

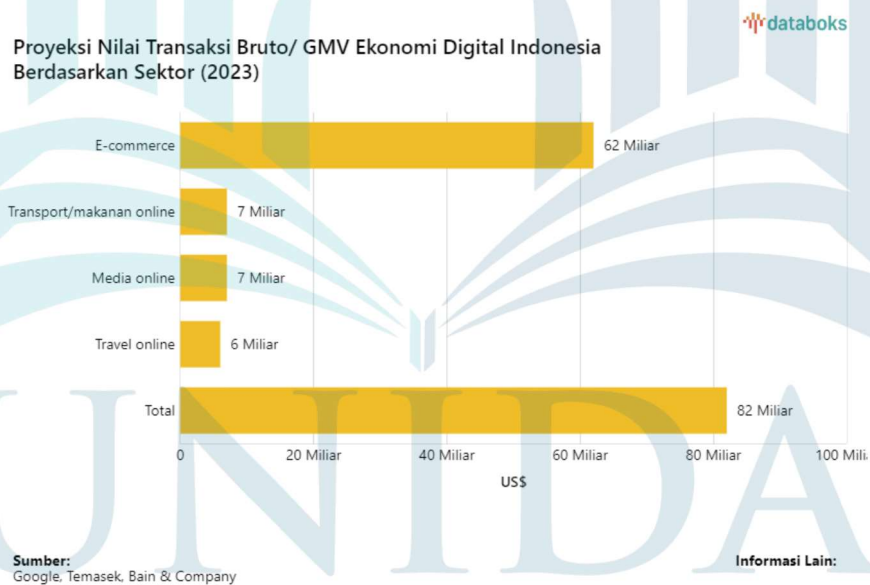
## CHAPTER I INTRODUCTION

### A. Background

The pandemic has triggered changes in employment practices, providing benefits for *gig workers* such as pandemic unemployment assistance and sick days.<sup>1</sup> With the advent of *the gig economy* and the platform-based, on-demand digital economy, working without employees is a reality. Individuals who offer their energy for sale on this platform<sup>2</sup>. Thus, *the gig economy* has a much higher potential to achieve very high volumes, as it is based on virtual Enterprises.<sup>3</sup>.

The Gig Economy has grown tremendously and has become a trillion-dollar industry with millions of attendees. Internet and communication technologies have made it easier to access the gig economy, which has become increasingly common during the COVID-19 pandemic. In India, the gig economy is expected to create up to 90 million jobs in the non-agricultural sector and add 1.25% to GDP in the long run.<sup>4</sup>

Picture 1. E-commerce, Indonesia's Largest Digital Economy Contributor in 2023



<sup>1</sup> Miriam A. Cherry and Ana Santos Rutschman, "Gig Workers as Essential Workers: How to Correct the Gig Economy Beyond the COVID-19 Pandemic", *ABA Journal of Labor & Employment Law*, vol. 78, no. 2017 (2020), pp. 11–6, <https://perma.cc/662J-R3NV>].

<sup>2</sup> Mujtaba Ahsan, "Entrepreneurship and Ethics in the Sharing Economy: A Critical Perspective", *Journal of Business Ethics*, vol. 161, no. 1 (Springer Netherlands, 2020), pp. 19–33, <http://dx.doi.org/10.1007/s10551-018-3975-2>.

