

LEGAL PROTECTION FOR GOJEK DRIVERS WHO EXPERIENCE WORK ACCIDENTS BASED ON LAW NUMBER 24 OF 2011 ON THE SOCIAL SECURITY ORGANIZING AGENCY (BPJS)

^{*1}Teresa Akgriana Putri Manihuruk, ²Besty Habeaan, ³Roida Nababan

^{*1,2,3}Universitas HKBP Nommensen Medan

Email: ^{*1}teresaakgrianaputri.manihuruk@student.uhn.ac.id, ²besty.habeaan@uhn.ac.id, ³roidanababan@uhn.ac.id

Abstract

Gojek drivers who experience work accidents, based on Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS). As workers who work in the online transportation sector, Gojek drivers often face the risk of work accidents that are not covered by the conventional social security system. In this context, examine how workers are protected in relation to the BPJS program when workers experience work accidents, and find out the legal consequences for workers who experience accidents while working. This research examines the protection mechanisms regulated by BPJS employment. So the results of this research show that regulations regarding workers who experience accidents while carrying out work have been regulated in the Employment Law.

Keywords: Legal Protection, Gojek Driver, Work Accident

Abstrak

Driver gojek yang mengalami kecelakaan kerja, berdasarkan Undang – Undang Nomor 24 tahun 2011 tentang Badan Penyelenggara Jaminan Sosial (BPJS). Sebagai pekerja yang bekerja di sektor transportasi daring driver gojek seringkali menghadapi risiko kecelakaan kerja yang tidak tercover oleh sistem jaminan social konvensional. konteks ini, mengkaji bagaimana perlindungan pekerja terkait program BPJS ketika pekerja mengalami kecelakaan kerja dan mengetahui akibat hukum bagi pekerja yang mengalami musibah kecelakaan saat bekerja. penelitian ini mengkaji mekanisme perlindungan yang diatur (BPJS) Ketenagakerjaan. Sehingga hasil penelitian ini menunjukkan bahwa pengaturan terkait pekerja yang mengalami musibah kecelakaan dalam melakukan pekerjaan telah diatur dalam UU Ketenagakerjaan.

Kata kunci: *Perlindungan Hukum, Driver Gojek, Kecelakaan kerja*

INTRODUCTION

The development of societal structures in Indonesia is currently undergoing rapid dynamics. This transformation occurs as a form of public awareness aimed at achieving a dignified state in the administration and management of a democratic and just national life. Along with the advancement of time and the increasing development of modern technology, supported by social media, information can now spread widely and rapidly,

thereby driving business activities across various sectors. Fundamentally, the public heavily relies on public transportation to fulfill their daily activities, both in rural areas and major cities (Eliza et al., 2024). This reliance is due in part to the fact that some individuals do not own private vehicles, or because urban traffic congestion levels are extremely high. This situation has created business opportunities for entrepreneurs to provide convenient and fast transportation services for those without private vehicles or those who find public transportation inefficient in terms of time. Technological advancements in the transportation sector have become a socio-cultural reality within society, where the internet now significantly influences people's daily lives. The widespread use of smartphones, whether running on Android or iOS systems, has led to an increased dependency on smartphones and the internet. The availability of applications for drivers and passengers enables private vehicles to function as public transportation, including two-wheeled vehicles (Thomas-Possee, 2023).

Online-Based Transportation (TBO) has become increasingly prevalent and highly favored by the public due to the various conveniences it offers, which are not found in existing transportation services (AlNuaimi et al., 2022). However, the emergence of two-wheeled TBO, such as online motorcycle taxis, has sparked controversy in society. On one hand, Article 47, Paragraph (3) of Law Number 22 of 2009 on Road Traffic and Transportation does not accommodate two-wheeled vehicles as public transportation. This provision is further reinforced in Article 23, Paragraph (3) of Government Regulation Number 74 of 2014 on Road Transportation. On the other hand, given the limited availability of transportation services, the public finds great benefits in the existence of online motorcycle taxis.

