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Problems of State Authority in Regulating Religious Holiday Bonuses for App-Based Drivers: A Normative Legal Analysis

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ABSTRACT
The expansion of the digital economy has transformed the organization of work, particularly through platform-based transportation and delivery services. In Indonesia, app-based drivers and couriers are generally constructed not as employees, but as partners operating under civil-law agreements with platform companies. This legal construction places them outside the ordinary scope of labour-law protection, including the statutory regime governing Religious Holiday Allowances (Tunjangan Hari Raya Keagamaan/THR) for workers. Nevertheless, growing demands for welfare protection prompted the Minister of Manpower to issue Circular Letter Number M/3/HK.04.00/III/2025 concerning the provision of Religious Holiday Bonuses (Bonus Hari Raya Keagamaan/BHR) for app-based drivers and couriers. This article examines the legal problems arising from state authority in regulating BHR for platform workers. Using normative legal research with statutory and conceptual approaches, this study analyses labour legislation, administrative-law doctrines, partnership law, ministerial circular letters, and scholarship on platform work. The study finds that the Circular Letter reflects a welfare-oriented administrative response, but it also raises serious juridical concerns because it seeks to influence private partnership relations through an instrument that lacks binding normative force. The problem lies not in the protective objective, but in the mismatch between the regulatory aim and the legal instrument used. The article argues that Indonesia requires a specific and rule-based regulatory framework for platform-based labour relations, including minimum social protection, algorithmic accountability, and a sui generis legal status for platform workers.

Keywords: state authority; platform work; app-based drivers; religious holiday bonus; circular letter; partnership; administrative law.

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INTRODUCTION

The development of the digital economy has encouraged the emergence of new business models that rely on flexibility, technological intermediation, and the fragmentation of work into discrete tasks. One of the most visible manifestations of this transformation is the rise of the gig economy, a mode of work in which individuals provide services on demand through digital platforms rather than through conventional employment structures. In this model, companies no longer necessarily organize labour through permanent employment relations, but instead mobilize individuals as independent service providers, partners, or contractors connected to consumers through application-based systems. This transformation has become a central issue in contemporary labour-law scholarship because it challenges the traditional boundaries between employment, self-employment, and commercial partnership (De Stefano, 2016; ILO, 2021).

The gig economy offers certain advantages. It allows firms to adjust labour supply dynamically, reduces fixed labour costs, and enables individuals to determine their own working time and work intensity. However, the same flexibility also creates significant vulnerabilities. Platform workers frequently depend economically on the platform while formally being excluded from the normative protections attached to employment status, including minimum wages, working-time limits, occupational safety standards, social security, severance protection, and holiday benefits. This tension between formal contractual classification and factual economic dependence has become a recurring problem in platform-work regulation across jurisdictions (Prassl & Risak, 2016; Aloisi & De Stefano, 2022).

In Indonesia, the growth of platform-based transportation and delivery services has significantly altered the structure of urban mobility and informal labour. App-based transportation services connect passengers or customers with drivers and couriers through a digital platform that integrates order allocation, fare calculation, performance evaluation, payment, and customer feedback. Although the platform is commonly presented as an intermediary, its practical role is more complex. The platform designs the architecture of work, sets access conditions, determines the algorithmic distribution of orders, establishes incentive mechanisms, and evaluates driver performance through ratings and account-based sanctions. Thus, the platform does not merely connect supply and demand; it also structures the practical conditions under which services are performed.

The legal relationship between platform companies and drivers in Indonesia is generally framed as a partnership relationship rather than an employment relationship. Under this construction, drivers are not treated as workers or employees of the platform company. They are instead regarded as independent partners who use the application to access service requests. This classification has important legal consequences. Because the relationship is framed as a civil partnership, the rights and obligations of the parties are primarily governed by contract law rather than by labour law. As a result, drivers do not automatically enjoy normative rights ordinarily granted to workers under Law Number 13 of 2003 concerning Manpower, as amended by Law Number 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law.

The difficulty arises because the formal label of partnership does not always reflect the substantive position of drivers within the platform economy. Drivers may formally possess autonomy over their working hours, but their income, access to orders, incentives, account status, and service opportunities are strongly shaped by platform rules and algorithmic management. Scholars have therefore warned that platform work often produces a hybrid legal reality: formally independent, but materially dependent; contractually flexible, but technologically controlled; economically entrepreneurial, but socially vulnerable (ILO, 2021; Aloisi & De Stefano, 2022). In the Indonesian context, Izzati (2022) argues that the partnership logic used in online motorcycle-taxi regulation may distort the protective function that law should provide to parties with weaker bargaining power.