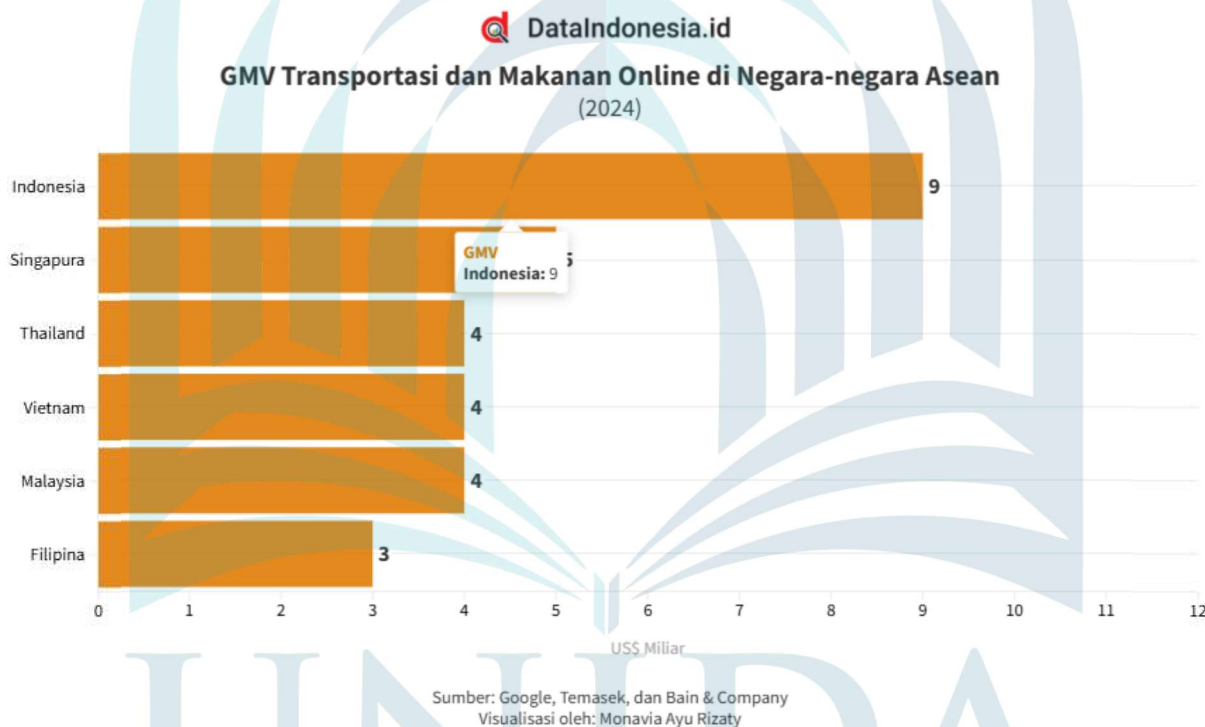
<sup>3</sup> Santiago Melián-González and Jacques Bulchand-Gidumal, "What type of labor lies behind the on-demand economy? New research based on workers' data", *Journal of Management and Organization*, vol. 27, no. 5 (2021), pp. 850–66.

<sup>4</sup> Rashmi Subbiah, "Gig Economy", *International Journal For Multidisciplinary Research*, vol. 5, no. 1 (2023), <https://www.ijfmr.com/research-paper.php?id=1638>.

Source: <https://databoks.katadata.co.id/datapublish/2023/11/06/e-commerce-sektor-penyumbang-ekonomi-digital-terbesar-indonesia-pada-2023>

In Figure 1, in addition to *e-commerce*, another sector contributing to Indonesia's digital economy's gross merchandise value (GMV) is online food delivery/delivery. The online motorcycle taxi sector is projected to have a GMV value of US\$7 billion in 2023, down 8% annually.<sup>5</sup> Basis. The digitalisation of the existing traditional market influences the potential shown in the gig economy, which contributes to GMV. This encourages various changes in society.

Picture 2. GMV Online Transportation and Food in Asean Country



Source: <https://dataindonesia.id/ekonomi-digital/detail/data-gmv-transportasi-dan-makanan-online-di-negaranegara-asean-pada-2024>

In Figure 2, According to a report by Google, Temasek, and Bain & Company, the gross merchandise value (GMV) of online transportation and food delivery services in Southeast Asia reached US\$28 billion in 2024, marking a 12% increase from the previous year's US\$25 billion. Among the countries in the region, Indonesia recorded the highest GMV in this sector, amounting to US\$9 billion in 2024. Singapore followed with US\$5 billion, while Thailand, Vietnam, and Malaysia each reported

<sup>5</sup> Cindy Mutiara Annur, "E-commerce, Sektor Penyumbang Ekonomi Digital Terbesar Indonesia pada 2023", *Databoks* (2023), <https://databoks.katadata.co.id/datapublish/2023/11/06/e-commerce-sektor-penyumbang-ekonomi-digital-terbesar-indonesia-pada-2023>, accessed 8 Jul 2024.

a GMV of US\$4 billion. The Philippines ranked last with US\$3 billion. Overall, the digital economy in Southeast Asia reached a GMV of US\$263 billion in 2024, up 15.4% from US\$228 billion in 2023. Additionally, total profits from the region's digital economy hit US\$11 billion in 2024, reflecting a 24% rise from US\$9 billion the year before. However, this growth rate is notably lower than the 101% surge recorded between 2022 and 2023.<sup>6</sup>

