

Gender and Labour Law: Protecting Women's Rights in the Digital Era in Indonesia and Malaysia

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Abstract

The digital transformation has created both opportunities and challenges for women workers, particularly in the gig economy sector. This study aims to analyze the effectiveness of labor policies in Indonesia and Malaysia in protecting the rights of women workers in the digital era, and to formulate gender-responsive policy recommendations. The research employs a normative and comparative legal method, with content analysis of labor legislation, national policies, and reports from international organizations, using the Feminist Legal Theory, Social Justice Theory, and Digital Labour and Precarity Theory as analytical frameworks. The findings reveal that neither country has developed regulations fully adaptive to the characteristics of digital work. Indonesia remains weak in defining the employment status of gig workers, while Malaysia has introduced the Self-Employment Social Security Act 2017 but with limited sectoral coverage. Gender perspectives are insufficiently integrated, leaving women workers vulnerable to job insecurity, minimal social protection, and a double burden of domestic and professional responsibilities. Legal reform is needed through the redefinition of employment status, expansion of mandatory social protection schemes, and the implementation of gender impact assessments in all digital labor regulations. These findings offer practical contributions for policymakers and enrich comparative scholarship on the protection of women workers in the rapidly evolving digital economy.

Keywords: Labor Law, Women Workers, Gig Economy, Gender Equality, Social Protection.

Abstrak

Transformasi digital telah memunculkan peluang dan tantangan baru bagi pekerja perempuan, khususnya di sektor gig economy. Penelitian ini bertujuan menganalisis efektivitas kebijakan ketenagakerjaan di Indonesia dan Malaysia dalam melindungi hak pekerja perempuan di era digital, serta merumuskan rekomendasi kebijakan yang responsif gender. Metode yang digunakan adalah penelitian hukum normatif dan komparatif dengan analisis content terhadap peraturan perundang-undangan, kebijakan nasional, dan laporan lembaga internasional, menggunakan kerangka Feminist Legal Theory, Social Justice Theory, dan Digital Labour and Precarity Theory. Hasil menunjukkan kedua negara belum memiliki regulasi yang sepenuhnya adaptif terhadap karakteristik kerja digital. Indonesia masih lemah dalam mendefinisikan status pekerja gig, sementara Malaysia telah memperkenalkan Self-Employment Social Security Act 2017 namun dengan cakupan terbatas. Perspektif gender belum terintegrasi secara memadai, sehingga pekerja perempuan tetap menghadapi

ketidakpastian kerja, minimnya perlindungan sosial, dan beban ganda. Reformasi hukum diperlukan melalui redefinisi status kerja, perluasan jaminan sosial wajib, dan penerapan gender impact assessment dalam setiap regulasi ketenagakerjaan digital. Temuan ini memberikan kontribusi praktis bagi pembuat kebijakan dan memperkaya literatur komparatif tentang perlindungan tenaga kerja perempuan di era ekonomi digital yang berkembang pesat.

Kata Kunci: Hukum Ketenagakerjaan, Pekerja Perempuan, Gig Economy, Kesetaraan Gender, Perlindungan Sosial.

Introduction

The digital transformation has revolutionized the global labor market, creating new opportunities while also presenting serious challenges, particularly in relation to the protection of women workers' rights. At the international level, issues of the digital divide and gender inequality in the digital economy have become a primary concern for institutions such as the International Labour Organization (ILO), which reports that women continue to face significant barriers in accessing technology and decent digital employment (International Labour Organization, 2023b). Furthermore, the precarious nature of employment status and the lack of adequate social protection in the gig economy exacerbate the vulnerabilities of women workers worldwide (Wajcman et al., 2020).

At the national level, particularly in developing countries such as Indonesia and Malaysia, these dynamics are further complicated by the interplay between economic growth, structural shifts in labor markets, and wide gaps in social protection policies. Data from Statistics Indonesia (BPS) indicate that the majority of women in the workforce are concentrated in the informal sector, with limited access to social security and legal protection (Agustine, 2025; Badan Pusat Statistik, 2025). In Malaysia, although the digital economy is more advanced, women workers face similar challenges regarding the recognition of employment status and the provision of adequate legal protection (Malaysia Digital Economy Corporation, 2024). These disparities underscore the urgent need to strengthen labor regulations that are both gender-responsive and technologically adaptive.