This unresolved legal status has created a normative vacuum in Indonesian law. Current labour legislation is still structured around the conventional elements of employment, namely work, wages, and orders. Meanwhile, the concept of partnership is more commonly regulated within the framework of business cooperation, particularly under Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. The concept of partnership in that statute was designed to regulate cooperation among business actors, not to address platform-mediated labour relations involving individuals who depend on daily app-based work for their livelihood. Consequently, the legal framework does not adequately capture the distinct characteristics of platform-based work (Dermawan, 2021; Izzati, 2022).

One concrete manifestation of this regulatory vacuum concerns the demand for Religious Holiday Bonuses. In Indonesian labour law, Religious Holiday Allowance or Tunjangan Hari Raya Keagamaan (THR) constitutes a non-wage income that must be provided by employers to workers or labourers in companies. This obligation is regulated under Minister of Manpower Regulation Number 6 of 2016 concerning Religious Holiday Allowances for Workers/Labourers in Companies. Because app-based drivers are generally not classified as workers, they do not automatically fall within the scope of this THR regime. Nevertheless, the socio-economic position of drivers has generated demands for similar welfare protection, especially during religious holiday periods when household expenditure commonly increases.

In response to these demands, the Minister of Manpower issued Circular Letter Number M/3/HK.04.00/III/2025 concerning the provision of Religious Holiday Bonuses for 2025 for drivers and couriers in app-based transportation services. The instrument is politically significant because it represents the state's attempt to respond to the vulnerability of platform workers. At the same time, it is legally problematic because the instrument used is a circular letter, while the legal relationship being influenced is formally a private partnership rather than an employment relationship. The core issue is therefore not merely whether drivers deserve welfare protection, but whether the state has an adequate legal basis and appropriate regulatory instrument to impose, recommend, or induce such protection.

Previous research has examined the legal status and protection of gig workers under labour law. Salsabila (2021), for example, analysed the position of gig-economy workers based on Indonesian manpower legislation and argued that special regulation is needed to clarify their legal status and protection. Studies on online transportation have also emphasized the imbalance of rights and obligations in partnership relations (Dermawan, 2021; Izzati, 2022; Annazah et al., 2023). However, the specific problem of state authority in using an administrative circular letter to regulate or influence Religious Holiday Bonuses for platform-based drivers has not been sufficiently addressed. This article therefore asks: to what extent may the state, through the Minister of Manpower, intervene in platform-based partnership relations by issuing a circular letter concerning Religious Holiday Bonuses?

METHOD

This research employs normative legal research. The object of analysis is not empirical behaviour as such, but the legal norms, legal concepts, and doctrinal arguments governing state authority, labour relations, partnership relations, and administrative instruments. The research uses statutory and conceptual approaches. The statutory approach examines relevant legislation and policy instruments, including Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning Job Creation, Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Law Number 30 of 2014 concerning Government Administration, Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, Minister of Manpower Regulation Number 6 of 2016, Minister of Transportation Regulation Number 12 of 2019, and Circular Letter of the Minister of Manpower Number M/3/HK.04.00/III/2025.

The conceptual approach is used to examine the doctrines of authority, legality, discretion, policy rules, employment relationships, partnership, and platform work. The legal materials consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, journal articles, theses, and reports, and tertiary legal materials in the form of legal dictionaries and supporting references. The analysis is conducted qualitatively, descriptively, and analytically through deductive reasoning, beginning from general principles of administrative law and labour law and then applying them to the specific problem of BHR regulation for app-based drivers.

RESULTS AND DISCUSSION

3.1 Characteristics of the Legal Relationship Between Platform Companies and App-Based Drivers

The starting point for analysing state authority is the legal character of the relationship between platform companies and drivers. A legal relationship does not arise merely because two parties interact economically; it arises because legal norms recognize certain facts, agreements, or events as generating rights and obligations. In the context of platform-based transportation, the principal question is whether the relationship between the platform and the driver should be qualified as an employment relationship or as a civil-law partnership.

Indonesian labour law recognizes an employment relationship as a relationship between an entrepreneur and a worker/labourer based on an employment agreement that contains the elements of work, wages, and orders. These elements are central because they determine whether a person may claim the normative protections of labour law. If the relationship is qualified as an employment relationship, the employer is bound by statutory obligations concerning wages, working conditions, social protection, and other labour rights. If the relationship is not so qualified, the applicable legal regime shifts toward civil law and contract law.

