

# THR for Online Motorbike Taxis: Right or Policy?

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**Abstract:** Tunjangan Hari Raya is a non-basic wage that is expressly regulated in the Labor Law as one of the rights that must be received by workers. With the development of technology, the emergence of online application-based transportation then raises a new legal issue regarding the rights of online motorcycle taxi drivers as working partners with online-based transportation providers to receive Hari Raya allowances. So it is necessary to analyze the working relationship between online ojek drivers and online-based transportation provider companies to determine whether online ojek drivers are entitled to holiday allowances. This study will formulate two problems: how is the legal basis for the provision of holiday allowance as a worker's right within the framework of labor law in Indonesia, and how is the legal position of online ojek drivers in employment relations according to the Labor Law.

**Keywords:** Employment; Labor Relation; Partnership Relation; Religious Holiday Allowance.

## 1. Introduction

In addition to the basic wage for work/services performed by workers/labourers, the Labour Law No. 13 of 2003 also regulates the right of workers to receive remuneration in the form of allowances. Although the Labour Code does not provide a definition of the allowance itself, the allowance is mentioned in the definition of wages based on the provisions of Article 1 No. 30 of the Labour Code as a component of wages for work and/or services that have been or will be performed.

"Wages are the rights of workers/labourers received and expressed in money as compensation from employers or employers to workers/labourers, determined and paid in accordance with a collective agreement, contract or laws and regulations, including benefits for workers/labourers and their families for a job and/or ASA that has been or will be done".

Wages are given as an effort to realise the right of workers/labourers to a decent livelihood for humanity. For this reason, the government has explicitly regulated that Religious Holiday Allowance is an obligation of the employer to be paid to the workers/labourers, which must be paid not later than 7 (seven) days before the religious holidays. The payment of the Religious Holiday Allowance is granted by the Employer to workers / labourers who have an employment relationship with the Employer on the basis of an open-ended employment contract or a specific employment contract with an uninterrupted working period of 1 (one) month. This obligation is regulated in the Government Regulation No. 36 of 2021 on Wages and then further regulated in the Minister of Manpower Regulation No. 6 of 2016 on Religious Holiday Allowances for Workers/Labourers in Enterprises.

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On 17 February 2025, OJOL (online motorcycle taxi) drivers held a demonstration in front of the Ministry of Manpower building, with one of their main demands related to the provision of religious holiday allowance for drivers. However, this demand has triggered a new polemic, given that Permenaker 6/2016 explicitly limited the obligation to provide Hari Raya Allowances only to workers who have a working relationship with an employer based on an indefinite time work contract or a specific time work contract with a continuous working period of one (1) month. This situation poses a legal dilemma because the status of online ojek drivers is legally a partnership relationship. Then, on 10 March 2025, the Minister of Manpower issued a Circular Letter of the Minister of Manpower of the Republic of Indonesia No. M/3/HK.04.00/III/2015 on the Provision of Religious Holiday Bonuses in 2025 for Drivers and Couriers in Application-Based Transportation Services. The circular was issued to provide protection and welfare for drivers on application-based transportation services.

Based on the background described above, the following problems can be formulated: what is the legal basis for the provision of holiday pay as a right of workers under Indonesian labour law, and what is the legal position of online motorcycle taxi drivers in employment relations under the Manpower Law?

## **2. Methods**

The research method used in this study is a normative legal research method, where the research is carried out by examining various legal regulations related to the field of labour law and legal theory under study. The analysis is carried out by examining the relevant laws and regulations accompanied by conducting literature studies from various secondary sources such as books, academic journals, articles and other supporting literature related to the topic.

## **3. Result and Discussion**

### **3.1. Legal Basis for Providing Holiday Allowance as a Worker's Right**

Wage or salary is a right of an employee that is received in return for work performed. In the Indonesian legal framework, the legal basis for the provision of remuneration is regulated in the 1945 Constitution in Article 28D, which states that everyone has the right to work and to be rewarded with fair and decent treatment in labour relations. Furthermore, in order to guarantee the basic rights of workers/labourers, Law No. 13 Year 2003 on Manpower was established as the legal umbrella for the implementation of employment in Indonesian.

