

Exploring Legal Protections for Platform Workers in Malaysia: A Human Rights-Based Perspective

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Abstract

Platform work has gained significant recognition due to the rapid growth of the digital economy, which offers new opportunities for workers. However, inadequate regulatory frameworks in Malaysia have led to various human rights concerns, particularly regarding the protection of workers' rights, such as social security, fair remuneration and safe working conditions. Furthermore, the challenge of providing worker protections must be balanced with the flexible nature of the gig economy. Thus, this study explored the evolving legal landscape surrounding the protection of platform workers' rights in Malaysia from both legal and human rights perspectives. It examines the role of business and human rights in finding the delicate balance between economic progress and protecting workers' fundamental rights, emphasizing the role of regulation. This study adopts a qualitative approach through review of existing literature, including academic research, reports, and relevant legal documents, to provide a comprehensive understanding of the issue. Therefore, this study underscores the urgent need for robust legal frameworks and regulatory measures to safeguard the rights and welfare of platform workers in Malaysia through the integration of corporate responsibility to respect human rights and to establish mechanisms that guarantee fair remuneration, job security, social protection, and avenues for workers' representation and collective bargaining. The findings of this study are expected to contribute to the growing body of literature on platform work and serve as a basis for policy recommendations and advocacy efforts to improve the rights and working conditions of platform workers in Malaysia.

Keywords: business and human rights, platform workers, workers' rights.

A. Introduction

The rapid growth of the digital economy has revolutionized the world of work, offered new opportunities, and transformed the existing traditional employment

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models. In this evolving landscape, platform-based work has gained considerable prominence and reshaped the labor market in Malaysia. Platform work refers to a form of employment, where individuals perform their tasks or provide services through online platforms or mobile applications (apps) in exchange for wages.¹ The individuals who work via the platform are called platform workers or gig workers, who made up to 26% of the overall Malaysian labor force in 2020 (15.3 million people). It indirectly reveals a significant number of people who are involved in the economy.² Though the trend has shown slight descent since the opening of all economy sectors after COVID-19, there is still a substantial number of people involved in the platform work, especially among young people and graduates, which signifies a high demand of the platform work because of its positive performances and the massive employment opportunities.³

The emergence of platform workers and platform work especially in the transportation and delivery sector in Malaysia, began in 2012 with the arrival of digital platforms such as Grab (2012), Uber (2013), and Foodpanda (2012). The Malaysia Digital Economy Corporation (MDEC) revealed in the Digital Talent Survey 2021 a recent surge in platform work (including logistic and delivery services, home cook services and transportation) revealing that 48% of companies in Malaysia have adopted digital platforms for their day-to-day operations, compared to 19% in 2020.⁴ Moreover, the digital economy's contribution to Gross Domestic Product (GDP) grew substantially, reaching 22.6% in the third quarter of 2021, compared to 10.4% in 2020 and 19.2% in 2019, underscoring the digital economy's importance to market players. As of March 2022, the total number of platform workers generating income was 369,966 and the total income generated from 2019 to March 2022 amounted to RM1.79 billion.

While this new form of employment presents certain advantages such as flexibility and accessibility in which they can do extra work without jeopardizing their existing commitments or employment,⁵ it also raises significant concerns regarding

¹ Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdsourcing and Labour Protection in the 'Gig Economy'* (Geneva: International Labour Office Publication, 2016), 1. Tran Molly and Rosemary K. Sokas, "The Gig Economy and Contingent Work," *Journal of Occupational and Environmental Medicine* 59, no. 4 (2017): 63-66, 10.1097/JOM.0000000000000977.

² Department of Statistic Malaysia, "Gig Workers in Malaysia: A Review of Definitions and Estimation," accessed on March 13, 2023, [https://dosm.gov.my/v1/uploads/files/6_Newsletter/Newsletter 2020/DOSM_MBLs_1-2020_Series-8.pdf](https://dosm.gov.my/v1/uploads/files/6_Newsletter/Newsletter%2020/DOSM_MBLs_1-2020_Series-8.pdf).

³ Harizah Kamel, "Food Delivery Services: From Odd Job to the Most in Demand," accessed on January 1, 2021, <https://themalaysianreserve.com/2021/01/01/food-delivery-services-from-odd-job-to-the-most-in-demand/>.

⁴ MDEC, "85 Percent of Malaysian Companies See the Need to Equip Their Employees with Digital Skill," accessed on April 13, 2022, <https://mdec.my/news/85-percent-of-malaysian-companies-see-the-need-to-equip-their-employees-with-digital-skills/>.

⁵ Janine Berg, *Income Security in the On-Demand Economy: Findings and Policy Lessons From a Survey of Crowdworkers* (Geneva: International Labour Office, 2016), 6. Gerald Friedman, "Workers Without Employers:

the protection of workers' rights. In general, the platform companies are precluded from liability and responsibility to provide fundamental protections to workers, and the business risks are often shifted to the workers owing to the status of the workers.⁶ In the delivery service sector, the platform workers must own the assets used for the work and are also responsible for the maintenance and repair costs without any reimbursement from the platform company,⁷ need to pay for social security, have no assurance of safe and healthy working conditions, and experience lack of salary bargaining power.⁸

