minta-pemerintah-atasi-masalah-kemitraan-hingga-payung-hukum>.

³⁹ Mahlil Adriaman, "Upaya Hukum terhadap Suspend dalam Perjanjian Kemitraan antara PT. Gojek Indonesia dengan Driver," *Jurnal Hukum Respublica* 20, no. 2 (2021): 1-8, <https://doi.org/10.31849/respublica.v20i2.7227>.

⁴⁰ Alfian Putra Abdi, "Status 'Mitra' Rentan Bermasalah di Balik Mogok Kerja Kurir Shopee," *Tirto.id*, April 14, 2021, <https://tirto.id/status-mitra-rentan-bermasalah-di-balik-mogok-kerja-kurir-shopee-gchB>.

⁴¹ Muhammad Isa Bustomi and Jessi Carina, "Rentetan Masalah yang Picu Amarah Sopir Gocar Hingga Demo di Kantor Gojek, dari Potongan Tarif hingga Mitra Baru," *Kompas.com*, September 13,

tation of the rights of online drivers, such as guaranteed minimum wages, work protection, vacation rights, and decent working hours.⁴²

Although male drivers also experience problems such as unclear employment relationships and low wages, this issue has a more significant impact on female drivers. Based on research by the National Commission on Violence against Women in 2022, 137 cases of sexual harassment were recorded specifically on online transportation platforms, including verbal and physical harassment and threats of stalking.⁴³ In addition, internal data from PT Gojek Indonesia revealed that the rate of order cancellations for female drivers reached 2.7%, almost three times higher than for male drivers, which was less than 1%.⁴⁴ It indicates that gender-based discrimination indirectly occurs when ordering online transportation services.

Furthermore, the author's interviews with several female drivers in Surabaya and Yogyakarta showed that most were worried about carrying out orders at night due to the lack of special protection mechanisms for women. One respondent even stated that she always carries pepper spray because of a previous bad experience. In contrast, others were reluctant to accept orders after 10 pm despite high demand.

From these facts, it can be concluded that although the issues of partnership and minimum wages are general, these problems are much more complex when experienced by female drivers due to the additional dimensions of safety threats and gender discrimination in daily operations.

2022, <https://megapolitan.kompas.com/read/2022/09/13/08524231/rentetan-masalah-yang-picu-amarah-sopir-gocar-hingga-demo-di-kantor-gojek>.

⁴² Arif Novianto, Anindya Dessi Wulansari, and Ari Hernawan, "Riset: Empat Alasan Kemitraan Gojek, Grab, hingga Maxim Merugikan Para Ojol," *The Conversation*, April 30, 2021, <https://theconversation.com/riset-empat-alasan-kemitraan-gojek-grab-hingga-maxim-merugikan-para-ojol-159832>.

⁴³ Komnas Perempuan, "CATAHU 2023: Kekerasan terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan," 2023, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu2023-kekerasan-terhadap-perempuan-di-ranah-publik-dan-negara-minimnya-perlindungan-dan-pemulihan>.

⁴⁴ Satrio Sarwo Trengginas and Ferdinand Waskita Suryacahya, "Driver Ojek Online Perempuan Lebih Sering Kena Cancel Penumpang Ketimbang Pengemudi Laki-laki," *Tribun Jakarta*, November 27, 2018, <https://jakarta.tribunnews.com/2018/11/27/driver-ojek-online-perempuan-lebih-sering-kena-cancel-penumpang-ketimbang-pengemudi-laki-laki>.

Female drivers are also vulnerable to excessive working hours and erratic wages.⁴⁵ The data shows that most women who become online transportation drivers are the backbone of the family because they are single parents and have to meet the needs of their children.⁴⁶ Those hard-working single parents are usually because of the circle of poverty, underage marriage, undereducated, or abandoned by their husbands.⁴⁷ Female drivers, who should be protected from over-exploitation of work, face a harsh reality. Companies control online drivers by implementing control functions used to discipline the drivers, thus making them have to work more disciplined, longer, and harder. Based on PT Gojek Indonesia,⁴⁸ Grab Holdings Inc,⁴⁹ Taximaxim,⁵⁰ and Shopee Pte. Ltd.,⁵¹ work control from the company to the drivers is carried out in three ways: sanctions, consumer assessments, and bonuses. Application companies make consumer judgments in this gig economy as a reference for controlling the drivers. When drivers get a low rating because they send goods wrongly or drive unsafe or unfriendly, they will be penalized.⁵² Problems arise when consumer assessments are placed as fundamental, without reliable evidence, and without considering clarification from the drivers.