Regarding the payment of remuneration for work performed by workers, it has been confirmed in the provisions of Article 88 of the Manpower Law, which regulates the right of workers/labourers to receive an income that meets the requirements of a decent human life.

This is in line with the purpose of the enactment of the Manpower Law itself, one of which is to provide protection for workers in realising welfare and improving the well-being of workers and their families. The remuneration itself is referred to in the Manpower Law as wages, which is the right of workers/labourers received and expressed in money as compensation from employers or employers to workers/labourers, determined and paid according to a labour contract, agreement or laws and regulations, including benefits for workers/labourers and their families for work and/or services performed or to be performed. With reference to the definition of wages, the remuneration for work/services performed by a worker includes not only wages but also benefits. However, the Labour Law itself does not further specify what is meant by allowances.

Furthermore, the definition of wages makes it clear that those who can receive wages are workers. A worker is defined as any person who works in return for wages or other forms of remuneration. In order for a worker to receive compensation for work performed, there must be a basic relationship between the worker and the employer, or in labour law, known as an employment relationship.

In the Manpower Act, an employment relationship is defined as a relationship between employers and workers/labourers based on an agreement containing elements of work, wages and orders. An employment relationship exists only if one of the parties is an employer and the other party is an employee. The provisions of Article 50 of the Labour Law also stipulate that labour relations are established on the basis of a labour agreement between workers/labourers and employers. There are 4 (four) bases for concluding a labour agreement, namely

- a. The agreement of both parties;
- b. The ability or capacity to perform legal acts;
- c. The existence of the promised work; and
- d. The promised work is not contrary to public order, decency and applicable laws and regulations. The agreed work is not contrary to public order, decency and applicable laws and regulations.

An employment agreement is an agreement between a worker/employee and an employer/employer that contains the terms, conditions, rights and obligations of the parties. The Manpower Act does not require that an employment agreement be in writing, but in the event that the employment agreement is in writing, Article 52 of the Manpower Act regulates the matters that must be included in an employment agreement, which must at least include the following:

- a. name, company address, and type of business;
- b. name, gender, age, and address of the worker/laborer;
- c. position or type of work;

- d. place of work;
- e. amount of wages and method of payment;
- f. working conditions that contain the rights and obligations of employers and workers/laborers;
- g. start and validity period of the work agreement;
- h. place and date of the work agreement; and
- i. signatures of the parties to the work agreement.

Furthermore, in relation to the elements of an employment relationship based on Article 1(13) of the Labour Code itself, the use of the word "and" in describing the elements means that the elements are cumulative. This means that all elements must be fulfilled in order to speak of an employment relationship.

The first element is command. In an employment relationship, the employer is the employer, so he has the right and at the same time the obligation to give work orders. Meanwhile, the work recipient is the recipient of work orders. An order is the main element, because without an order there is no employment contract. With the existence of an order, it has legal consequences that the position of the two parties is not the same, in other words, the party giving the order has a position above the party receiving the order, so that it is a subordinate or vertical relationship.

The second element of the employment relationship in the form of work also does not regulate the definition or limits of the work itself. This legal policy is intended to allow the law to keep up with the times. The reason for this is that if limitations were given, it would complicate the implementation and development of labour law, especially with regard to the legal protection of workers.

The final element is wages. Asri Wijayanti explains that wages are one of the means used by workers to improve their welfare. The element of wages is fulfilled when workers receive compensation in the form of a certain amount of money that is fixed and not calculated on the basis of commissions. As described earlier, it is essentially the right of workers/labourers to be paid by the employer for work and/or services performed or to be performed. Wages themselves are the main objective of a worker doing work. Regarding wages themselves, the Manpower Law mandates that provisions regarding wages be regulated in government regulations. Based on this mandate, Government Regulation No. 78 of 2015 on Wages was formed, which was later repealed by Government Regulation No. 36 of 2021 on Wages, which regulates in detail the payment of wages, types of wages, to the calculation of wages themselves.

On the basis of PP 36 of 2021, it has been emphasised that the aim of the wage policy is to achieve an income that corresponds to a humane standard of living. The income received by workers can be in the form of wages and non-wage income. Wage income consists of four

components, namely wages without benefits, basic wages and fixed benefits, basic wages, fixed benefits and non-permanent benefits, or basic wages and inadequate benefits. In addition to wage income, PP 36/2021 also regulates non-wage income. Article 8 of PP 36/2021 regulates that non-wage income is in the form of religious holiday allowances, incentives, bonuses, compensation for working facilities and/or service money in certain enterprises.