In an ideal context, labor law should be capable of accommodating technological advancements while ensuring equal and inclusive protection for all workers, particularly women. This includes the regulation of fair working hours, access to social security, protection from discrimination and harassment, and the provision of digital skills training as an empowerment strategy (Organisation for Economic Co-operation and Development,

2024). However, in practice, existing regulations often lag behind the pace of technological change and the emergence of new work patterns. Such regulatory gaps risk widening gender inequality in the labor market and hindering women's optimal contribution to sustainable economic development.

In Indonesia, for example, the rapid growth of the gig economy, exemplified by ridesharing platforms such as Gojek and Grab, has generated up to 2.3 million workers by 2023. Yet, current regulations still fail to provide basic protections such as social security, sick leave, or reasonable working hours (International Labour Organization, 2023c). Studies further indicate that since the initial adoption of the “partnership” model, digital workers have been classified as partners rather than formal employees, leaving them without equivalent protections when facing exploitation or wage reductions (Vallas et al., 2022). This regulatory gap amplifies the risk of gender inequality, as the majority of informal and gig workers are women, thereby constraining their potential contribution to sustainable economic development.

The problem statement of this study is how labor law in Indonesia and Malaysia can adapt to the development of the digital economy to effectively protect the rights of female workers, who often find themselves in vulnerable positions due to flexible and informal working conditions. Legal gaps and weak implementation have become the main factors causing female workers to be insufficiently protected in this digital era. This situation not only impacts the welfare of individual workers but also diminishes the potential contribution of women to macroeconomic growth. Furthermore, regulatory failure to respond to structural changes in the labor market risks reinforcing gender segmentation in job types, ultimately deepening socio-economic inequalities between men and women.

Several studies have highlighted various perspectives related to this issue. First, the normative legal perspective emphasizes the need for revisions and updates in regulations to accommodate digital work and the gig economy (Nurhayati et al., 2024). Second, the socio-economic perspective underscores the impact of digital divides and unequal access to technology, which widen the gender inequality gap (Jurnalperempuan.org, 2024). Third, the feminist perspective asserts that legal protection must consider the dual burden faced by women due to domestic responsibilities and professional work, thus policies should be gender-responsive and contextually grounded (Pratiwi, 2017).

This study presents a distinct novelty through a comparative approach that simultaneously examines the legal and social contexts in Indonesia and Malaysia, two countries facing different challenges and progress in economic digitalization and the protection of female workers. The urgency of this research lies in the pressing need to bridge the regulatory and legal implementation gaps that can support the empowerment of women in the rapidly expanding digital labor sector.

The expected recommendations from this study include concrete policy proposals for regulators to strengthen the protection of female workers, the development of inclusive digital training programs, and the establishment of effective monitoring mechanisms to ensure fair and gender-responsive legal implementation in the digital era. These recommendations are not only reactive to existing challenges but also proactive in building an adaptive framework responsive to technological dynamics and labor market changes. Through this approach, the resulting policies are expected to create a digital work environment that is equitable, sustainable, and integratively empowers female workers.

Theoretical Framework

The analytical framework of this study integrates three main theoretical approaches. First, Feminist Legal Theory is employed to examine how labor law frameworks often overlook the specific experiences and needs of women, particularly in the context of flexible and digital work. This theory emphasizes the importance of gender-responsive policy design that accounts for the double burden faced by women due to simultaneous domestic and professional roles (Albertson Fineman, 2008). Second, Social Justice Theory, especially as formulated by Nancy Fraser, guides the evaluation of the extent to which labor policies fulfill the principles of recognition, redistribution, and representation (Fraser, 2008; Marcelo, 2021). This approach is relevant for measuring equality of access, economic resource distribution, and women's participation in decision-making processes within the digital economy sector.