⁴⁵ International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (Geneva: International Labour Organization, 2016), 168–99.

⁴⁶ Alif Fadzilatusi Siti Arofah and Yus'afin Taji Alam, "Eksistensi Driver Ojek Online Wanita sebagai Bentuk Kesetaraan Gender," *Jurnal Sosiologi Nusantara* 5, no. 2 (2019): 171–83, <https://doi.org/10.33369/jnsn.5.2.171-183>.

⁴⁷ Ridwan Arifin, Rodyah Rodyah, and Fadhilah Rizky Afriani Putri, "The Legal and Social Aspect for Underage Marriage Women's Education Rights in the Perspective of Human Rights: Contemporary Issues and Problems," *Sawwa: Jurnal Studi Gender* 15, no. 2 (2020): 219–40, <https://doi.org/10.21580/sa.v15i2.5165>.

⁴⁸ PT Gojek Indonesia, "Perjanjian Kemitraan untuk Mitra PT Paket Anak Bangsa," PT Gojek Indonesia, 2023, <https://www.gojek.com/en-id/app/ketentuan-penggunaan-aplikasi-gopartner-untuk-mitra-4w>.

⁴⁹ Grab Holdings Inc, "Syarat dan Ketentuan Umum Penjual," Grab Holdings Inc. Indonesia, 2023, <https://www.grab.com/id/merchant/food/merchant-terms/>.

⁵⁰ Taximaxim, "Kesepakatan Lisensi," Taximaxim Indonesia, n.d., <https://legal.taximaxim.com/license-agreement/?country=ID&intl=id-ID>.

⁵¹ Shopee Pte. Ltd., "Syarat dan Ketentuan Mitra Shopee," Shopee Pte. Ltd. Indonesia, 2020, [https://help.shopee.co.id/portal/3/article/72686-\[FAQ\]-Mitra-Shopee](https://help.shopee.co.id/portal/3/article/72686-[FAQ]-Mitra-Shopee).

⁵² Dea Arum Komala, "Gig Economy Regulation: What's the Future?," *Center for Digital Society*, December 20, 2021, <https://digitalsociety.id/2021/12/20/press-release-gig-economy-regulation-whats-the-future-diffusion-65/6681/>.

The second problem is the sexual harassment risk in the workplace. Women are one of the vulnerable groups, especially in an area where patriarchal influence is still strong,⁵³ and one example is in Indonesia as well. An example is the vulnerability of women to becoming victims of sexual crimes.⁵⁴ Data from BPS states that there is 400,000 sexual harassment that occurred in Indonesia in 2021.⁵⁵ Furthermore, a study carried out in Singapore has classified Indonesia as the second most unsafe place for women.⁵⁶ Women have a higher probability of experiencing sexual harassment compared to men, both in real life and electronically.⁵⁷ This sexual harassment is often experienced by female drivers, both verbally, such as when being asked on a date, and physical violence, such as being touched by passengers on their body parts.⁵⁸

Specifically, sexual harassment against female drivers in the online transportation sector has become a serious problem that has not been appropriately handled. Based on the 2022 annual report of the National Commission on Violence against Women, there were at least 137 cases of sexual harassment that specifically involved ride-hailing or online transportation platforms. The forms of harassment include verbal harassment, unwanted physical contact, threats, and stalking.⁵⁹ In big cities such as Jakarta,

⁵³ Ministry of Women's Affairs of Cambodia, "Rights Vulnerable Groups of Women and Girls Cambodia Gender Assessment," 2014, https://www.undp.org/sites/g/files/zskgke326/files/migration/kh/Neary-Rattanak-4---Vulnerable-Groups-of-Women-and-Girls_Eng.pdf.