Previous research has used co-word analysis and thematic groupings to provide information on emerging themes in performance economics, such as labour, technology, management, and precariat.<sup>7</sup> Examining issues relating to legitimacy in the specific context of the gig platform's economics is also interesting because, in traditional "human-to-human" control relationships, the controller's ability to influence the behaviour of the controlled party usually derives from a legitimate source of social power, such as the manager's formal position in the organisational hierarchy or legal contracts.<sup>8</sup>

*The gig economy*, driven by companies like Uber, has accelerated the trend of neoliberal industrial relations, resulting in unstable middle-class jobs and a lack of legal protections for workers.<sup>9</sup> Workers who work offline for online platforms have risks different from those of traditional workers.<sup>10</sup> The National Labor Relations Board found that although *canvassers* have flexible work schedules, they face many of the same barriers as traditional employees and are entitled to the same protections.<sup>11</sup>

From the economic side, the digital platform work pattern seems more bilateral than trilateral.<sup>12</sup> Access to social protection is not granted for some forms of protected employment. In some Member States, those working in the platform economy can be excluded from certain social security schemes. Traditional social protection is based on the archetypal pattern of full-time and open relationships or contracts between workers and employers over a certain period.

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<sup>6</sup> *Ibid.*

<sup>7</sup> Shravani Guduru, Nivethitha Santhanam, and Nancyprabha Pushparaj, "Comprehending the research on the gig economy: a bibliometric approach", *Global Knowledge, Memory and Communication*, no. 2020 (2023), <https://www.emerald.com/insight/content/doi/10.1108/GKMC-02-2023-0056/full/html>.

<sup>8</sup> Martin Wiener, W. Alec Cram, and Alexander Benlian, "Algorithmic control and gig workers: a legitimacy perspective of Uber drivers", *European Journal of Information Systems*, vol. 32, no. 3 (Taylor & Francis, 2023), pp. 485–507, <https://doi.org/10.1080/0960085X.2021.1977729>.

<sup>9</sup> Austin Zwick, "Welcome to the Gig Economy: neoliberal industrial relations and the case of Uber", *GeoJournal*, vol. 83, no. 4 (2018), pp. 679–91.

<sup>10</sup> Adrián Todolí-Signes, "The 'gig economy': employee, self-employed or the need for a special employment regulation?", *Transfer*, vol. 23, no. 2 (2017), pp. 193–205.

<sup>11</sup> Not Independent, Contractors Sisters, and N.L.R.B. No Sept, *Employment Law — National Labor Relations Act — NLRB Classifies Canvassers as Published by: The Harvard Law Review Association Stable URL* : <https://www.jstor.org/stable/44072356>, vol. 129, no. 13 (2020), pp. 2039–46.

<sup>12</sup> Elena Gramano, "Digitalisation and work: challenges from the platform-economy", *Contemporary Social Science*, vol. 15, no. 4 (Taylor & Francis, 2020), pp. 476–88, <https://doi.org/10.1080/21582041.2019.1572919>.



Long periods are less inclusive and fail to adapt to provide income throughout the life cycle. They also reduce the risk of poverty and social exclusion among self-employed workers and their families.

Digital platforms are emerging as key tools in managing the pandemic crisis, which is impacting mobility, logistics supply chains, daily life, and workforce organization.<sup>13</sup> Virtual companies act as intermediaries between individuals who provide and ask for products and services based on the provider's performance, and consumers pay for the services they have acquired.<sup>14</sup> This new virtual company theoretically only matches clients (requests) with workers who will perform those tasks (offers).<sup>1516</sup>

Virtual companies allow anyone to easily connect with consumers without making any investments. Thus, the workers can offer different types of skills in the same market with the platform's ease.<sup>17</sup> The platform is an ideal testing ground for analysing the suitability of the 'binary gap' between jobs and workers found in many legal settings.<sup>18</sup> The platform's role can be likened to that of traditional brokers. However, these partnerships' comprehensive and automatic implementation raises many practical and legal problems.<sup>19</sup>

The impact on Uber drivers' unwillingness to work and weekly hours varies based on threat assessments, countermeasure assessments, and maladaptive perceptions. Challenges faced by workers in the gig economy include job security issues and income uncertainty. There is a need for a new legal category for independent workers that requires benefits and protections for workers in the grey area between employees and independent contractors.<sup>20</sup>

Misclassified partnerships in Indonesia negatively impact workers' rights and legal

<sup>13</sup> Cano, Espelt, and Morell, *Capitalism in the Platform Age*, ed. by Sandro Mezzadra et al. (Cham: Springer International Publishing, 2024), <https://link.springer.com/10.1007/978-3-031-49147-4>.