Given the crucial role of transportation, road traffic and transport must be regulated within an integrated national transportation system that ensures the availability of services aligned with traffic demands while maintaining order, comfort, efficiency, and affordability. Online motorcycle taxi services have successfully offered various advantages compared to other public transportation options currently available. Several companies, such as Gojek, Grab Bike, and Uber, have introduced online-based motorcycle taxi services, leading to rapid industry growth and the creation of employment opportunities for thousands of drivers (Farida & Naim, 2021). These services have not only expanded job opportunities for Indonesians but also provided a practical transportation alternative for the public.

Motorcycles, which serve as the primary vehicle for both online and conventional motorcycle taxi services, are not classified as public motor vehicles under Article 47, Paragraph (3) of Law Number 22 of 2009 on Road Traffic and Transportation. According to this law, only passenger cars, buses, and freight vehicles fall under the category of public motor vehicles, meaning motorcycles are not legally recognized as public transportation. This provision is reaffirmed in Article 23, Paragraph (3) of Government Regulation Number 74 of 2014 on Road Transportation. The increasing participation of workers in national development and the use of technology in various business activities can raise the risks related to the safety, health, and well-being of workers (Wulandari, 2022). Essentially, every job carries risks and challenges, but because online motorcycle

taxi drivers (gojek) spend a significant amount of time on the road, they are considered to have one of the highest-risk occupations. This threatens the safety of the online drivers. In this regard, ensuring occupational safety protection is an essential aspect to be provided by online motorcycle taxi companies, considering the growing demand for online transportation services. The responsibility of the service provider companies also extends to safety, while sanctions may be imposed on drivers if accidents occur, causing harm to customers/passengers.

In this case, the institutional framework of the company is formally regulated, typically in the form of a written contract that outlines a partnership agreement. This agreement states that the company does not provide an explicit guarantee of protection for work-related accidents. However, the partners are included in the BPJS (Social Security Administration) for Occupational Safety. One of the clauses in the agreement specifies that damages, losses, or even personal injuries are not the responsibility of the Temporary Substitute Officer (PGS) but fall under the responsibility of the partner. The agreement further states that the partner agrees that PGS, or any of its affiliates, is not liable for any losses, including indirect losses such as profit loss, data loss, personal injury, or property damage in connection with, or arising from, the use of the Application, or services provided by the Partner to Consumers. The partner agrees that PGS is not liable for damages, obligations, or losses arising from the partner's use or reliance on the Application or the partner's inability to access or use the Application.

The Labor Law No. 13 of 2003 explains that workers are entitled to protection from the company. This highlights the need for legal protection and health guarantees for online motorcycle taxi drivers who experience accidents or mugging incidents while working. This is crucial because drivers often operate in high-risk areas, and their working hours are not limited, as we frequently encounter online motorcycle taxi drivers still waiting or accepting orders on the streets in the early hours of the morning. So, how does the service provider company take responsibility? Do they contribute to the welfare of their partners facing such challenges on the road? Law No. 13 of 2003 on Employment already provides guidance that there is no formal employment relationship but rather a partnership, which leads to different interpretations by each party due to the absence of employment relationship elements. The elements of an employment relationship are as follows: a. Work: This element is fulfilled if the worker only performs tasks assigned by the company. b. Wage: This element is fulfilled if the worker receives a fixed monetary compensation within a specific period, not based on commission/percentage. c. Orders: This element is fulfilled if the work order is given by the company, not at the worker's initiative.

The role of law in social life is to protect, provide security, tranquility, and order to achieve peace and justice for everyone. Law, in essence, provides justice, because justice is the ultimate goal of the law. This partner can be categorized as a business actor. The formal binding contract agreement in the employment relationship also includes rights and obligations. The contents of the partnership agreement demonstrate that the partner agrees to the terms and conditions, which include rights and obligations as well as rewards and sanctions. Here is the response related to this matter: "This cooperation agreement is

effective from the date the contract is approved by the Partner. By doing so, the Partner agrees to the terms and conditions outlined in this cooperation agreement by electronically clicking to accept this Agreement, accessing, and using the Application. The Partner will be considered to have agreed to be bound by the Terms, which constitute a contractual partnership relationship between the Partner and PGS."