The flexible forms of employment has created a trend, where platform companies reduce their business risks by demanding greater flexibility of their workers, thereby exposing them to increased personal risks.⁹ Platform companies usually employ transformation of risk mechanisms with short-term contracts, flexible working hours and remuneration, and a deduction or no insurance coverage to allow companies to externalize business risks, where the cost of insuring against such consequences is delegated to the workers.¹⁰ It is thus perceived that the risks in the gig economy are aggravated since the work is facilitated and mediated online, and performed without necessary supervision or regulation.¹¹ Furthermore, the algorithmic management that the platform companies employ also suggests the concept of fairness to the platform workers that is hardly feasible, considering the complexity of the real-world situations.¹² In comparison, the existence of legislation that regulate traditional companies allows for minimization of risks to the workers

Shadow Corporations and the Rise of the Gig Economy," *Review of Keynesian Economics* 2, no. 2 (2014): 172-173, <https://doi.org/10.4337/roke.2014.02.03>. Valerio De Stefano (et.al.), *Platform Work and the Employment Relationship ILO Working Paper No. 27* (Geneva: International Labour Organization, 2021), 27.

⁶ Chen Bin, Tao Liu, and Yingqi Wang, "Volatile Fragility: New Employment Forms and Disrupted Employment Protection in the New Economy," *International Journal of Environmental Research and Public Health* 17, no. 5 (2020): 2, <https://doi.org/10.3390/ijerph17051531>.

⁷ Boidurjo Rick Mukhopadhyay and Bibhas K Mukhopadhyay, "What is the 'Gig' Economy?" accessed on April 12, 2020, https://www.researchgate.net/publication/340583864_What_is_the_Gig_Economy.

⁸ Wieteke Conen and Joop Schippers, "Self-Employment: Between Freedom and Insecurity" in Wieteke Conen and Joop Schippers (ed.), *Self-Employment as Precarious Work: A European Perspective* (United Kingdom: Edward Elgards Publishing Limited, 2019), 6.

⁹ Friedemann Bieber and Jakob Moggia, "Risk Shifts in the Gig Economy: The Normative Case for an Insurance Scheme Against the Effects of Precarious Work," *Journal of Political Philosophy* (2020): 3, doi.org/10.1111/jopp.12233.

¹⁰ Friedmann Bieber and Jakob Moggia, 6.

¹¹ Sacha Garben, *Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU* (Luxembourg: Publications Office of the European Union, 2017), 3. Harald Hauben, Karolien Lenaerts, and Susanne Kraatz, *Platform Economy and Precarious Work* (Luxembourg: European Parliament, 2020), 9.

¹² Laura Schulze (et.al.), "Fairness in Algorithmic Management: How Practices Promote Fairness and Redress Unfairness on Digital Labor Platforms," (Proceedings of the 56th Hawaii International Conference on System Sciences, 2023), 196.

and the incorporation of the principle of fairness ensures that workers are adequately protected by the companies employing with certain rights that can be negotiated through trade unions. While conventional labor laws and regulations have been designed to protect employees in traditional employment relationships, they may not adequately address platform workers' specific needs and concerns.¹³ The legal framework for platform work in Malaysia remains relatively underdeveloped, leaving platform workers in a precarious position with limited legal protections and access to social security benefits.

This study aims to analyze the current legal landscape surrounding the protection of platform workers in Malaysia. It investigated the unique characteristics of platform work and platform workers as compared to traditional employment. It examined the protection of workers' rights under Malaysian legal framework and compared it with the protection of workers' rights from the human rights' perspectives. It also presented ideas on the protection of platform workers' rights through business and human rights, particularly on the concept of corporate responsibility to respect human rights. The discussion aims to contribute to the ongoing discourse on protection of workers' rights in the gig economy by incorporating the elements of human rights. By addressing this issue, policymakers, labor activists, and stakeholders can work to develop robust mechanisms to safeguard the rights and well-being of platform workers while ensuring a more inclusive and fair future of work in the digital age.

B. The Unique Characteristics of Platform Work

Platform work is a form of employment typically associated with self-employment or working as an independent contractor, where they can choose when and where to work, and have autonomy and control over their activities, flexible working hours and ability to maintain existing commitments.¹⁴ The flexibility enables the company to save physical resources and maintain a cost balance, such as the cost of renting office spaces, and hiring staff.¹⁵ As such, platform work is viewed as part-time work

¹³ Mohd Shahril Nizam Md Radzi (et.al.), "Protecting Gig Workers' Interest in Malaysia Through Registered Association under Societies Act 1966," *IIUM Law Journal* 30, no. S1 (2022): 161, <https://doi.org/10.31436/iiumlj.v30iS1.702>.

¹⁴ Josep Mestres Domenech, "The Sharing Economy and the Labour Market," accessed on May 28, 2022, http://www.caixabankresearch.com/sites/default/files/documents/im_1807_34-35_dossier_2_en.pdf. Willem Pieter de Groen (et.al.), *Employment and Working Conditions of Selected Types of Platform Work*, (Luxembourg: Publications Office of the European Union, 2018), 5. Qingjun Wu and Zhen Li, "Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work," *Journal of Chinese Sociology* 6, no. 14 (2019): 3, <https://doi.org/10.1186/s40711-019-0098-9>; Jamie Woodcock and Mark Graham, *The Gig Economy: A Critical Introduction, Economic Geography* (United Kingdom: Polity Press, 2020), 65.