As regards the religious holiday allowance itself, PP 36/2021 does not regulate it in detail. The provisions on religious holiday allowance in PP 36/2021 are regulated in only one article, namely Article 8. The provisions of Article 8 of PP 36/2021 regulate the obligation of the employer to pay the religious holiday allowance to the employee not later than 7 (seven) days before the religious holiday and further provisions regarding the religious holiday allowance, while the procedures for payment will be further regulated by ministerial regulations. For this reason, Regulation of the Minister of Manpower of the Republic of Indonesia No. 6 of 2016 on Holiday Allowances for Workers/Labourers in Companies has been issued.

The definition of the new religious holiday allowance is regulated in Permenaker 6/2016, which is non-wage income that must be paid by the Employer to the workers/labourers or their families before the religious holiday. The Hari Raya allowance is given to workers/labourers who have an employment relationship with the employer based on a permanent employment contract or a fixed term employment contract. The religious holidays concerned are Eid al-Fitr for Muslim workers/labourers, Christmas for Catholic and Protestant Christian workers/labourers, Nyepi for Hindu workers/labourers, Waisah for Buddhist workers/labourers and Lunar New Year for Confucian workers/labourers. The provision of Hari Raya Allowance to religious workers is made once a year and to celebrate their religious day. For this reason, Article 5 paragraph (4) of Permenaker 6/2016 requires the payment of religious holiday allowance to be made not later than 7 (seven) days before the religious holiday.

Furthermore, based on Permenaker 6/2016, the amount that must be paid by the employer is 1 (one) month's wages for workers/labourers who have a continuous working period of 12 (twelve) months or more, or 1 (one) month's wages for workers/labourers who have a continuous working period of 1 (one) month but less than 12 (twelve) months, in proportion to the working period multiplied by one month's wages.

### **3.2. The Basis of Legal Relations Between Online Motorcycle Taxis and Companies from the Employment Law**

This is in contrast to the legal relationship that exists between conventional transport drivers and online transport, where the driver's employment relationship with conventional transport is regulated by Law No. 13 Year 2003 on Manpower. While the legal relationship between online ojek drivers and online transport providers has no legal basis in Indonesian legislation. However, in practice, the legal relationship between online ojek drivers and online-based transport service providers is a partnership relationship arising from a partnership

agreement. The partnership relationship between an online-based transport provider company and an online ojek driver means as a colleague or partner working together as a partner.

In legal terms, partnership relationships refer to partnership agreements that are not specifically regulated by the provisions of the Civil Code, but in general partnership agreements still adhere to the principles of the agreement as regulated by the Civil Code. Meanwhile, the partnership relationship is specifically regulated by Government Regulation No. 44 of 1997 on Partnership, which was later repealed and replaced by the implementation of Law No. 20 of 2008 on Micro, Small and Medium Enterprises, and amended by Law No. 11 of 2020 on Job Creation. The MSME Law defines the service as cooperation in business linkages, both direct and indirect, based on the principles of mutual need, trust, strengthening and benefit involving micro, small and medium enterprises and large enterprises. Based on the provisions, it can be understood that the partnership relationship is carried out in its implementation by taking into account the principles of mutual need, trust, strengthening and benefit for the parties, which shows that the relationship between the parties in the partnership agreement has a legal position of equality. The relationship between the equality of the parties in the partnership agreement has also been specifically emphasised in the provisions of Article 36(1) of the UMKM Law, which reads as follows

“In implementing the partnership as referred to in Article 26, the parties shall have equal legal standing and Indonesian law shall apply to them.”

In response to the rapid growth of online transportation, there is a need to regulate the legal umbrella for its implementation, then in 2019, the Ministry of Transportation of the Republic of Indonesia issued Minister of Transportation Regulation Number 12 of 2019 on the Protection of Safety of Motorcycle Users Used for Public Interest, which aims to provide safety protection for the use of motorcycles, both passengers and drivers, through applications and without applications. Article 15 of the Minister of Transportation Number 12 of 2019 regulates that the relationship between application companies and drivers is based on a partnership relationship, as quoted below:

“The relationship between the Application Company and the Driver is a partnership relationship”.