The partner is obligated to comply with every policy in the Terms and Conditions of this Agreement. The content of this agreement indicates that the worker has obligations, including the ability to operate a two-wheeled motor vehicle and possess a valid and appropriate driving license (SIM). They must also own a smartphone or mobile phone capable of connecting to the application and have a motor vehicle that meets the legal requirements and is safe and comfortable to drive on the road. The high number of accidents on the roads has made the company realize the importance of providing social security to drivers. Although the partnership agreement specifies that damage, loss, and personal injury are the responsibility of the partner, the company still takes steps to protect its partners by collaborating with parties that can offer work-related insurance. Gojek, as an online company, cooperates with BPJS. Employment provides social security protection for the risk of work-related accidents and death.

(BPJS) Employment also provides basic protection to PT. Gojek, which collaborates with BPJS Employment to offer basic coverage, including compensation in the form of income replacement for lost or reduced earnings and protection against uncertainties such as social and economic risks (Ajisegiri et al., 2022). Social security has been mandated by the government for employers to register their employees with BPJS Employment to ensure that workers' rights and obligations are properly fulfilled. This is in accordance with Article 5, Paragraph 1 of Law No. 24 of 2011 on the Social Security Administration Body, which clearly stipulates that both employers and employees are required to register with BPJS Employment. If employers and employees fail to register with BPJS Employment, they will face administrative sanctions, as stipulated to Government Regulation (PP) No. 86 of 2013. The penalties may include written warnings, fines, and denial of public services (Joesoef, 2022).

Law No. 24 of 2011 on the Social Security Administration Body (BPJS) Employment, as amended by Law No. 11 of 2020 on Job Creation, stipulates that BPJS Employment operates five types of programs: work accident insurance, death insurance, old age insurance, pension insurance, and unemployment insurance. Based on the background above, with the increasing rate of work-related accidents among workers, employees must understand the rights guaranteed by BPJS Employment in the event of an accident during work. Therefore, the researcher is interested in analyzing with the title "Legal Protection for Gojek Drivers Who Experience Work Accidents Based on Law No. 24 of 2011 on the Social Security Administration Body (BPJS)."

METHOD

The type of research used in this study is descriptive-analytical with a normative juridical approach regarding the role and mechanism of BPJS in the implementation of the Work Accident Insurance (JKK) program. The data used in this study is secondary data obtained

from theories, expert doctrines informatively (formally), and official documents. This secondary data includes a) primary legal materials, which are: 1) Law No. 24 of 2011 on the Social Security Administration Body, relevant government regulations related to social security, such as (BPJS) Employment regulations; 2) Law No. 13 of 2003 on Employment, as amended by Law No. 11 of 2020 on Job Creation. b) Secondary legal materials, including: 1) relevant journals related to the research. Data analysis is carried out normatively with interpretation and discussion of the research results from legal norms, legal theories, and legal doctrines related to the study. The sources of legal materials include primary legal sources from laws and regulations, and secondary legal sources such as books, articles, and other legal literature. Data collection techniques are conducted through a study of both primary and secondary legal materials.

RESULTS AND DISCUSSION

1. Legal Protection for Gojek Drivers Experiencing Work Accidents

As the highest hierarchy in the legal system in Indonesia, the 1945 Constitution (UUD 1945) naturally serves as a legal reference. Protection of workers' rights is derived from Article 27, paragraph (2) of the 1945 Constitution, which states that every citizen has the right to obtain employment and a decent livelihood. Furthermore, job protection guarantees are outlined in Article 28 D, paragraph (1) of the 1945 Constitution, which essentially affirms that every individual has the right to recognition, protection, guarantees, and legal certainty. According to Satjipto Raharjo, legal protection refers to safeguarding Human Rights that are violated by others, and this protection is extended to the entire society to ensure that everyone experiences the rights granted by law. The principles of legal protection are divided into two categories:

a. Preventive Legal Protection

Preventive legal protection refers to legal measures taken to provide an opportunity for legal subjects to express objections or opinions before a government decision is finalized. Preventive legal protection, within the context of Law Number 24 of 2011 concerning the Social Security Organizing Agency (BPJS), involves preventive steps aimed at avoiding losses or violations that could harm participants or related parties in social security programs. This legal protection includes various actions to ensure that participants' rights are safeguarded and not misused. In this law, the focus of preventive legal protection is on efforts to prevent violations of participants' rights, misuse of funds, or fraud in social security administration. Several articles related to preventive legal protection in Law No. 24 of 2011 include:

- 1) Article 4 – Discusses the purpose of organizing social security, which is to provide social protection to all Indonesian citizens so that their social rights are guaranteed. In this case, preventive protection is carried out by ensuring that all Indonesian citizens are protected through the social security system.
- 2) Article 5 – States that the purpose of organizing social security is to ensure that every individual or family does not face economic hardship due to certain social risks. This is a preventive step to avoid greater social loss.