¹⁵ Niam Yaraghi and Shamika Ravi, *The Current and Future State of the Sharing Economy* (New Delhi: Brookings India Institution Center, 2017), 12-15.

and does not constitute actual work since it allows workers to keep their full-time job and simultaneously secure some extra money.¹⁶

Platform work can be divided into two types, namely (a) cloud work (or crowd-work), which is a web-based digital platform that offers freelance marketplaces, macro-task crowd work. It represents both higher-skilled tasks, where workers offer their services as graphic designers, computer programmers, translators, or other professional services, and micro-tasks crowd work, and lower-skilled work, such as clerical tasks, copy-writing, writing reviews, and filling surveys, and (b) gig work, which is location-based digital labor that usually involves low-skilled workers in transportation, delivery services, hospitality, cleaning, etc.¹⁷

Cloud work via a web-based digital platform can also be categorized as a crowd sourcing platform, if the tasks are not location-based and can be done remotely via the internet and if the tasks are not given to specific individuals but an undefined group of people online¹⁸ while the location-based gig work offers tasks in which the execution of traditional working activities is channeled through apps managed by platform companies, which allocate work to individuals in a specific geographical area.¹⁹ The location-based platform work is typically associated with traditional work activities such as transportation, cleaning, and running errands, where significant human rights risks to workers exist in terms of their working conditions, workplace safety and health, social security and insurance, and the need for collective bargaining rights.²⁰

¹⁶ Janine Berg, *Income Security in the On-Demand Economy Findings and Policy Lessons From a Survey of Crowdworkers*, 5. Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdwork and Labour Protection in the 'Gig Economy'*, 2 ; Jonathan V. Hall and Alan B. Krueger, "An Analysis of the Labor Market for Uber's Driver-Partners in the United States," *ILR Review* 71, no. 3 (2018): 2-3, <https://doi.org/10.1177/0019793917717222>.

¹⁷ Michael "Six" Siberman (et.al.), "Working Conditions on Digital Labour Platforms: Opportunities, Challenges, and the Quest for Decent Work," accessed on September 20, 2019, <https://voxeu.org/article/working-conditions-digital-labour-platforms>. Florian A Schmidt, *Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Work and Gig Work*, (German: Friedrich Ebert Stiftung, 2017), 5-6.

¹⁸ Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdwork and Labour Protection in the 'Gig Economy'*, 2.

¹⁹ Janine Marie Berg (et.al.), *Digital Labour Platforms and The Future of Work: Towards Decent Work in the Online World* (Geneva: International Labour Office, 2018), 107. Richard Heeks, "Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing, Crowdwork," (Working Paper Series Number 71, 2017), 2-3. Michelle Rodino-Colocino (et.al.) (ed.) "The Gig Economy: Workers and Media in the Age of Convergence," Brian Dolber (et.al.) (New York: Routledge Taylor & Francis Group, 2021), 7.

²⁰ Valerio De Stefano (et.al.) (ed.), *A Research Agenda for the Gig Economy and Society* (United Kingdom: Edward Elgards Publishing Limited, 2022), 3.

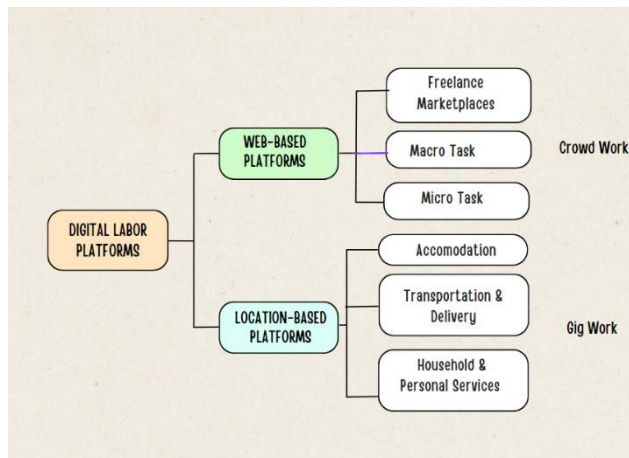


Figure 1. Categorization of Platform Work²¹

The short-term and temporary arrangement of platform work allows platform companies to save physical and financial resources in hiring fixed-term labor,²² where they are perceived as market intermediaries, that facilitate exchanges between the different platform users, to perfect the algorithms in order to meet expectations better, and to guarantee the smooth running of transactions.²³ The platform companies are described as ‘digital matching firms’ that allow individuals to access goods and services in real-time and to handle the financial transactions between the consumer and provider,²⁴ or as a digital infrastructure, where rules and processes enable resource exchange between external producers and consumers.²⁵ Additionally, the platform company may be referred as a ‘platform provider’ that allows for an efficient matchmaking task between individuals or businesses, based

²¹ Valerio De Stefano, *The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdsourcing and Labour Protection in the ‘Gig Economy,’* 6.

²² Josep Mestres Domenech, “The Sharing Economy and the Labour Market,” 37. Qingjun Wu and Zhen Li, “Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers’ Work,” 3.

²³ Rebeca Perren and Robert V. Kozinets, “Lateral Exchange Markets: How Social Platforms Operate in a Networked Economy,” *Journal of Marketing* 82, no. 1 (2017): 37, <https://doi.org/10.1509/jm.14.0250>. Patrick Dieuaide and Christian Azais, “Platforms of Work, Labour, and Employment Relationship: The Grey Zones of a Digital Governance,” *Frontiers in Sociology* 5, no. 2 (2020): 2, <https://doi.org/10.3389/fsoc.2020.00002>; Perren and Kozinets, 30.