Within the framework of the Labour Law, the parties entitled to receive wages are those who are bound by an employment relationship with the employer. The Labour Law emphasises that an employment relationship must fulfil 3 (three) elements, namely the existence of work, wages and orders. The absence of any of these elements results in a relationship that cannot be categorised as an employment relationship.

The partnership relationship between online-based transport service providers and online ojek drivers cannot be qualified as an employment relationship within the meaning of

the Employment Act. Therefore, the provisions of the Labour Code and other laws and regulations in the field of employment do not apply. This is because the legal relationship between online-based transport service providers and online ojek drivers does not fulfil the elements of a contract and a wage. The partnership relationship between online-based transport provider companies and online ojek drivers cannot be qualified as an employment relationship within the meaning of the Labour Code. Therefore, the provisions of the Labour Code and other laws and regulations in the field of employment do not apply. This is because the legal relationship between online-based transport provider companies and online ojek drivers does not fulfil the elements of orders and wages.

That the element of order is not fulfilled in the legal relationship between drivers of online ojek, because the work performed by the driver is not based on orders from online-based transport provider companies, but comes from the requests of passengers. This is also in line with the provisions of Article 8 of the Regulation of the Minister of Transport 12 Year 2019, which regulates the characteristics of services provided by drivers, one of which is unscheduled services, the amount of service fees charged in accordance with the agreement or stated in the application, and reservations made in accordance with the agreement or through an information technology-based application.

Furthermore, based on the judge's consideration in decision no. 841K/Pdt Sus/2009, a case between a taxi driver and a taxi company, the element of command is not met because the driver is given the freedom to look for passengers and is not determined by the taxi company. The element of command is an important element in the legal relationship between employees and employers, which shows the unequal legal position of the parties. This is contrary to the principle adopted in partnership relationships, where the parties to the partnership agreement have equal legal status, taking into account the principles of mutual need, trust, strengthening and benefit of the parties. Thus, the legal position of online drivers with online-based transport service providers is not a relationship of subordinate and superior.

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Based on Article 26 of the MSME Law, partnerships can be implemented in several patterns, as follows:

- a. inti-plasma;
- b. subcontracting;
- c. franchising;
- d. general trading;
- e. distribution and agency; and
- f. other forms of partnership, such as: profit sharing, operational cooperation, joint ventures, and outsourcing.

When referring to the forms of the pattern above, the partnership pattern between online ojek drivers and online transport service providers is included in the pattern of other forms of partnership in the form of profit sharing. Based on the Government Regulation No. 7 of 2021 on the facilitation, protection and empowerment of cooperatives and micro, small and medium-sized enterprises, the provision of profit sharing is based on contributions in accordance with the capabilities and resources owned and agreed by both parties to the partnership.

The absence of these two elements shows that the legal relationship between online ojek drivers and online-based transport service providers is not an employment relationship. In addition, online ojek drivers are not included in the definition of workers under the Labour Code. Therefore, online ojek drivers are not entitled to the rights of workers or employment protection under the provisions of applicable laws and regulations in Indonesia, including holiday pay.

#### **4. Conclusion**

Religious Holiday Allowance is a worker's right guaranteed by the 1945 Constitution and the Labour Law as an effort to fulfil a decent livelihood. The right to Religious Holiday Allowance is included in the non-wage income component regulated by Government Regulation No. 36 of 2021 and Ministerial Regulation No. 6 of 2016, with the provision of mandatory payment to workers who have an employment relationship based on a work agreement. In order to be considered an employment relationship, it must fulfil the cumulative and mandatory elements of an employment relationship, namely work, wages and orders. If a legal relationship does not fulfil these three elements, it cannot be said to be an employment relationship. The legal relationship between the online ojek driver and the application-based company is not an employment relationship as referred to in the Manpower Act, but a partnership relationship as stipulated in Permenhub Number 12 of 2019 and the MSE Act. This is because the elements of assignment and remuneration are not fulfilled. The non-fulfilment of the elements means that online ojek drivers are not entitled to normative labour rights, including the Hari Raya allowance.



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