<sup>14</sup> Melián-González and Bulchand-Gidumal, "What type of labor lies behind the on-demand economy? New research based on workers' data".

<sup>15</sup> Todolí-Signes, "The 'gig economy': employee, self-employed or the need for a special employment regulation?"

<sup>16</sup> Gramano, "Digitalisation and work: challenges from the platform-economy".

<sup>17</sup> Melián-González and Bulchand-Gidumal, "What type of labor lies behind the on-demand economy? New research based on workers' data".

<sup>18</sup> Antonio Aloisi, "Platform work in Europe: Lessons learned, legal developments and challenges ahead", *European Labour Law Journal*, vol. 13, no. 1 (2022), pp. 4–29.

<sup>19</sup> *Ibid.*

<sup>20</sup> Seth D. Harris and Alan B. Krueger, "Is Your Uber Driver an Employee or an Independent Contractor?", *Perspectives on Work*, vol. 20, no. May 2024 (2016), pp. 30–3, 80, <http://www.lerachapters.org/OJS/ojs-2.4.4-1/index.php/LERAMR/article/download/3098/3073%0Ahttps://www.jstor.org/stable/26621134>.

protections, depriving them of legal protections and affecting working conditions.<sup>21</sup> Partnership consulting, a concept borrowed from collective bargaining in employment relations, can improve the human rights situation of app drivers in Indonesia's online transportation Gig Economy sector.<sup>22</sup> Indonesia's labour laws should adopt strategies from Germany and the UK to protect digital platform workers, consider flexible work arrangements, and adapt to organisational growth and algorithmic management.<sup>23</sup>

The agreement should begin with a clear understanding of the object of the transaction, the background, and the principles of the agreement. This includes identifying partners and formulating the principles of the agreement.<sup>24</sup> In public-private partnerships, the agreement should include eight key parameters: value received, scope, benefits and risks, and exit strategy. These parameters can be modified according to the set priority.<sup>25</sup> The agreement must include each party's rights and obligations and include a signature as a form of agreement.<sup>26</sup> For public-private partnerships, important conditions include the implementation of construction work, ownership of objects by private partners, duration of the agreement, and project co-financing.<sup>27</sup>

The legal relationship between Gojek and PT. Gojek Indonesia is based on a standard contractual agreement rather than a formal employment bond, thereby excluding Gojek drivers from the protections offered by prevailing labor laws.<sup>28</sup> In Banyumas, the ambiguity surrounding the legal status of Grab drivers within the Gig Economy has led to limited

<sup>21</sup> Nabiyla Risfa Izzati and Mas Muhammad Gibran Sesunan, “‘Misclassified Partnership’ and the Impact of Legal Loophole on Workers”, *BESTUUR*, vol. 10, no. 1 (2022), p. 57, <https://jurnal.uns.ac.id/bestuur/article/view/62066>.

<sup>22</sup> Auditya Firza Saputra, “Partnership Consultation: An Alternative Solution to the Nonexistent Collective Bargaining Right in the Indonesian Ride Hailing Gig Economy Sector”, *Yuridika*, vol. 37, no. 1 (2022), pp. 93–124, <https://e-journal.unair.ac.id/YDK/article/view/34599>.

<sup>23</sup> Nur Afifah Aminuddin and Erna Dyah Kusumawati, “The Legal Protection of the Digital Platform Workers in Indonesia: Lesson Learnd From Germany and the United Kingdom”, *Indonesian Journal of Law and Society*, vol. 4, no. 2 (2023), p. 98, <https://jurnal.unej.ac.id/index.php/ijls/article/view/41915>.

<sup>24</sup> Widaningsih Widaningsih et al., “Legal Protection for the Partnership Agreement Parties”, *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, vol. 22, no. 1 (2022), pp. 31–9, <https://shariajournals-uinjambi.ac.id/index.php/al-risalah/article/view/1118>.

<sup>25</sup> D.T. Molintas, “Public-Private Partnership Agreement in the Context of the Matrix for Assessing their Legal Parameters and Digitalization”, *Journal of Digital Technologies and Law*, vol. 2, no. 2 (2024), pp. 430–49, <https://www.lawjournal.digital/jour/article/view/432>.

<sup>26</sup> Widaningsih et al., “Legal Protection for the Partnership Agreement Parties”.