²⁴ Rudy Jr. Telles, “Digital Matching Firms: A New Definition in the ‘Sharing Economy’ Space,” accessed on August 1, 2022, <https://www.commerce.gov/sites/default/files/migrated/reports/digital-matching-firms-new-definition-sharing-economy-space.pdf>.

²⁵ Matti Mäntymäki, Abayomi Baiyere, and A. K.M.Najmul Islam, “Digital Platforms and the Changing Nature of Physical Work: Insights From Ride-Hailing,” *International Journal of Information Management* 49 (2019): 458-459, <https://doi.org/10.1016/j.ijinfomgt.2019.08.007>.

on shared understanding and trust.²⁶ Therefore, the digital platforms and apps for wireless devices (smartphones and tablets) play the role of ‘invisible infrastructure’ or ‘central gathering hall’ that connect the supply and demand of services and facilitate the interactions between individuals and businesses.²⁷

While platform companies clearly act as market intermediaries for social media (Facebook, Instagram, or Twitter) and e-commerce platforms (Lazada or Shopee), the gig economy presents a more complex situation. In the gig economy, platform workers are crucial, especially in transportation, delivery, and household services sectors.²⁸ Friedman describes these companies as ‘shadow corporations’ that manipulate worker availability through digital tools and algorithms without incurring labor costs.²⁹ This raises questions about whether gig economy platforms merely act as intermediaries, as they also manage workers who are generally considered self-employed, limiting their rights under national law.

C. Protection of Workers’ Rights in Malaysian Legal Framework

In Malaysia, workers’ rights are stated in various legislation such as the Employment Act 1955, the Employees’ Social Security Act 1969, and the Occupational Safety and Health Act 1994, which apply to persons contracted under ‘contract of service’ and exclude those performing self-employment activities. The Self-Employment Social Security Act 2017 was then enacted to extend social security rights to self-employed persons.³⁰

Before 2017, the status and recognition of platform workers’ rights in Malaysia were unspecified until the government enacted the Self-Employment Social Security Act in 2017. For example, Item nine of the First Schedule identifies ‘self-employment activity’ includes ‘the service of carriage and delivery of goods or food by any person by means of any vehicle owned by him, or managed, maintained or operated by that person’.³¹ Given this context, it is reasonable to assume that platform workers who offer and perform transportation and delivery services may be considered self-

²⁶ Sabine Benoit (et.al.), “A Triadic Framework for Collaborative Consumption (CC): Motives, Activities and Resources & Capabilities of Actors,” *Journal of Business Research* 79 (2017): 224, <https://doi.org/10.1016/j.jbusres.2017.05.004>.

²⁷ Antonio Aloisi, “Commoditized Workers: Case Study Research on Labour Law Issues Arising from a Set of ‘On-Demand/Gig Economy’ Platforms,” *Comparative Labour Law & Policy Journal* 37, no. 3 (2016): 654.

²⁸ Steven Vallas and Juliet B. Schor, “What Do Platforms Do? Understanding the Gig Economy,” *Annual Review of Sociology* 46 (2020): 275, <https://doi.org/10.1146/annurev-soc-121919-054857>.

²⁹ Gerald Friedman, “Workers Without Employers: Shadow Corporations and the Rise of the Gig Economy,” 180.

³⁰ Section 3 of the Self-Employment Social Security Act 2017.

³¹ Item 9 to the First Schedule provides.

“The service of carriage and delivery of goods or food by any person by means of any vehicle owned by him, or managed, maintained or operated by that person, in any form of arrangement with the owner or lessor of the vehicle and whether for hire or reward or for any other valuable consideration or money’s worth or otherwise.”

employed workers under the act. This provision however lacks in the definitional context of work arranged by digital platforms or platform work, but it has been utilized by many platform companies to encourage self-contributory social security among the platform workers.³² In 2022, the Employment Act 1955 was amended and included Section 101C which provides for presumption of employment, in the absence of a written contract of service, if he or she fulfills any of the conditions under the provision, namely:

- a. The manner of work is subject to the control or direction of the platform company.
- b. The tools, materials or equipment are provided by the platform company.
- c. The work constitutes an integral part of the platform company.
- d. The work performed is solely for the benefit of the platform company.
- e. The payment is made in return for work done by him at regular intervals and payment constitutes most of his income.

To determine if a platform worker meets these standards, factors such as the work arrangement, the existence of a written contract, scheduling and payment systems, and platform policies must be considered. Each case's circumstances are crucial in deciding if a worker is an employee. Though the new law has yet to be tested, but it may be presumed that the requirements under section 101C must be met individually by the platform workers, where the existence and determination of the work arrangement, written contract, scheduling, payment systems, and platform policies are to be considered. In principle, the six requirements mentioned in section 101C are comparable to the legal criterion for determining employee status, for which the facts of each individual case are crucial in evaluating the platform workers' status under the act.

D. Protection of Platform Workers' Rights Through Human Rights Lens

The workers' rights, often known as labor rights, are described as entitlements that are particular to the role of a worker and are crucial for workers to attain human dignity and strive for personal and family development, if without, can affect the full realization of human rights.³³ Collectively, labor rights encompass a wide range of worker rights, including the right to enjoyment of reasonable and favorable working circumstances, the right to safe working conditions, and the right to establish and participate in trade unions. They are categorized as both individual and collective rights, which apply to all types of employment, whether independent or dependent

³² Self-Employment Social Security (Rates of Contribution for Persons Carrying Out Service of Carriage and Delivery of Goods of Food) Regulations 2021.