⁵⁴ Sarah E. Ullman and Cynthia J. Najdowski, "Vulnerability and Protective Factors for Sexual Assault," in *Violence against Women and Children: Mapping the Terrain*, vol. 1 (Washington: American Psychological Association, 2011), 151–72, <https://doi.org/10.1037/12307-007>.

⁵⁵ Reza Pahlevi, "Jumlah Kasus Pemerkosaan dan Pencabulan Meningkat 31% dalam Lima Tahun Terakhir: Jumlah Kasus Pemerkosaan dan Pencabulan (2016 - 2020)," *databoks.katadata.co.id*, December 15, 2021, <https://databoks.katadata.co.id/demografi/statistik/dc88c8194e0c4e6/jumlah-kasus-pemerkosaan-dan-pencabulan-meningkat-31-dalam-lima-tahun-terakhir>.

⁵⁶ Deutsche Welle, "Indonesia Negara Yang Tidak Aman Bagi Perempuan?," *Deutsche Welle*, March 3, 2019, <https://www.dw.com/id/studi-indonesia-negara-yang-tidak-aman-bagi-perempuan/a-47823351>.

⁵⁷ Nur Alfy Syahriana, Erfaniah Zuhriah, and Ahmad Wahidi, "Legal Protection for Female Victims of Electronic-Based Sexual Violence (EBSV): A Legal System Theory Perspective," *Sawwa: Jurnal Studi Gender* 17, no. 2 (2022): 193–220, <https://doi.org/10.21580/sa.v17i2.13857>.

⁵⁸ Agus Joko Mulyono, "Ojol Wanita Semarang Rentan Korban Pelecehan Seksual," *Tagar*, September 17, 2020, <https://www.tagar.id/ojol-wanita-semarang-rentan-korban-pelecehan-seksual>.

⁵⁹ Komnas Perempuan, "CATAHU 2023: Kekerasan terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan."

Yogyakarta, and Surabaya, interviews with female drivers also showed that sexual harassment does not only occur occasionally but has become a daily risk that they face. Some female drivers even reported feeling worried when they get male passengers at night due to the company's lack of adequate security mechanisms.

All of the above problems are increasingly pressing the position of women to become online transportation industry drivers. Female drivers are faced with difficult choices: becoming online drivers with all the risks of sexual violence, a highly exploitative workload, and obscure work status, or becoming unemployed and unable to support their families. These problems cause women to be reluctant to work in the online transportation industry.

Therefore, there is a massive gap regarding the number of female and male online transportation drivers in Indonesia. That phenomenon is happening all over regions in Indonesia. For example, based on the research by Larasati,⁶⁰ there is only one online transportation driver community in Malang Region, Indonesia, with female members as the majority. That community is called *Grab Queen Community*. That community contains the online transportation driver working for Grab Holdings Inc. Apart from that community, Malang's online transportation driver communities contain men as the majority. There were only 700 female online transportation drivers in Malang in 2019.⁶¹

Also, based on the data from Zakinah,⁶² the comparison number of online transportation drivers between males and females that work for Grab Holdings Inc. and PT Gojek Indonesia in Makassar, Indonesia, is 30 to 1. Align, In Surabaya, Indonesia, the number of female online transportation drivers is less than 250, based on the Social Service of Surabaya City.⁶³ Based on the research

⁶⁰ Nur Anisa Larasati, Sulistyowati, and Sulismadi, "Gender Inequality against Female Online Ojek Driver (Case Study on Grab Queen Community in Malang City)."

⁶¹ Faizal Kurniawan and Siti Fatimah Soenaryo, "Menaksir Kesetaraan Gender dalam Profesi Ojek Online Wanita di Kota Malang," *Jurnal Sosiologi Pendidikan Humanis* 4, no. 2 (2020): 115–24, <https://doi.org/10.17977/um021v4i2p115-124>.

⁶² Zakinah Nurul, "Efisiensi dan Dampak Ojek Online terhadap Kesejahteraan Driver Kota Makassar [Undergraduate Thesis]" (Universitas Islam Negeri Alauddin Makassar, 2019), 32–51.