<sup>27</sup> A.F. Khakimova, “Essential Conditions of Public-Private Partnership Agreement”, *Juridical science and practice*, vol. 17, no. 4 (2022), pp. 46–53, <https://judpract.elpub.ru/jour/article/view/239>.

<sup>28</sup> Sebastian Edward Mardianto and Gunardi Lie, “Hubungan Hukum Kemitraan Antara Driver Gojek dan PT. Gojek Indonesia berdasarkan peraturan perundang-undangan di Indonesia”, *JERUMI: Journal of Education Religion Humanities and Multidisciplinary*, vol. 1, no. 2 (2023), pp. 671–6.



protection, especially for those affected by fraudulent or fictitious orders.<sup>29</sup> Meanwhile, Maxim provides a form of legal safeguard through accident insurance facilitated by the Indonesian Healthy and Prosperous Driver Foundation (YPSSI), with the insurance premiums covered directly by the company. Furthermore, Maxim's accountability to its drivers is reflected in its commitment to ensuring the platform operates efficiently and in accordance with the terms outlined in the partnership agreement.<sup>30</sup>

Fairness in the gig economy requires a holistic approach that considers flexibility and ethical considerations. Proper regulation, protection of workers' rights, and transparency in algorithmic management are important steps to ensure future fairness and welfare for gig workers.<sup>31</sup> This also poses challenges regarding labour regulations, taxes, and social protection.<sup>32</sup>

The philosophical thinking of figures such as Plato, Aristotle, and John Rawls emphasised that justice is an important foundation for social welfare. Rawls, for example, emphasises that social welfare cannot be achieved without social justice.<sup>33</sup> However, justice does not always accompany increasing economic welfare. A fair exchange that reduces welfare or, conversely, an unfair exchange that increases welfare is possible.<sup>34</sup>

To drive the gig economy in its original form, Islam offers moral economy-based solutions to competition against its fundamentals, addressing exploitation, job insecurity, mental and physical health crises, and promoting social welfare and individual interests.<sup>35</sup> The

<sup>29</sup> Ery Charmelita Raska and Susilo Wardani, *PERLINDUNGAN HUKUM BAGI DRIVER GRAB YANG MENGALAMI PESANAN FIKTIF PADA ERA GIG ECONOMY DI KABUPATEN BANYUMAS*, vol. 7, no. 2 (2024), pp. 449–63.

<sup>30</sup> Putri Handayani, Weny Amoravid Dunga, and Waode Mustika, *Analisis Bentuk Pertanggungjawaban Pihak Maxim Dalam Sebuah Perjanjian Kemitraan di Kota Gorontalo*, vol. 1, no. 2 (2024).

<sup>31</sup> Amit Joshi, Saharsh Jain, and Puneet Kumar Gupta, "Challenges and impact of the gig economy", *Sustainable Economies*, vol. 2, no. 2 (2024), p. 96, <https://ojs.sin-chn.com/index.php/SE/article/view/96>; Zhi Ming Tan et al., "The Ethical Debate about the Gig Economy: A Review and Critical Analysis", *SSRN Electronic Journal* (2020), <https://www.ssrn.com/abstract=3669216>; Benjamin Semujanga and Xavier Parent-Rochelleau, "Time-Based Stress and Procedural Justice: Can Transparency Mitigate the Effects of Algorithmic Compensation in Gig Work?", *International Journal of Environmental Research and Public Health*, vol. 21, no. 1 (2024), p. 86, <https://www.mdpi.com/1660-4601/21/1/86>.

<sup>32</sup> Alex de Ruyter, Martyn Brown, and John Burgess, "GIG WORK AND THE FOURTH INDUSTRIAL REVOLUTION", *Journal of International Affairs*, vol. 72, no. 1 (Journal of International Affairs Editorial Board, 2018), pp. 37–50, <https://www.jstor.org/stable/26588341>.

<sup>33</sup> Ingrida Baranauskienė, "Preface by Editor-in-Chief", *Social welfare : interdisciplinary approach*, vol. 10, no. 1 (2020), pp. 5–6, <https://www.journals.vu.lt/social-welfare/article/view/26472>.

<sup>34</sup> Łukasz Dominiak and Igor Wysocki, "How Does Justice Relate to Economic Welfare?", *Croatian journal of philosophy*, vol. 23, no. 67 (2023), pp. 51–67, <https://hrcak.srce.hr/301248>.