³³ Jack Donnelly, *Protecting Dignity: An Agenda for Human Rights* (Geneva: Geneva Academy of International Humanitarian Law and Human Rights, 2009), 29. Virginia Mantouvalou, "Are Labour Rights Human Rights?" *European Labour Law Journal* 3, no. 2 (2012): 152, <https://doi.org/10.1177/201395251200300204>.

on the wage-paid job. Thus, regardless of the type of employment that a person possesses, his or her workers’ rights must be protected.³⁴

Protection of workers’ rights under the international law regime are provided in numerous instruments such as the Universal Declaration of Human Rights, International Covenant of Economic Social and Cultural Rights 1966, and ILO Declaration on Fundamental Principles and Rights at Work 1998. They are described in the table below:

International Instruments	Human Rights of Workers
Universal Declaration of Human Rights	Article 22: the right to social security. Article 23 (1): the right to work, to free choice of employment, the rights to just and favorable conditions of work and to protection against unemployment. Article 23 (2): the right to equal pay for equal work. Article 23 (3): the right to just and favorable remuneration. Article 23 (4): the right to form and join trade unions. Article 24: right to rest and leisure (reasonable limitation of working hours and periodic holidays with pay).
International Covenant on Economic, Social and Cultural Rights 1966	Article 6: the right to work and the right to free choice of employment. Article 7: the right to just and favorable condition of work Right to minimum remuneration. Right to fair remuneration (equal pay forequal work). Decent living. Safe and healthy working conditions. Equal opportunity to promotion in employment. Right to rest, leisure, and reasonable working hours, periodic and public holidays with remuneration. Article 8: the right to form trade unions and join trade unions. Article 9: the right to social security includingsocial insurance.

³⁴ Anis Widyawati, “Legal Protection Model for Indonesian Migrant Workers,” *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 299, <https://doi.org/10.15294/jils.v3i02.27557>.

International Instruments	Human Rights of Workers
ILO Declaration on Fundamental Principles and Rights at Work 1998	<p>To promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:</p> <ul style="list-style-type: none"> (a) freedom of association and the effective recognition of the right to collective bargaining. (b) the elimination of all forms of forced or compulsory labor. (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.

Table 1. Workers' Rights under International Human Rights Law³⁵

According to the positivist view, workers' rights are human rights if they are enumerated in international treaties and conventions.³⁶ Substantially, there is an extensive list of rights related to employment such as the prohibition against slavery and servitude, the right to work and that everyone should work in a freely job, the right to receive equal pay for equal work, the right to receive decent remuneration for work performed are listed in the international instruments such as in the Universal Declaration, International Covenant on Economic, Social and Cultural Rights and in the ILO Declarations and Conventions.³⁷ The ILO focuses on a set of four core labour standards consisting of freedom of association, freedom from forced labor, freedom from child labor, and non-discrimination of employment. Alston cautioned that there should be a heavy reliance on the principles promoted under the Declaration rather than labor rights as it will undermine both the ILO and civil society's efforts to promote labor rights as human rights.³⁸ Thus, the question whether labor rights constitute human rights according to the positivists is dependent on the drafters of a particular document, the judicial decisions or other authoritative interpretations of human rights documents, which may differ from one country or region to the other.³⁹

³⁵ Authors' own.

³⁶ Virginia Mantouvalou, "Are Labour Rights Human Rights?" 152.

³⁷ Labour rights are contained in other regional instruments such as the American Convention on Human Rights, European Union Charter of Fundamental Rights (EUCFR). Although the ILO has endorsed a list of labour rights (or principles) as human rights in the Declaration of Fundamental Principles and Rights at Work 1998, they left behind other labour rights such as the right to a minimum wage outside the scope of the declaration.

³⁸ Philip Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime," *EJIL* 15, no. 3 (2004): 457, <https://doi.org/10.1093/ejil/15.3.457>.

³⁹ Virginia Mantouvalou, "Are Labour Rights Human Rights?" 154-155.

The Universal Declaration became the foundation of the formulation of the International Labor Standard (ILS) which is subsequently based upon the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The ILS articulates human rights at work, such as the right to work, the right to social security, the right to safe and healthy working conditions, the right to fair wages and equal pay for work of equal value, the right to rest, leisure, and a reasonable limit on working hours, as well as the right to periodic paid holidays, and the right to maternity protection. The ILS forms an integral part of international human rights standards and norms and guides how to practically implement such standards in the workplace.⁴⁰

Despite the recognition of human rights principle in international law, the binding effects of these conventions on states varied. While the Universal Declaration is not a legally binding instrument, its principles are widely accepted and have formed part of the general principles of law, although it has not been crystallized into customary law. The International Covenant on Economic, Social and Cultural Rights on the other hand are legally binding instruments by contracting state parties.⁴¹ Notwithstanding this, international law is the law of the nation with a primary concern to govern and regulate the state's conduct towards its people and as such, they impose a primary obligation on states to promote, respect, and protect human rights of its people. The imposition can scarcely be attributed to other entities such as corporations and other businesses, in situation where adverse human rights are inflicted by them.