⁶³ Dadang Kurnia, "Surabaya Latih dan Fasilitas Pengemudi Ojol Perempuan," *Republika*, August 15, 2022, <https://rejogia.republika.co.id/berita/rgni7k291/surabaya-latih-dan-fasilitas-pengemudi-ojol-perempuan?>

by Sari,⁶⁴ one online transportation driver community, *Garuda Bangau Squad* in Pekanbaru, Indonesia, working for PT Gojek Indonesia, contains only one female member out of 42. From the smaller scope, only 11% of female online transportation drivers work for Grab Holdings Inc. and PT Gojek Indonesia in Central Klaten District in Klaten, Indonesia.⁶⁵

Also, the author interviewed *Komunitas Jogja Barat Onbid*, one of the online transportation driver communities in Yogyakarta City, Indonesia. That community is also men-majority. One member of the community stated:

"Our community has 14 members, most of whom work for Grab Holdings Inc., PT Gojek Indonesia, and Shopee Pte. Ltd. Based on gender division, our community has 12 male and two female members. However, I think those female members are not our members anymore as they are not drivers anymore" (interview with member of *Komunitas Jogja Barat On-bid* on January 5, 2023).

Then, the cancellation rate from customers for female online transportation drivers is 2.7%, compared to less than 1% for male drivers, based on the data from PT Gojek Indonesia.⁶⁶ Cancellation from the customers means that when they want to order the transportation service, they cancel the order right after they know that the driver is female.

One of the online transportation providers in Indonesia, Grab Holdings Inc., admits that it has never been selective about gender when recruiting drivers. However, the number of female online transportation drivers at Grab Holdings Inc. Indonesia has only reached approximately 10% of the nearly one million total drivers.⁶⁷ In Indonesia, most men still consider a job as an online transportation driver in great demand.⁶⁸

⁶⁴ I P Sari, "Konsep Diri Pengendara Go-Jek Perempuan." [Undergraduate Thesis] (Universitas Islam Riau, 2019), 32–36.

⁶⁵ Amin Kasanah, "Analisis Kondisi Sosial Ekonomi Pengemudi Ojek Online di Kecamatan Klaten Tengah" [Undergraduate Thesis] (Universitas Muhammadiyah Surakarta, 2018), 6–17.

⁶⁶ Trengginas and Suryachya, "Driver Ojek Online Perempuan Lebih Sering Kena Cancel Penumpang Ketimbang Pengemudi Laki-laki."

⁶⁷ Siti Sarifah Alia and Novina Putri Bestari, "5 Fakta Driver Perempuan Grab, Terakhir Bikin Miris," *Viva.co.id*, April 18, 2018, <https://www.viva.co.id/digital/startup/1027928-5-fakta-driver-perempuan-grab-terakhir-bikin-miris>.

⁶⁸ Dian Ayu Tri Kumala, "Hubungan antara Persaingan Kerja dengan Kepuasan Kerja pada Wanita Ojek Online Motor di Yogyakarta." [Undergraduate Thesis] (Universitas Mercu Buana Yogyakarta, 2020), 15–46.

The Importance of Forming Legal Regulations Regarding Online Transportation Drivers

An all-encompassing solution is required to solve the significant gender inequality in the online transportation industry by making legal regulations that protect workers' rights, especially women workers. First, legal regulations must clear up the relationship between workers or drivers and the company. Based on Dewi,⁶⁹ the relationship between workers and companies as partners, not bosses and workers. Indonesian law has not explicitly regulated the partnership between online drivers and companies.⁷⁰ The partnership relation is only regulated in Law No. 20 of 2008 concerning Small and Medium-Sized Enterprises. Article 1 (13) of Law No. 20 of 2008 explains that the concepts of partnership, such as mutual need, mutual trust, mutual strengthening, and mutual benefit, must be present in contemporary partnership practices.⁷¹ Unfortunately, in practice, the company violates the partnership principle regulated by that law.⁷² This violation happens because of an unequal relationship and gives the companies more bargaining position over their partners, in this case, online drivers.⁷³ Therefore, it is crucial to have a legal regulation that emphasizes the position of online drivers so that the partnership between companies and drivers is equal. In this case, female drivers, a vulnerable group, can be protected from overexploitation due to the unequal position between drivers and companies. Women drivers can still get decent wages without excessive workloads so they can carry out their roles as

⁶⁹ I Gusti Agung Dhian Maharani Swari Dewi, Ida Ayu Putu Widiati, and Ni Made Puspasutari Ujianti, "Hubungan Keperdataan antara Pengemudi dengan Perusahaan Ojek Online," *Analogi Hukum* 1, no. 3 (2019): 324–29.