Lastly, Digital Labour and Precarity Theory is utilized to understand the dynamics of job insecurity, lack of social protection, and income fluctuations within the gig economy, which empirically have a greater impact on female workers (Vallas et al., 2022; Vallas & Schor, 2020; Zietlow, 2020). The integration of these three theories allows for a comprehensive analysis of the legal protection challenges faced by female workers in the

digital era in Indonesia and Malaysia, from legal, socio-economic, and technological dimensions.

Research Method

This study employs normative legal and comparative research methods. The normative legal approach is used to examine legislation, labor policies, and relevant international legal instruments concerning the protection of female workers in the digital era. The analysis is conducted through the examination of legal texts, statutes, and other official documents regulating labor in Indonesia and Malaysia. This research also compares the implementation and effectiveness of regulations in both countries to identify best practices as well as obstacles in protecting female workers in the digital economy sector.

The comparative approach is chosen to identify similarities and differences in policies protecting the rights of female workers in the two countries. This method enables the researcher to discover best practices that can be adopted cross-nationally while also revealing regulatory weaknesses that may perpetuate gender inequality in the digital labor sector (Cameron et al., 2023). The comparative analysis covers the substance of laws, implementation mechanisms, and supervisory effectiveness in each country. Additionally, this approach helps to better understand the social and cultural contexts influencing the application of policies protecting female workers in Indonesia and Malaysia more comprehensively.

The data sources consist of primary and secondary data. Primary data are obtained from literature studies on national regulations such as the Labor Law, the Migrant Worker Protection Law, and policies related to the gig economy in Indonesia and Malaysia. Secondary data come from reports by international organizations such as the International Labour Organization (ILO), academic journal articles, books, and official publications from government agencies related to labor and gender (Sorgner & Krieger-Boden, 2017). Secondary data also include relevant previous research findings and comparative policy analyses that provide a broader context regarding the challenges and opportunities for protecting female workers in the digital sectors of both countries.

The data analysis technique is qualitative content analysis, referring to the theoretical frameworks of Feminist Legal Theory, Social Justice Theory, and Digital Labour and Precarity Theory. This analysis aims to evaluate the extent to which existing regulations

accommodate the needs of female workers, reduce gender gaps, and protect them from job vulnerabilities in the digital era. The data analysis process also involves identifying key themes and emerging patterns from legal documents and policies to enhance understanding of the dynamics of protecting female workers' rights in the digital economy sector.

Results and Discussion

Legal Framework of Labor Law and Challenges in the Digital Era

The labor law frameworks in Indonesia and Malaysia are both built on the foundation of worker protection that emphasizes fundamental rights such as minimum wage, working hours, and occupational safety. However, the rise of the gig economy and digital-based work models has created new challenges that are not fully accommodated within existing regulations. In Indonesia, worker protection is governed by Law Number 13 of 2003 on Manpower and Law Number 11 of 2020 on Job Creation, along with their implementing regulations (Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003; Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, 2020). Meanwhile, Malaysia relies on the Employment Act 1955, which was amended in 2022 to include provisions on flexible working hours and paternity leave, but has yet to comprehensively regulate digital or gig workers (Employment (Amendment) Act 2022, 2022).

Both countries face legal definitional issues regarding the status of workers in the gig economy sector. In Indonesia, platform workers such as rideshare drivers are categorized as “partners,” thus they are not entitled to formal social protection such as the BPJS Employment or BPJS Health insurance schemes (International Labour Organization, 2023a). In Malaysia, although some gig workers are covered under social insurance schemes through the Self-Employment Social Security Act 2017, their status remains outside the main labor protection framework (PERKESO, 2017). This regulatory gap potentially exacerbates vulnerabilities and uncertainties regarding protection for female workers in both countries. Policy adjustments that are responsive to the characteristics of digital work are urgently needed to ensure inclusive and gender-equitable protection. These definitional ambiguities also hinder effective enforcement of labor rights and limit access to social benefits for gig workers, particularly affecting women who are disproportionately represented in precarious digital jobs. The following table summarizes the relevant labor regulation differences between the two countries:

Table 1. Labor Regulations in Indonesia and Malaysia

Aspect	Indonesia	Malaysia
Main Legislation	Law No. 13/2003 on Manpower; Law No. 11/2020 on Job Creation; Government Regulation No. 35/2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours	Employment Act 1955 (amended 2022)
Gig Worker Status	Categorized as “partners,” not covered by formal worker protection	Regulated under the Self-Employment Social Security Act 2017, but outside the Employment Act
Social Protection	BPJS Employment and BPJS Health (optional for gig workers)	Self-Employment Social Security Scheme (mandatory for certain sectors such as e-hailing)
Flexible Working Hours	Not specifically regulated for the gig economy	Regulated under the 2022 amendment to the Employment Act
Leave and Family Rights	3 months maternity leave; paternity leave not regulated for the private sector	98 days maternity leave; 7 days paternity leave (2022 amendment)
Digital Labour Regulation	No specific regulation	No specific regulation

Source: Processed from the Indonesian Manpower Law and the Malaysian Employment Act.

One of the main challenges in labor regulation in the digital era is the delayed adaptation of laws to new work models. Existing regulations remain oriented toward conventional employment relationships, leaving workers in the digital sector often situated in a legal "grey area." This situation results in weak access to social security, income uncertainty, and the absence of adequate dispute resolution mechanisms for female workers (Vallas & Schor, 2020).

The protection of female workers in the digital era requires the integration of labor policies and gender policies. In Indonesia, Minister of Manpower Regulation No. 2 of 2022 concerning the Protection of Female Workers exists; however, its scope is limited to the formal sector and does not specifically address digital workers (Peraturan Menteri Ketenagakerjaan No. 2 Tahun 2022 Tentang Perlindungan Pekerja Perempuan, 2022). In Malaysia, there is no equivalent policy explicitly regulating the protection of female workers in the gig sector, although several gender mainstreaming policies have been implemented in the public sector (Ministry of Women, 2023).

Furthermore, the legal frameworks in both countries have yet to explicitly adopt the principles of Feminist Legal Theory and Social Justice Theory in policy formulation. This is evident from the absence of provisions that proactively accommodate the double burden faced by women, such as regulations on flexible working hours while ensuring fundamental rights. Literature shows that gender-responsive regulations can enhance women's participation in the digital labor market and reduce income disparities (Fraser, 2008). The integration of these principles into the legal framework is expected to promote more inclusive and equitable labor policies, especially for female workers facing unique challenges in the digital era.

Therefore, the labor law frameworks in Indonesia and Malaysia require substantial reforms to anticipate technological developments and new work models. Such reforms include redefining the status of gig workers, expanding mandatory social protection, and integrating gender-responsive policies into labor regulations. Without these measures, the protection gap between formal and non-formal workers, particularly women, will continue to widen.

Vulnerabilities of Female Workers and Gender Analysis

The vulnerabilities of female workers in the digital economy in Indonesia and Malaysia arise from a combination of structural, legal, and socio-cultural factors. Feminist Legal Theory emphasizes that laws are often created from a gender-neutral perspective that is, in reality, biased toward men, thereby overlooking the specific needs and experiences of women (Albertson Fineman, 2008). In the context of digital work, this bias is reflected in regulations that focus on formal employment relationships, while the majority of female workers in the gig economy operate under flexible working arrangements and lack protection under conventional labor laws (Cameron et al., 2023).

Based on Digital Labour and Precarity Theory, digital work tends to produce precarious employment conditions, including irregular working hours, fluctuating wages, and absence of social security (Doorn, 2022; Yin, 2024). For female workers, these vulnerabilities are further exacerbated by factors such as the double burden and gender-based discrimination that hinder their mobility in the digital labor market (James, 2024; van Doorn, 2017). This situation underscores the importance of formulating policies that not only acknowledge the general vulnerabilities of digital workers but also specifically address the

structural challenges faced by female workers in order to achieve social justice and equitable protection.

These vulnerabilities can be identified in four main factors:

1. Flexible and Unprotected Employment Status

Female workers in the digital sector are often categorized as partners or self-employed, thereby lacking automatic access to social protection, maternity leave, or compensation in the event of workplace accidents (International Labour Organization, 2023a). In Indonesia, this status is regulated through a partnership scheme that exempts platform companies from the obligation to provide formal worker rights (Vallas & Schor, 2020). In Malaysia, although the Self-Employment Social Security Act 2017 exists, its coverage is limited to certain sectors such as e-hailing and does not encompass the entire digital workforce (PERKESO, 2017).