As a matter of principle, international human rights law primarily focuses on relations between states, not the internal relationship between a state and the people within its jurisdiction.⁴² Thus, the interface between the national state and international law depends on the jurisdiction of the state, i.e., the main authority, to make, apply, and enforce law. Article 4(1) of the Federal Constitution of Malaysia, for example, states that the constitution is the supreme law of the land, which requires all law to be accordant with it. Thus, this means that international human rights law does not *per se* apply in Malaysia until properly legalized via formal legislative procedure.

⁴⁰ Tim de Meyer, "International Labour Standards as Human Rights," accessed on October 1, 2022, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_860960/lang--en/index.htm. Anom Wahyu Asmorojati, (et.al.) "The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights," *Bestuur* 10, no. 1 (2022): 51, <https://doi.org/10.20961/bestuur.v10i1.60179>.

⁴¹ K.M Rhona Smith, *Textbook on International Human Rights* 7th Edition (Oxford: Oxford University Press, 2016), 39.

⁴² Koen De Feyter, *Globalization and Common Responsibilities of States, Globalization and Common Responsibilities of States* (London: Routledge, 2017), 26.

Thus, when it comes to analyzing the implementation of international human rights law within Malaysia's jurisdiction, the dualist concept is utilized where it views national and international laws as two distinct legal systems that requires the international law requires to be transposed into the national law to have a legal force.⁴³ Thus, contrary to the principle of universality of human rights,⁴⁴ workers' rights under Malaysia legal regime only accords rights to regular employment or under the presumption of employment, leaving behind workers who are placed in the grey area between regular and self-employment. Despite the similarity of platform work with regular employment particularly on the significant dependency on the platform for work, payment and instructions,⁴⁵ their workers' rights are not fully guaranteed.⁴⁶

Due to the level of flexibility and autonomy in the platform work, there are various human rights risks concerning platform workers that expose them to increased personal risks.⁴⁷ The platform workers take a personal risk when they receive a request through the system, and they must make a prompt decision to accept the request, with limited time to evaluate whether the task is profitable or the destination of the task warrants their service.⁴⁸ Notably, the transformation of risk mechanisms employed by the platform company allows the company to externalize business risk and its cost by passing it on to their workers.⁴⁹ The risks of platform work would be more aggravated because the work is facilitated and mediated online and performed without necessary supervision or regulation, such as, no protective measures at the workplace (private mobiles or equipment), competitive working environment due to rating systems, payment per-task basis, or

⁴³ Visar Morina, Fisnik Korenica, and Dren Doli, "The Relationship between International Law and National Law in the Case of Kosovo: A Constitutional Perspective," *International Journal of Constitutional Law* 9, no. 1 (2011): 274–296, <https://doi.org/10.1093/icon/mor020>. Nazli Ismail Nawang, "A Comparative Analysis of the Practice of the United Kingdom and Malaysia in Respect of Freedom of Expression," *UUM Journal of Legal Studies* 1 (2011): 18. Judy Obitre-Gama, *The Application of International Law into National Law, Policy, and Practice* (Geneva: World Health Organization, 2000), 5-6.

⁴⁴ John Tasioulas, "Taking Rights out of Human Rights," *Ethics* 120, no. 4 (2010): 670, <https://doi.org/10.1086/653432>.

⁴⁵ Teemu Kautonen and Ewald Kibler, *The 'Grey Area' between Employment and Self-Employment : Implications for Official Statistics* (European: European Commission, 2016), 2.

⁴⁶ Eurofound, *Self-Employed or Not Self-Employed? Working Conditions of 'Economically Dependent Workers* (Dublin: Eurofound, 2013), 2.

⁴⁷ International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (Geneva: International Labour Organization, 2016), 8-9. Friedemann Bieber and Jakob Moggia, "Risk Shifts in the Gig Economy: The Normative Case for an Insurance Scheme Against the Effects of Precarious Work," 284.

⁴⁸ Alex Rosenblat and Luke Stark, "Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers," *International Journal of Communication* 10 (2016): 3762, <https://doi.org/10.2139/ssrn.2686227>.

⁴⁹ Rosa Eugene, "Metatheoretical Foundations for Post-Normal Risk," *Journal of Risk Research* 1, no. 1 (1998): 30, <http://dx.doi.org/10.1080/136698798377303>.

lack specific training on the safety of vehicles or equipment used.⁵⁰ Henceforth, platform work is considered precarious work, where the work is uncertain, unstable, and insecure, and the need for workers to bear personal risk with limited social benefits and statutory protections.⁵¹

Thus, the emergence of the Business and Human Rights (BHR) regime in the late twentieth century signifies a pivotal development in the context of workers' rights and the global landscape. The BHR discourse, especially on the concept of corporate responsibility fundamentally asserts the idea that corporate entities bear responsibility to uphold human rights obligations, which exists independently of states' capacity or willingness to fulfil their duty to protect human rights.⁵² The discourse surrounding BHR revolves around two primary aspects, namely the negative duty of corporations to refrain from causing or enabling human rights violations, and the positive duty to actively incorporate human rights standards into their operations while offering remedies for human rights violations.⁵³ This, however, does not diminish the positive duty of states to uphold their human rights obligations, ensuring that when corporate entities violate human rights, the affected individuals can have access to effective judicial and non-judicial remedies.⁵⁴

The foundational and operational principles outlined in the Guiding Principles on Business and Human Rights 2011 emphasizes on the concept of corporate responsibility, which is imperative for all businesses, regardless of their size or sector, to respect human rights and rectify adverse human rights repercussions arising from their operations. These principles advocate the interrelation between human rights standards and grievance mechanisms, echoing the principle that justice must be

⁵⁰ Sacha Garben, *Online Platform Work at European Level* (Geneva: Geneva Global Policy Briefs, 2019), 2. Harald Hauben, Karolien Lenaerts, and Susanne Kraatz, *Platform Economy and Precarious Work*, 36-37.