- 3) Article 7 – Contains the obligation of the Social Security Organizing Agency (BPJS) to conduct management that is transparent and accountable. This step represents preventive protection against the misuse or diversion of social security fund management.
- 4) Article 11 – Emphasizes the importance of supervision and evaluation of the implementation of social security.

b. Repressive Legal Protection

Repressive legal protection aims to resolve disputes that arise after a government policy has been implemented. Health and safety protection for workers is a form of legal obligation that employers have to provide for their workers. Several articles regulating repressive legal protection in Law No. 24 of 2011 include:

- 1) Article 28 – States administrative sanctions for participants or employers who fail to meet their obligations, such as not paying social security contributions on time. These sanctions are repressive in nature, aimed at providing a deterrent effect and ensuring compliance with obligations.
- 2) Article 36 – Mentions administrative sanctions for businesses or employers who fail to report their workers' data in the social security system. These sanctions are also a form of repressive legal protection, aiming to enforce compliance with existing regulations.
- 3) Article 37 – Contains provisions regarding violations committed by the BPJS organizers or other parties involved in organizing social security, with sanctions in the form of warnings or even the dissolution of the organizing body if proven to have committed violations.
- 4) Article 42 – Regulates criminal sanctions for parties found guilty of misappropriation or criminal acts in the management of social security funds. This represents repressive legal protection in the form of criminal punishment against individuals or legal entities involved in criminal activities related to social security.

Through these articles, Law No. 24 of 2011 provides repressive legal protection by imposing sanctions on parties that violate the provisions in the administration of social security, either in the form of administrative or criminal sanctions (Destyarini et al., 2022). Recognizing the importance of workers to employers, society, and the government, the idea arose to ensure workers' safety while working. Workers' protection can be carried out through legal claims or by strengthening the recognition of human rights based on prevailing norms. Social Security is part of social protection aimed at providing guarantees to all elements of society and meeting the needs of a more adequate life.

Law No. 24 of 2011 on BPJS, where the law grants authority to (BPJS) Employment, states that the function of (BPJS) Employment is to implement four programs: work accident insurance, pension, old age, and death (Hakim, 2021). The work accident insurance program is implemented to provide guarantees to participants in the form of cash benefits and health services when workers experience accidents while working. With the enactment of the law related to BPJS, workers in Indonesia need not worry about their

welfare as employees. At the beginning of the agreement, the service provider company and its partners were not responsible for accidents, and the certainty of receiving social security protection in accordance with the applicable laws could not be provided by online motorcycle taxi service providers due to the partnership agreement. Furthermore, legal protection is transferred to (BPJS) Employment by registering its partners as participants under the category of Non-Wage Earners (PBPU), to address accidents and illnesses experienced by online motorcycle taxi drivers. The company provides a form of self-protection, which is a feature for online motorcycle taxi drivers to choose between BPJS and insurance. (BPJS) Employment and Gojek have also collaborated in providing social security for their drivers through various premium payment systems, such as automatic GoPay balance deductions or direct payments to BPJS (Iwayan & Anom, 2020). Although there is still limited reach and effectiveness, there have been several socialization and outreach efforts regarding the importance of social security for online drivers in several associations. Therefore, they need to realize that (BPJS) Employment is very important in their work.

Ultimately, it comes down to the individual awareness of each online driver. There are several options for the payment duration of (BPJS) Employment contributions offered, including one year, six months, three months, and even one month (Farida & Naim, 2021). This flexibility allows online drivers to adjust according to their financial capabilities. The social security program for workers is divided into three different programs: work accident insurance, death insurance, and old age insurance. Protection and guarantees for unexpected accidents, single-vehicle accidents while riding, or accidents during work should be fully covered by the work accident insurance program. If a worker dies, they will receive a benefit worth 25 million IDR through the death insurance program. This amount will be given to the guardian/parent of the deceased if they are unmarried, or to their spouse if married. Meanwhile, the guarantee or benefit, which is adjusted based on the length of employment and membership in (BPJS) Employment, is covered by the old age insurance program. (BPJS) Employment has offered various conveniences to encourage workers to register. These conveniences include flexible payment durations and methods, as well as very simple registration requirements, such as only needing an ID card (KTP). This demonstrates that (BPJS) Employment is very flexible for all professions, but many have yet to realize the importance of social security, both for workers and employers.