<sup>35</sup> Renny Candradewi Puspitarini and Abdul Basit, "Race to the Bottom: an Introduction to Gig Economy based on Moral Economy in Islam Perspective", *POLITEA*, vol. 3, no. 2 (2020), p. 167, <https://journal.iainkudus.ac.id/index.php/politea/article/view/8331>.

Islamic economic system promotes equal partnership, peace and harmony, and the sharing of profits and losses.<sup>36</sup> According to the Compilation of Sharia Economics Law (KHES), contracts must be carried out based on the principle of mutual benefit; each contract must meet the interests of the parties to avoid manipulation practices that harm one of the parties.<sup>37</sup> Therefore, fairness is needed in every deal made in a partnership in the gig economy.

From an Islamic perspective, welfare is a concept that integrates material, spiritual, and moral values to achieve overall human welfare. The concept is rooted in the Qur'an's teachings and the Prophet Muhammad's traditions, emphasising the importance of balancing these aspects in achieving sustainable and inclusive development goals.<sup>38</sup> The measurement of the poverty index and welfare index of the CIBEST model, which is based on the Qur'an and Sunnah, can be adjusted to measure welfare.<sup>39</sup> Identify relevant index criteria and indicators and apply them to gig workers. For example, criteria such as fair income, job security, work-life balance, and access to social protection can be measured and analysed in the gig economy context.

Various phenomena have emerged in the *gig economy*, accelerating the neoliberal industries' trend related to various practical and legal issues, such as labour, technology, management, *precariat*, or uncertain workers, and the lack of legal protection for gig workers. This makes the happiness in this gig economy unfair. From the perspective of Sharia economic law, the concept of partnership in *the gig economy*, if applied by Sharia principles, will create justice. Similarly, if justice is achieved, welfare is created. To discuss the uniqueness of the relationship in partnership agreements between platform companies and gig workers, research is needed on the Analysis of Partnership Agreements in the Gig Economy Reviewed with the Compilation of Sharia Economics Law (KHES) and Its Impact on Islamic Welfare.

## B. Problem Formulation

Based on the background mentioned above, the following is a formulation of the problem:

<sup>36</sup> dr. khawar anjum bhatti, "An Analysis of the Business Partnership in Islamic Economic System", *Journal of Religious Studies (UOCHJRS)* (2019), pp. 127–33, <https://jrs.uoch.edu.pk/index.php/journal3/article/view/127>.

<sup>37</sup> Mahkamah Agung Republik Indonesia, "Kompilasi Hukum Ekonomi Syariah", *Mahkamah Agung Republik Indonesia* (2011).

<sup>38</sup> Ahmad Anas et al., "Welfare in Islamic Economics Perspective: Literature Review", *Affective Development Journal*, vol. 1, no. 1 (2024), pp. 21–32, <https://ojs.edutechpublishing.com/index.php/affective/article/view/24>.

<sup>39</sup> Irfan Syauqi Beik and Laily Dwi Arsyianti, "MEASURING ZAKAT IMPACT ON POVERTY AND WELFARE USING CIBEST MODEL", *Journal of Islamic Monetary Economics and Finance*, vol. 1, no. 2 (2016), pp. 141–60, <https://consensus.app/papers/measuring-zakat-impact-on-poverty-and-welfare-using-cibest-beik-arsyianti/da9146eab8695810bd3f4d5fb9a6c4d1/>.



1. How are the Partnership Agreement clauses on the Gig Economy reviewed based on the Compilation of Sharia Economics Law (KHES)?
2. What is the impact of the Partnership Agreement on the welfare of Islamic gig workers based on welfare measurement using the CIBEST model?

#### C. Research Objectives

Based on the formulation of the problem mentioned above, the following are the objectives of the research:

1. To Review Partnership Agreements clauses in the Gig Economy with the Compilation of Sharia Economics Law (KHES).
2. To Measure the Impact of Partnership Agreements on the Islamic Welfare of Gig Workers using the CIBEST Model.

#### D. Research Benefits

##### 1. Theoretical Benefits:

Contributing to developing literature on Sharia economic law related to the gig economy.

##### 2. Practical Benefits:

Guiding policymakers, business actors, and regulators to create a gig economy ecosystem.

##### 3. Social Benefits:

Providing a deeper understanding of worker welfare in the gig economy.

#### E. Research Hypothesis

Based on the description above, the research hypothesis can be stated in the form of:

1. The gig economy partnership relationship in the partnership agreement is unfair when reviewed with the Compilation of Sharia Economics Law (KHES).
2. Gig workers do not receive welfare according to the CIBEST welfare model.