⁵¹ Arne L. Kalleberg and Steven P. Vallas, *Research in the Sociology of Work: Precarious Work 31* (Emerald Publishing Limited, 2018), 13. Alexandra J. Ravenelle, "'We're Not Uber': Control, Autonomy, and Entrepreneurship in the Gig Economy," *Journal of Managerial Psychology* 34, no. 4 (2019): 270-271, <https://doi.org/10.1108/JMP-06-2018-0256>.

⁵² Michael A. Santoro, "Business and Human Rights in Historical Perspective," *Journal of Human Rights* 14, no 2 (2015): 157. Ana Certanec, "The Connection between Corporate Social Responsibility and Corporate Respect for Human Rights," *Law, Economics, and Social Issues Review* 10, no. 2 (2019): 105-107, <https://doi.org/10.2478/danb-2019-0006>. Łukasz Dawid Dąbrowski (ed.), "Human Rights Obligations of Enterprises under Public International Law, in Magdalena Sitek (et.al.) (ed.) *Human Rights - Between Needs and Possibilities* (Polska:Książki Publikacje Naukowe, 2017), 75. Saidatul Nadia Abdul Aziz and Salawati Mat Basir, "Protection of Migrant Workers under the ICMW: Incompatibility with Malaysian Laws and Position in ASEAN," *Hasanuddin Law Review* 7, no. 3 (2021): 161, <http://dx.doi.org/10.20956/halrev.v7i3.3066>.

⁵³ David Bilchitz, "The Necessity for a Business and Human Rights Treaty," *Business and Human Rights Journal* 1 (2016): 216, 10.1017/bhj.2016.13. Michael A. Santoro, "Business and Human Rights in Historical Perspective,"

⁵⁴ Łukasz Dawid Dąbrowski (ed.), "Human Rights Obligations of Enterprises under Public International Law," 217. Anita Ramasastry, "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability," *Journal of Human Rights* 14, no. 2 (2015): 240, <https://doi.org/10.1080/14754835.2015.1037953>.

served and visibly seen.⁵⁵ The BHR framework recommends that states have a proactive duty to protect the human rights of people, by having legislation in place for corporations to comply and adhere. Nevertheless, human rights concerns are emerging in business sectors where their relevance go beyond governments, legal systems, and civil society.⁵⁶

Hence, the implementation of corporate responsibility mechanisms occurs in two contexts: first, through the adoption of a policy commitment mandating businesses to align with international or national human rights standards. This commitment necessitates the integration of a human rights' due diligence process, obliging businesses to identify, prevent, mitigate, and rectify human rights impacts.⁵⁷ Second, businesses must establish an effective grievance mechanism at the operational level, signaling their dedication to upholding human rights standards.⁵⁸

The regulatory framework under BHR must consider the stakeholder-oriented approach to corporate governance, which might help strengthen accountability and guarantee that corporations engage in a socially responsible manner in all aspects of their commercial activity, including adherence to human rights standards and principles.⁵⁹ In the case of platform companies, platform companies wield enormous power through their control of material resources, and this control represents a critical mediating structural relationship between corporation and rights-holder, such as the power to violate individual human rights, which includes labor rights violations.⁶⁰ The businesses have the power to directly impact its workers by way of restructuring of employment to form the emergent precarious, constituted by new forms of insecure, temporary and poorly paid work.⁶¹ Though corporations cannot compel individuals to take on such work, but they can create a system – with and through law – in which individuals are forced to choose such options. Thus, the growing power of corporations over individual rights has legitimized the question of corporate responsibility to respect human rights in the gig economy. The Guiding

⁵⁵ Faris Natour, "Respecting Human Rights in the On-Demand Economy: Closing the New Governance Gap," *Business and Human Rights Journal* 1, no. 2 (2016): 319, <https://doi.org/10.1017/bhj.2016.7>.

⁵⁶ George S. Dallas, "Human Rights Through a Corporate Governance Lens," accessed on October 3, 2022, <https://www.icgn.org/sites/default/files/1>.

⁵⁷ Maheran Makhtar, Zuhairah Ariff Abd Ghadas and Mahbulul Haque, "Due Diligence for the Protection of Platform Workers in Malaysia: A Human Rights Analysis," *Journal of Humanities and Social Sciences Research* 4 (2022): 13, <https://doi.org/10.37534/bp.jhssr.2022.v4.ns.id1196.p5>.

⁵⁸ Alex Newton, *The Business of Human Rights; Best Practice and the UN Guiding Principles 1st Edition* (London: Routledge, 2019), 5-7.

⁵⁹ Niamh M Brennan and Jill Solomon, "Corporate Governance, Accountability and Mechanisms of Accountability: An Overview," *Accounting, Auditing & Accountability Journal* 21, no. 7 (2008): 897, <https://doi.org/10.1108/09513570810907401>.