2. The Government's Responsibility in Providing Social Security for Gojek Driver Workers

Law Number 24 of 2011 on the Social Security Organizing Agency (BPJS) regulates the government's obligation to provide social security for all Indonesian citizens, including informal workers such as Gojek drivers (Eliza et al., 2024). The government has a responsibility to ensure that all workers, including those working in the online transportation sector, can enjoy social security protection, such as Health Insurance (JKN) and Work Accident Insurance (JKK). Initially, Gojek drivers were not included in the category of social security beneficiaries, but in 2020, the government, through BPJS) Employment began implementing a social security program for informal sector workers,

which also includes online motorcycle taxi drivers. Several points related to the government's responsibility are:

- a. **Implementation of Social Security:** The government is responsible for providing an inclusive social security system that covers health insurance, work accident insurance, pension insurance, and old age benefits for all workers, both in the formal and informal sectors, as stated in Article 4 of Law 2011 and Article 5 of the Law.
- b. **Registration and Membership under Article 13 of Law No. 24 of 2011:** The government, through (BPJS) Employment, provides a mechanism for registering informal workers, including Gojek drivers, in the social security program. These workers can join work accident insurance (JKK) and death insurance (JKM), although pension insurance and old age benefits for the informal sector are still under development.
- c. **Subsidies for worker contributions:** In some programs, the government may provide subsidies or social assistance to help workers who are struggling to pay social security contributions and carry out socialization to ensure that workers understand their rights and obligations regarding social security in accordance with Article 14 of Law No. 24 of 2011.
- d. **Counseling and Socialization to Workers:** The government is obligated to provide counseling to informal workers, such as Gojek drivers, about the importance of registering for the social security program and the procedures for registration, to increase participation in the social security system in accordance with Article 12 of Law No. 24 of 2011.

Overall, based on Law 24/2011, the government has the obligation to create a social security system that is accessible to all workers, including Gojek drivers, so that they are protected from social and economic risks. Essentially, the application provider companies only offer job opportunities but pay less attention to welfare aspects, including career development. Furthermore, before any issues arise between the application provider and the drivers, the application provider must adhere to the provisions of the Minister of Transportation Regulation Number 12 of 2019 on the Protection of Motorcycle Users for Public Interests (hereinafter referred to as Permenhub), specifically Article 14, which outlines preventive measures that must be applied by the application provider to drivers.

3. Barriers to the Implementation of Employment Social Security for Gojek Online Drivers

Social security plays a crucial role in preventing workers and their families from falling into poverty when they experience economic shocks due to work accidents or economic crises, including layoffs. In such cases, social security serves as the primary safeguard for maintaining a decent standard of living. Therefore, it is essential to examine the factors that influence or hinder the implementation of social security for Gojek drivers, as it is expected that they receive adequate social security to ensure their and their families' well-being in the future. If the implementation of social security encounters various obstacles, it may affect the effectiveness and efficiency of social security programs. To gain direct

insights into the challenges or barriers to the implementation of social security, several key aspects must be considered.

Policies, information limitations, administrative constraints, and demographic changes are among the factors that influence participation rates and pose obstacles to the implementation of social security. The following are some common challenges encountered in the field regarding the implementation of social security:

- a) Intense competition with conventional motorcycle taxis and low driver income, where only 80% of the fare is received by the driver, while the remaining portion is allocated to the company. Additionally, there are various supporting expenses, such as internet data packages, fuel, and phone credit.
- b) Online drivers face difficulties in allocating funds to pay BPJS Employment Security premiums due to their low income, which is primarily used to cover essential needs for their spouses and children, such as education costs, food, and clothing. This issue is related to Article 17 of Law No. 24 of 2011.
- c) A lack of awareness among online drivers regarding the benefits of employment social security, with only a few willing to participate due to the absence of socialization and outreach from BPJS Employment Security.
- d) Online drivers are not provided with social security coverage by Grab, leaving them without employment protection.
- e) The contribution fees for BPJS Employment Security are perceived as burdensome, making it difficult for drivers to enroll in the program.
- f) Many drivers have not received adequate training or socialization regarding the improvement of employment social security benefits, either from the government or from Grab.
- g) The BPJS Employment Security registration process is lengthy and complicated, which discourages participation. This issue is linked to Article 4 of Law No. 24 of 2011.
- h) Many online drivers remain unaware of the importance of employment social security, further contributing to low participation rates in the program (Adedokun, 2017).

CONCLUSION

Based on the discussions explained, it can be concluded that the legal protection for Gojek drivers who experience work accidents, within the context of Law No. 24 of 2011 on the Social Security Organizing Agency (BPJS), consists of two parts: preventive legal protection and repressive legal protection. Preventive Legal Protection: This protection focuses on preventing accidents from occurring. In the case of Gojek drivers, the company or parties involved must ensure that drivers receive adequate safety training and protection while working. This protection also includes the obligation to enroll drivers in social security programs, such as BPJS Health and BPJS Employment.

Related Article: Article 14 of Law No. 24 of 2011 regulates the obligation to implement social security, which includes health and employment insurance. Repressive Legal Protection: Repressive protection aims to provide recovery or compensation for drivers

who experience work accidents. In this case, if an accident occurs, the driver is entitled to medical treatment as well as compensation or benefits in accordance with the provisions of BPJS Employment. The related article, Article 16 of Law No. 24 of 2011, regulates the provision of benefits for workers who experience work accidents, including medical treatment, rehabilitation, and death or disability benefits. In addition, Article 17 also emphasizes the provision of social security for the risks experienced by workers. Overall, Law No. 24 of 2011 provides a legal basis for Gojek drivers to receive social security protection both preventively through accident prevention and repressive compensation if an accident occurs. They are entitled to employment-related social security protection according to the prevailing regulations, such as work accident insurance, death benefits, and old age security. Furthermore, according to Minister of Transportation Regulation No. 12 of 2019, Gojek provides accident compensation free of charge (Reimbursement).

Barriers to the Implementation of Social Security, Particularly BPJS Employment, for Gojek Drivers: The obstacles in implementing social security, particularly BPJS Employment, for Gojek drivers within the framework of their partnership with Gojek can be summarized as stemming from unclear policies, limited information, communication barriers, and demographic changes. The challenges faced in implementing social security for Gojek drivers, especially BPJS Employment, include low awareness among drivers, a lack of guidance and socialization from Gojek to the drivers, access to information for drivers, and the financial income conditions of the drivers.

Government Responsibility in Providing Social Security for Gojek Drivers: The government's responsibility to provide social security for workers, including Gojek drivers who fall under the category of self-employed or informal workers, is reflected in Law No. 24 of 2011 on the Social Security Organizing Agency (BPJS). The government has the obligation to ensure that all Indonesian citizens, including informal workers like Gojek drivers, receive protection through social security programs that include health and employment insurance.

The government's responsibilities include administering social security, providing access for workers to register and participate, subsidizing worker contributions, and conducting outreach and socialization to workers. The government is responsible for ensuring that workers, such as Gojek drivers, can access social security programs that provide social protection, including health and employment security. This is regulated in Law No. 24 of 2011, particularly in Articles 4, 5, 13, 14, and 11. The implementation of employment social security for Gojek drivers faces several obstacles that affect the effectiveness of the program. Therefore, it is important to identify what factors may influence or hinder the implementation of social security for Gojek drivers, as it is expected that they all receive good social security for their livelihoods and their families in the future.

The main hindrances to the implementation of employment social security for Gojek drivers include a lack of awareness, inability to pay contributions, complicated registration processes, job status ambiguity, and lack of support from the platform. To address these barriers, a more integrated approach is needed, including enhanced

socialization, simplified registration processes, contribution subsidies, and closer collaboration between the government and platforms to ensure that all Gojek drivers receive proper social protection. This is regulated in Law No. 24 of 2011, particularly in Articles 4, 10, 5, and 17.

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