In platform-based transportation, the companies generally construct drivers as partners. Drivers register through the platform, provide their own vehicles and work equipment, and obtain access to service requests through the application. They are

formally free to activate or deactivate the application, choose their working hours, and determine the intensity of their work. On this basis, platform companies argue that they do not provide direct orders in the same manner as employers in conventional employment relationships.

The payment structure also differs from a wage system. Drivers receive income from completed services, usually through a fare-sharing or commission mechanism, while the platform deducts a certain percentage or service fee. Incentives may be provided when drivers achieve specific targets, but such incentives are conditional, variable, and performance-based. They do not necessarily constitute fixed wages in the labour-law sense. From this formal perspective, the elements of wages and orders are not clearly fulfilled, and the relationship is more easily framed as a partnership than as employment.

However, this formal construction should not end the analysis. Digital platforms exercise a form of control that does not always appear as direct human instruction. Algorithmic systems may determine order allocation, visibility, performance scores, suspension risks, incentive eligibility, and service priority. As a result, drivers may be subject to indirect control even though the platform does not issue conventional orders. Aloisi and De Stefano (2022) describe this phenomenon as part of the broader transformation of work through algorithmic management, in which managerial power is embedded in digital systems rather than expressed only through human supervision.

This creates a conceptual tension. On the one hand, the current Indonesian legal framework tends to place app-based drivers outside the employment relationship because the cumulative elements of work, wages, and orders are not easily established in the traditional sense. On the other hand, the factual dependence of drivers on the platform and the operation of algorithmic control show that the relationship is not entirely equal. The partnership label therefore carries the risk of concealing an asymmetry of bargaining power, information, and control. This concern is consistent with Dermawan's (2021) finding that partnership in app-based transportation may be affected by information asymmetry and incomplete contractual arrangements.

The legal classification of the relationship is further complicated by the limited relevance of the partnership concept in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. That statute conceptualizes partnership as cooperation among business actors in patterns such as subcontracting, franchising, distribution, and other business arrangements. Although this concept is useful in commercial law, it does not fully explain the socio-economic vulnerability of drivers who depend on platform-mediated work for daily income. Therefore, the application of ordinary business-partnership logic to app-based drivers is doctrinally insufficient.

Minister of Transportation Regulation Number 12 of 2019 provides a sectoral regulatory basis concerning the use of motorcycles for public interest, including safety and order in app-based transportation. Nevertheless, the regulation does not create a comprehensive labour-protection framework for drivers. It does not resolve the deeper issue of whether drivers should be classified as employees, partners, dependent contractors, or a distinct legal category. Consequently, the legal relationship remains

largely governed by civil-law agreements and platform terms, while labour-law protections remain uncertain.

Based on these characteristics, the relationship between platform companies and app-based drivers is, under the prevailing positive law, more appropriately classified as a partnership or civil-law relationship rather than a conventional employment relationship. This conclusion is important because it explains why the ordinary THR regime cannot be directly applied to drivers. However, the same conclusion also reveals a regulatory gap: drivers are outside the employment framework, but they are not necessarily autonomous business actors in a substantive sense. The law therefore faces a mismatch between formal legal categories and the lived realities of platform work.

3.2 The Position of Circular Letters in the Indonesian Legal System

The second issue concerns the legal status of circular letters in the Indonesian legal system. Law Number 12 of 2011 concerning the Formation of Laws and Regulations establishes the formal hierarchy of laws and regulations. Article 7 paragraph (1) places the hierarchy in the following order: the 1945 Constitution, decrees of the People's Consultative Assembly, laws or government regulations in lieu of laws, government regulations, presidential regulations, provincial regulations, and regency or municipal regulations. Circular letters are not included in this formal hierarchy.

Article 8 of Law Number 12 of 2011 recognizes the possibility of other regulations issued by certain state institutions or officials, including ministers, provided that such regulations are ordered by higher legislation or established based on authority. This provision is important because not every instrument issued by a minister automatically becomes a generally binding regulation. The decisive issue is whether the instrument contains normative rules, whether it is based on a valid authority, and whether it is intended to bind the public externally.

A circular letter is generally understood as an administrative policy instrument rather than a formal regulation. In administrative-law doctrine, such instruments are often associated with policy rules or beleidregels. Their main function is to provide guidance, interpretation, coordination, or administrative direction within the governmental apparatus or to communicate policy expectations to relevant parties. They are not ordinarily designed to create new rights and obligations for external legal subjects in the same manner as statutes or regulations.