⁷⁰ Rahandy Rizki Prananda and Zil Aidi, "Tinjauan Yuridis Kedudukan Pengemudi Transportasi Online dalam Perjanjian Kemitraan dengan Perusahaan Penyedia Aplikasi Transportasi Online," *Law, Development and Justice Review* 2, no. 2 (2019): 135–62, <https://doi.org/10.14710/ldjr.v2i2.6139>.

⁷¹ Undang-Undang Republik Indonesia Nomor 20 Tahun 2008 tentang Usaha Mikro, Kecil, dan Menengah.

⁷² Bowo Pribadi, "Ganjar Siap Bantu Driver Ojol Sampaikan Keresahan Kepada Aplikator," *Republika*, April 4, 2022, <https://news.republika.co.id/berita/r9to6x349/ganjar-siap-bantu-driver-ojol-sampaikan-keresahan-kepada-aplikator>.

⁷³ Institute Governance and Public Affairs. Universitas Gadjah Mada, "Kondisi Kerja Ojol dan Sengkarut Hubungan Kemitraan dalam Ekonomi Gig di Indonesia," igpa.map.ugm.ac.id (Yogyakarta, October 1, 2021), <https://igpa.map.ugm.ac.id/2021/10/01/kondisi-kerja-ojol-dan-sengkarut-hubungan-kemitraan-dalam-ekonomi-gig-di-indonesia/>.

single parents and the backbone of the family. The legal rules must contain strict sanctions, both penal and non-penal, for parties who violate the partnership agreement to suppress unilateral actions from the company.

Furthermore, there is a need for legal regulations that regulate the status of these online transportation driver workers. Online drivers were not classified as labor, so online drivers were not to be covered by worker protection as regulated in Law No. 13 of 2013 about Employment, which regulates the rights and obligations of workers.⁷⁴ As a result, the position of female drivers becomes more vulnerable because they do not get any legal certainty in their work, like working hours, health insurance, incentives, and guarantees of a decent wage. Moreover, online transportation drivers' incomes always decrease yearly.⁷⁵ Therefore, legal protection for online transportation drivers, especially women drivers, must be regulated with more specific regulations that contain the rights and obligations of the workers, especially women drivers, as a vulnerable group involved in this gig economy society. The rule of law regarding legal protection for female drivers is more than just a ministerial-level regulation. However, it must be a product of the law so that the power of legal protection is more robust and not easily subject to judicial review in the *Mahkamah Agung* (Supreme Court, the highest hierarchy of Jurisdiction in Indonesia).

The Importance of Forming Legal Regulations Regarding Sexual Harassment for Online Transportation Drivers

Lastly, and one of the most important, especially for female drivers, is protection against sexual harassment. Sexual violence has the potential to cause harm both physically and mentally.⁷⁶ Fortunately, in 2022, the Law No. 12 of 2022 concerning the Crime of Sexual Violence was ratified. Meanwhile, the existence of this Law will become the primary and first specific regulation in tackling the Crime of Sexual Violence, as well as complement the laws that

⁷⁴ Undang-Undang Republik Indonesia Nomor 13 Tahun 2013 tentang Ketenagakerjaan.

⁷⁵ Lenny Septiani, "Driver Sering Demo, Benarkah Bisnis Ojol Seperti Gojek & Grab Gagal?," Katadata, October 13, 2022, <https://katadata.co.id/digital/startup/6348e0237c558/driver-sering-demo-benarkah-bisnis-ojol-seperti-gojek-grab-gagal>.