2. Lack of Social Protection

Most female gig workers finance their own healthcare and retirement needs, as formal social protection systems are designed for salaried employees (Badan Pusat Statistik, 2025). This lack of protection results in long-term financial vulnerability, especially for women who rely on digital work as their primary source of income.

3. Double Burden and Domestic Roles

Women in the digital labor market often have to balance professional work with domestic responsibilities such as childcare and household management. Feminist Legal Theory criticizes that labor law rarely considers this aspect, while flexibility in working hours without guaranteed rights exacerbates fatigue and reduces productivity (Fraser, 2008).

4. Discrimination and Limited Career Mobility

Female workers in the digital sector are often placed in jobs considered “feminine,” such as customer service, microtasks, or administrative work, which generally pay less than technical jobs (Organisation for Economic Co-operation and Development, 2024). These barriers are reinforced by gaps in access to technology and digital training.

Analysis using Digital Labour and Precarity Theory reveals that platform work models create asymmetrical employment relationships, where companies control algorithms and work rules, while workers, including women, have little control over their working

conditions (Wood et al., 2019). This results in low bargaining power and high risks of exploitation, especially in sectors that are loosely regulated.

Furthermore, the application of Feminist Legal Theory demands labor law reforms that acknowledge the social realities of female workers, including the need for maternity leave applicable to all types of employment status, affordable health insurance, and inclusive digital training. Without such reforms, the digital labor market risks perpetuating, and even deepening, existing gender inequalities.

Therefore, the protection of female workers in the digital sector requires an interdisciplinary approach combining legal reform, social policy, and gender-based empowerment strategies. This approach is essential not only to reduce vulnerabilities but also to ensure that digital transformation serves as a means to enhance social justice for all workers.

Comparative Effectiveness of Policies and Recommendations for Reform

The comparison of policy effectiveness between Indonesia and Malaysia shows that both countries have taken legislative steps to address the challenges of the modern labor market, yet their implementation achievements differ. Indonesia has undertaken major reforms through the Omnibus Law (UU Cipta Kerja) which revises several labor provisions and social security systems. This step aims to simplify regulations and increase investment; however, many observers argue that the reform has yet to optimally address protections for platform workers and raises concerns about the decline of labor protection standards (Amnesty International, 2022). On the other hand, Malaysia updated the Employment Act (2022 Amendment) to expand the coverage of several basic protections (e.g., increased maternity leave, regulation of working hours) and developed protection schemes for self-employed workers through the Self-Employment Social Security Act (Act 789) and its implementation by PERKESO, providing an initial protection framework for certain gig workers such as e-hailing drivers (Employment (Amendment) Act 2022, 2022; PERKESO, 2017).

Despite formal progress in Malaysia in expanding social schemes for self-employed workers, effectiveness remains limited by selective coverage (e.g., initially mandatory only for certain transport sectors) and registration or compliance challenges among dispersed gig workers (Allen & Gladhill, 2021). In Indonesia, the main weakness lies in the definition of employment status (e.g., “partner”), which diminishes platform obligations toward social

protection and workers' rights; consequently, many digital workers, including women, are not automatically covered by BPJS or formal labor protection. Field research and independent platform ratings also note that platform practices often rely on contractual flexibility to avoid social responsibilities and standard labor protections (International Labour Organization, 2023a). To clarify the differences in policy effectiveness, the following table summarizes the key aspects, achievements, and limitations of policies in both countries.