⁶⁰ David Birchall, "Corporate Power over Human Rights: An Analytical Framework," *Business and Human Rights Journal* 6, no. 1 (2021): 10, <https://doi.org/10.1017/bhj.2020.23>.

⁶¹ David Birchall, "Corporate Power over Human Rights: An Analytical Framework," 13.

Principles can serve as a useful framework for delineating the responsibilities of various actors in addressing human rights concerns, as well as determining how companies can effectively manage human rights risks, and their application can be extended into the digital sphere.⁶²

Therefore, calls for regulation in the gig economy are necessary but in a more innovative and friendly approach, as that will incorporate human rights principles and standards specifically for the protection of platform workers in the gig economy.⁶³ The regulation must not be bound by the limitations of existing technology but rather be open to potentially new economic practices in different fields that would ensure its sustainability and further growth.⁶⁴ The regulation must feature the basic concepts and principles of legal regulation, the rights and obligations of its participants, types, and objects of legal relations and legal facts that determine their occurrences, the types of responsibility of legal entities, and the mechanism for its application and enforcement.⁶⁵

E. Conclusion

In conclusion, the recognition and extension of workers' rights in Malaysia, particularly in the context of gig economy, have made significant progress. The introduction of the Self-Employment Social Security Act in 2017 and the subsequent 2022 amendment to the Employment Act 1955 are notable steps taken by the government to protect the rights of platform workers, particularly in the transportation and delivery sectors. The introduction of Section 101C in the Employment Act 1955 provides a structured framework for determining the employment status of platform workers, offering them access to the benefits and protections afforded to traditional employees.

However, challenges and potential inequalities remain, such as possible conflicts with the Self-Employment Social Security Act and concerns regarding the impact on

⁶² Faris Natour, "Respecting Human Rights in the On-Demand Economy: Closing the New Governance Gap," 319. Michael Samway, "The Global Network Initiative: How Can Companies in the Information and Communications Technology Industry Respect Human Rights?" in *Business and Human Rights From Principles to Practice*, Dorothee Baumann-Pauly and Justine Nolan (ed.) (London: Routledge, 2016), 140.

⁶³ Stephen R. Miller, "First Principles for Regulating the Sharing Economy," *Harvard Journal on Legislation* 53 (2016): 202, <https://dx.doi.org/10.2139/ssrn.2568016>. Mukti Fajar, "Fair Competition: The Concept of Regulation in the Sharing Economy," *The Journal of Asian Finance, Economics and Business* 7, no. 11 (2020): 639, <https://doi.org/10.13106/jafeb.2020.vol7.no11.637>.

⁶⁴ Sofia Ranchordás, "Public Values, Private Regulators: Between Regulation and Reputation in the Sharing Economy," *Law and Ethics of Human Rights* 13, no. 2 (2019): 209-210, <https://doi.org/10.1515/lehr-2019-2005>. Nikos Koutsimpogiorgos (et.al.), "Conceptualizing the Gig Economy and Its Regulatory Problems," *Policy and Internet* 12, no. 4 (2020): 535, <https://doi.org/10.1002/poi3.237>.

⁶⁵ Elena Voskresenskaya, Lybov Vorona-Slivinskaya, and Lybov Achba, "Digital Economy: Theoretical and Legal Enforcement Issues in Terms of Regional Aspect," *E3S Web of Conferences* 164 (2020): 6-7, <https://doi.org/10.1051/e3sconf/202016409016>.

the gig economy's structure. Efforts to protect platform workers' rights through the reformation of the labor law is essentially a one-sided approach to regulation. Indeed, the effort can lead to positive consequences. However, there are concerns that state-based legislation will inevitably lead to the gig economy failure and collapse, restricting economic freedom, impose extensive labor costs, and limit prospects for innovation.⁶⁶

In the gig economy, regulation must be carefully balanced to encourage innovation, profitability, and sustainability while protecting the fundamental rights.⁶⁷ This approach aligns with workers' rights as an essential facet of international human rights law, enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. The Business and Human Rights (BHR) regime provides foundational and operational principles in which the workers' rights can be protected by both states and the corporate entities. However, the voluntary nature of BHR instruments has highlighted the need for regulations in the gig economy that balance protecting platform workers' rights with preserving the sector's innovative and flexible nature. The regulation in the gig economy is necessary but in a more innovative and friendly approach, which incorporates human rights principles and standards specifically for the protection of platform workers in the gig economy and must not be limited by existing technology but should remain adaptable to new economic practices in various fields to promote sustainability and growth.⁶⁸

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⁶⁶ Elena Voskresenskaya, Lybov Vorona-Slivinskaya, and Lybov Achba, "Digital Economy: Theoretical and Legal Enforcement Issues in Terms of Regional Aspect," 6-7.

⁶⁷ Liyang Hou, "Destructive Sharing Economy: A Passage From Status to Contract," *Computer Law and Security Review* 34, no. 4 (2018): 10, <https://doi.org/10.1016/j.clsr.2018.05.009>.

⁶⁸ Sofia Ranchordás, "Public Values, Private Regulators: Between Regulation and Reputation in the Sharing Economy," 213-217. Nikos Koutsimpogiorgos (et.al.), "Conceptualizing the Gig Economy and Its Regulatory Problems," 12-13.

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Self-Employment Social Security (Rates of Contribution for Persons Carrying Out Service of Carriage and Delivery of Goods of Food) Regulations 2021.