⁷⁶ Irvanaries Irvanaries and David Tan, "Analytical Approach on the Law Regarding Sexual Violence between Indonesia and the United Kingdom," *Syiah Kuala Law Journal* 5, no. 2 (2021): 183–94, <https://doi.org/10.24815/skjl.v5i2.21482>.

previously regulated the related issue. This Law specifically regulates the types of sexual violence, criminal sanctions, judicial procedures, and victims' recovery.⁷⁷ This Law is a breakthrough for women who have experienced sexual assault in Indonesia. With the existence of a legal product that specifically regulates sexual harassment, female drivers will feel much safer at work and are not afraid to seek justice when they become victims of sexual harassment by passengers. On the other hand, the existence of penal and non-penal sanctions as regulated in this Law can effectively deter instances of sexual harassment against female drivers.⁷⁸

The Impact of Legal Protection towards Online Transportation Drivers for Implementing Gender-Inclusiveness

First, in promoting social engineering.⁷⁹ The legal role is an essential function any society requires, even in times of turmoil and progress. This event aims to acquaint individuals with contemporary legal institutions to alter their perspective and enhance their understanding of gender inclusivity. This function is widely used in developing countries, especially in Indonesia, because it aims to modernize society to create a better standard of living; in this scope, it is implementing gender-inclusiveness. In other words, this sociology of law is a means of reform in society because it has a significant role in changing the mindset that women cannot be or complicated to be online transportation drivers because of many risks that will be faced by women, such as sexual harassment, into a modern mindset, which can promote women to be online transportation drivers because of the safety that they will have.

Second, the law is social control.⁸⁰ This impact means that social action in the scope of behavior⁸¹ and mindset towards women online transportation

⁷⁷ Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

⁷⁸ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

⁷⁹ Sai Abhipsa Gochhayat, "Social Engineering by Roscoe Pound: Issues in Legal and Political Philosophy," *SSRN Electronic Journal*, 2010, <https://doi.org/10.2139/ssrn.1742165>.

⁸⁰ A. Javier Treviño, *The Sociology of Law* (New York: Routledge, 2017), 334–348, <https://doi.org/10.4324/9781315135069>.

⁸¹ Martin Innes, *Understanding Social Control: Deviance, Crime and Social Order* (Maidenhead: Open University Press, 2003), 95–129.

drivers must have legal certainty guaranteed by policy-makers and law enforcers. The law must be implemented so that the inequality and conflicts that arise do not interfere with productivity and public order. This social control function attempts to create a balanced societal situation to create harmony between societal changes and stability. This social control function encompasses the authority to establish and sustain social connections. In other words, this sociology of law is used to maintain order and bring about justice and as a coercive tool to protect women and online transportation drivers from threats or actions that endanger them.⁸²

D. Conclusion

Legal protection for online transportation drivers in Indonesia is not only aimed at reducing the inequality of relations between companies and drivers but also specifically needs to be directed at protecting female drivers who face more complex challenges than male drivers. Based on the findings in this study, female drivers face a higher risk of sexual harassment, gender-based order cancellations, and working conditions that are vulnerable to exploitation due to unclear work protection regulations.

Therefore, specific gender-responsive regulations are urgently needed. These regulations must include an explicit clause on the mechanism for protecting against sexual harassment on online transportation platforms, such as the obligation for companies to provide special security features for women, gender sensitivity training for drivers and customers, and fast and victim-friendly reporting and handling procedures. Additionally, regulations should govern the elimination of gender-based discrimination in the transportation service booking process, including protection mechanisms against discriminatory order cancellations detrimental to female drivers. Furthermore, there must be an affirmation of partnership status that guarantees specific work protections for women, such as limits on maximum working hours at night, flexibility for female drivers who are single parents, and fair and transparent minimum wage provisions.

⁸² Abraham, "How Sociology Perspective Influence Law with a Social Contexts? A Book Review 'Pokok-Pokok Sosiologi Hukum', Prof Dr Soerjono Soekanto SH MA, Rajawali Pers, 269 Pages, ISBN 979-421-131-1."

With this regulation, female drivers will receive optimal protection, which ultimately encourages gender inclusivity and creates a safe, fair, and productive working environment in the online transportation business in Indonesia. The suggestion for the following research is to analyze the importance of legal protection for implementing gender-inclusiveness in the scope of online transportation drivers in Indonesia's neighboring countries, such as Southeast-Asian countries, for comparison study.[s]

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