This doctrinal position is crucial for assessing Circular Letter Number M/3/HK.04.00/III/2025. The Circular Letter was issued by the Minister of Manpower to address the provision of BHR for drivers and couriers in app-based transportation services. Its purpose may be viewed as protective and socially responsive. However, its legal form remains a circular letter. Therefore, it cannot be equated with a statute, government regulation, presidential regulation, or ministerial regulation that has a clear normative basis and generally binding force.

The problem becomes sharper when the circular letter is directed toward private platform companies and driver-partners. If a circular letter merely communicates an appeal or policy recommendation, then it lacks coercive normative force. If, however, it is treated in practice as creating an obligation, then it risks functioning as a pseudo-

regulation that affects external private legal relations without passing through the proper law-making mechanism. This condition produces a normative paradox: formally non-binding, yet practically influential.

The paradox arises because a circular letter issued by a minister carries institutional authority and political legitimacy. Platform companies may feel pressured to comply even when no formal sanction is attached. Drivers may also perceive the circular letter as a binding legal command because it comes from a state authority. As a result, the instrument may shape conduct in the same way as a binding rule, but without the procedural safeguards, clarity of legal basis, and accountability mechanisms required for formal regulation.

From the perspective of legal certainty, this is problematic. Legal certainty requires clarity concerning the source of authority, the form of the instrument, the legal subjects addressed, the rights and obligations created, and the consequences of non-compliance. A circular letter that appears to impose or induce external obligations while lacking clear binding force blurs the boundary between administrative guidance and legal norm. This ambiguity affects both platform companies and drivers because each party may hold different expectations regarding the legal effect of the instrument.

3.3 Problems of State Authority in Regulating Religious Holiday Bonuses

The validity of governmental action in administrative law depends on authority. In a state governed by law, governmental bodies and officials may act only within the limits of authority granted by law. Law Number 30 of 2014 concerning Government Administration provides an important framework for this principle by placing government decisions and actions within the requirements of legality, authority, and general principles of good governance. Authority may be obtained through attribution, delegation, or mandate. Without a valid source of authority, a governmental action may be questioned as exceeding legal competence.

The issuance of Circular Letter Number M/3/HK.04.00/III/2025 must therefore be tested against this framework. The Minister of Manpower clearly has authority in the field of manpower affairs. However, the question is whether this authority extends to creating or inducing a holiday-bonus obligation in a legal relationship that is formally classified as partnership rather than employment. The ordinary THR obligation under Minister of Manpower Regulation Number 6 of 2016 applies to workers or labourers in companies. Its normative subject is therefore linked to an employment relationship. App-based drivers, by contrast, are generally placed outside that category.

This mismatch between legal subject and regulatory object is the first problem. If drivers are not legally classified as workers, then the legal basis for imposing an employment-style THR obligation on platform companies becomes weak. The use of the term Bonus Hari Raya Keagamaan rather than Tunjangan Hari Raya Keagamaan appears to acknowledge this limitation. BHR is framed as a bonus or expression of concern from platform companies, not as THR in the strict labour-law sense. Yet, when such a bonus is encouraged by a ministerial circular letter, it may be perceived as a state-imposed obligation.

The second problem concerns the form of the instrument. A circular letter is not an appropriate instrument for creating generally binding external norms. Even if the state has a legitimate interest in protecting platform workers, the use of an instrument with limited legal force may undermine the principle of legality. Protective objectives cannot substitute for proper authority and proper regulatory form. In administrative law, good intentions do not automatically validate an instrument that exceeds its lawful function.

The third problem concerns legal certainty. Platform companies face uncertainty regarding whether BHR is legally mandatory, morally recommended, politically expected, or administratively monitored. Drivers face uncertainty regarding whether they possess a legally enforceable right or merely a policy-based expectation. This ambiguity may produce social conflict because drivers may interpret the circular letter as recognition of entitlement, while companies may interpret it as a non-binding appeal. Such uncertainty is inconsistent with the function of law as a mechanism for predictable allocation of rights and obligations.

The fourth problem concerns accountability. Formal regulations are subject to procedural requirements, including drafting standards, harmonization, publication, and potential judicial review. Circular letters, by contrast, are more flexible administrative instruments. When they are used to regulate external relations, they may avoid the ordinary safeguards of the regulatory process. This creates a risk of administrative overreach, especially where the instrument affects private contractual relations and economic burdens.