Table 2. Comparative Effectiveness of Digital Worker Protection Policies in Indonesia vs. Malaysia

Aspect	Indonesia	Malaysia	Evidence / Notes
Redefinition of Gig Worker Status	Weak - most workers are categorized as "partners," resulting in minimal platform obligations.	Moderate - no comprehensive redefinition in the Employment Act; partial protection under Act 789 for selected sectors.	Job Creation Law; PERKESO Act 789. (Global Compliance News, PERKESO)
Coverage of Social Security	Limited - access to BPJS depends on individual initiative or corporate policies.	More structured for certain sectors (e-hailing, taxi), but expansion is gradual.	PERKESO; ILO policy review. (PERKESO, International Labour Organization)
Family Protection and Gender-Sensitive Policy	Exists but focuses on the formal sector; digital workers have limited coverage.	Employment Act Amendment (2022) increased maternity and paternity leave, but gig worker coverage is not automatic.	Employment Amendment Act 2022; Relevant ministries. (MoHR, International Labour Organization)
Monitoring and Enforcement Mechanisms	Weak - fragmented oversight among government levels and agencies; enforcement challenges on digital platforms.	More centralized through PERKESO/Human Resources Ministry, but compliance challenges remain.	Amnesty & ILO analysis; PERKESO. (Amnesty International, PERKESO)

Source: Processed from legal documents and international reports.

From the table and the analysis above, it appears that Malaysia, although not yet perfect, has more rapidly developed specialized social instruments for self-employed workers through Act 789 and gradually expanded coverage. Meanwhile, Indonesia is at the stage of restructuring macro-level regulations (omnibus law), but practical challenges, particularly in defining employment status and fragmented implementation, complicate effective protection for digital workers (Kadir et al., 2020).

The identification of potential best practices for adaptation by both countries includes:

1. Simplified mandatory registration and contribution mechanisms for gig workers (such as PERKESO's registration model for e-hailing), which enhance social security coverage;
2. Legal provisions that shift the burden of proof regarding employment status from workers to platforms when elements of subordination or economic dependence exist, thereby preventing avoidance of obligations; and
3. The integration of gender-responsive policies (e.g., transformative leave, subsidized digital training access, and protection schemes applicable to all employment statuses) as prerequisites in every platform regulation (International Labour Organization, 2023c; PERKESO, 2017).

For concrete policy recommendations: first, both countries need to undertake a legal redesign that clearly defines the category of platform workers using functional criteria (algorithmic control, tariff setting, exclusivity) and establishes minimum obligations for platforms; second, the expansion of social security schemes based on a shared contribution model (between workers, platforms, and the state) managed by accessible institutions; third, the adoption of mandatory gender impact assessments in every digital labor regulation to ensure policies consider the double burden and inequalities in technology access (International Labour Organization, 2023c; PERKESO, 2017).

Ultimately, policy effectiveness depends not only on sound legislation but also on implementation capacity, market actors' awareness and compliance, and adaptive oversight mechanisms responsive to platform innovations. Therefore, multi-stakeholder collaboration (government, labor organizations, platforms, academia, and women's organizations) must be enhanced to pilot policies, collect gender-disaggregated data, and adjust interventions based on empirical evidence. These measures will help bridge the protection gap between formal and digital workers, particularly women, in the continuously evolving digital transformation era.

Conclusion

This study demonstrates that both Indonesia and Malaysia face similar challenges in protecting women workers in the digital era, particularly within the gig economy sector. Although legal reforms have been introduced, such as the Omnibus Law in Indonesia and the Employment (Amendment) Act 2022 along with the Self-Employment Social Security

Act 2017 in Malaysia, the regulatory frameworks of both countries remain insufficiently adaptive to the dynamics of digital work and have yet to fully integrate a comprehensive gender perspective. Fundamental weaknesses include the narrow definition of employment status, which limits the scope of protection, restricted access to social security for non-formal workers, and the absence of policies specifically addressing women's double burden.

Drawing on Feminist Legal Theory, Social Justice Theory, and Digital Labour and Precarity Theory, the analysis reveals that without clear legal interventions and consistent implementation, women workers will continue to occupy a vulnerable position, both economically and socially. Legal reform should therefore encompass a redefinition of platform worker status, the expansion of mandatory social protection, a shift of the burden of proof for employment status onto platforms, and the integration of gender impact assessments into all digital labor regulations.

The findings of this study offer not only an academic contribution to the development of comparative labor law scholarship but also practical guidance for policymakers in designing regulatory frameworks that are technologically adaptive, inclusive, and gender-responsive. By adopting such measures, digital transformation can serve as a driver for empowerment and gender equality in the labor market, rather than exacerbating existing inequalities.

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