Nevertheless, a balanced analysis must recognize the welfare-state argument supporting state intervention. Platform drivers occupy a vulnerable position within the digital economy. Their work contributes directly to the continuity of platform services, but their access to labour protection remains limited. The state cannot ignore this vulnerability merely because the relationship is formally labelled as partnership. The constitutional commitment to social justice and the administrative obligation to protect citizens provide a normative foundation for policy concern.

However, state protection must be pursued through a legally appropriate framework. The welfare-state rationale justifies regulatory reform, but it does not justify bypassing the principle of legality. The proper response is not to rely repeatedly on circular letters, but to develop a specific regulatory framework for platform-based work. Such a framework may recognize a distinct category of platform workers or dependent contractors, granting minimum protections without necessarily assimilating all drivers into conventional employment status.

Comparative regulatory developments show that several jurisdictions have moved beyond a strict binary distinction between employee and independent contractor. The policy challenge is to design a middle or sui generis category that accommodates flexibility while ensuring basic protection. For Indonesia, such protection could include social security participation, occupational safety, transparent account suspension procedures, minimum standards for incentive changes, dispute-resolution mechanisms, collective representation, and algorithmic accountability. These protections would

respond to the factual vulnerability of drivers without forcing all platform work into a conventional employment model.

Accordingly, the fundamental problem is not whether drivers should receive welfare support during religious holidays. The more precise legal problem is whether such support may be regulated through a circular letter issued in the absence of a clear statutory basis for platform-work protection. The answer is that the circular letter may function as a temporary policy appeal, but it is insufficient as a legal basis for creating enforceable rights and obligations. A rule-based regulatory framework is therefore necessary to align social protection with legality, legal certainty, and good governance.

CONCLUSION

This study affirms that, under the prevailing Indonesian legal framework, the relationship between platform companies and app-based drivers is more appropriately classified as a partnership or civil-law relationship than as a conventional employment relationship. This classification is based on the formal absence of cumulative elements of employment, particularly fixed wages and direct orders, although the practical reality of algorithmic management and economic dependence complicates the analysis. The partnership label therefore explains the exclusion of drivers from the ordinary THR regime, but it does not eliminate their vulnerability.

The issuance of Circular Letter Number M/3/HK.04.00/III/2025 reflects the state's attempt to respond to the welfare demands of drivers and couriers in app-based transportation services. Substantively, this response is understandable because platform workers often lack adequate social protection. Juridically, however, the use of a circular letter raises problems because it seeks to influence private partnership relations through an instrument that does not possess the binding force of formal legislation or regulation.

The central issue lies in the mismatch between the policy objective and the legal instrument used. A circular letter may serve as an administrative appeal or policy guidance, but it should not be treated as a legal basis for creating external obligations. If it is practically perceived as binding, it creates pseudo-norms that blur the distinction between legal obligation and administrative recommendation. This condition weakens legal certainty for both platform companies and drivers.

The problem also reveals a broader regulatory vacuum. Indonesian labour law remains largely structured around the binary categories of employment and partnership, while platform work occupies a hybrid position that combines flexibility, dependency, and algorithmic control. The absence of a specific regulatory framework encourages the state to rely on non-legislative instruments, which may provide short-term political responses but cannot establish durable legal protection.

Recommendations

First, Indonesia should formulate a specific regulation governing platform-based work relations. The regulation should define the legal status of platform workers, clarify the rights and obligations of platform companies and drivers, and provide a minimum floor of protection without eliminating the flexibility that characterizes platform work.

Second, the regulation should include substantive protections such as social security participation, occupational safety, transparent criteria for account suspension and termination, fair mechanisms for incentive and commission changes, access to dispute resolution, and protection against arbitrary algorithmic decisions. These elements are necessary because vulnerability in platform work often arises not only from the absence of employment status, but also from asymmetric information and technological control.

Third, the state should limit the use of circular letters to their proper administrative function. Circular letters may be used to provide guidance, coordination, or temporary policy appeals, but they should not be used to create norms with external binding effects in private legal relationships. When the policy objective requires enforceable rights and obligations, the state should use a formal regulatory instrument supported by clear statutory authority.

Fourth, the government should consider a sui generis legal category for platform workers, such as dependent contractors or platform workers, that grants minimum protection while preserving operational flexibility. This approach would avoid the inadequacy of the current binary distinction between employees and partners.

Fifth, policy-making in the digital economy should be conducted through a participatory and evidence-based process involving driver organizations, platform companies, labour-law experts, consumer representatives, and relevant ministries. Such a process would strengthen legitimacy, prevent regulatory uncertainty, and ensure that social protection is pursued through lawful and accountable governance.

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