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The Limits of Contractual Freedom in The Platform Economy: Toward Differentiated Protection for MSMEs and Digital Workers Under Indonesian Law

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ABSTRACT

The rapid expansion of digital platforms in Indonesia has reshaped commercial and employment relationships between platform operators and two distinct groups of participants: micro, small, and medium-sized enterprises (MSMEs) that rely on digital platforms for market access and digital platform workers who depend on these platforms for work opportunities and income. Although these groups occupy different legal positions under Indonesian law, both may be subject to structurally similar mechanisms of platform governance, including algorithmic ranking, account deactivation, automated performance evaluation, and unilateral modifications of contractual terms, which traditional principles of freedom of contract may not adequately address. This paper argues that Indonesian law governs these relationships through fragmented regulatory frameworks encompassing commercial law, consumer protection law, and labor law, none of which was specifically designed to address platform-related structural dependency. Consequently, contractual fairness must extend beyond contract formation to encompass the governance of ongoing contractual relationships. Drawing on a functional comparative analysis of the European Union's Platform-to-Business Regulation, Digital Services Act, and Platform Work Directive, this paper develops a differentiated framework of regulated contractual fairness. This framework establishes common procedural principles while proposing group-specific legal mechanisms that recognize the distinct legal status of MSMEs and digital platform workers. It emphasizes transparency, procedural accountability, safeguards against arbitrary platform decisions, and accessible dispute resolution mechanisms to address structural dependency and power imbalances within platform-mediated relationships.

INTRODUCTION

Since the commercial introduction of ride-hailing and e-commerce platforms in Indonesia in the early 2010s, digital platforms have progressively assumed roles extending beyond those of neutral technological intermediaries (Kibaroglu, 2022; Park et al., 2026). Empirical studies of the two-wheeled ride-hailing sector describe a tripartite structure comprising the platform, the driver, and the passenger, in which the platform independently designs the algorithms governing work allocation, determines the fares charged to consumers, and establishes the commissions retained from individual transactions (Meytiara, 2024, pp. 497–498). By the early 2020s, ride-hailing platforms in Indonesia served tens of millions of

users and had several million registered motorcycle drivers. These figures illustrate the scale of contemporary platform governance without, in themselves, resolving the legal questions arising from these relationships (Meytiara, 2024, p. 497).

For micro, small, and medium-sized enterprises (MSMEs), digital platforms have become essential commercial infrastructure for reaching customers, processing payments, and managing logistics (Prabowo et al., 2024). For digital platform workers, particularly ride-hailing and delivery drivers, these platforms have become a primary or, in some cases, sole source of work and income (Djamaluddin et al., 2026). In both contexts, contractual relationships are formally established through agreements accepted by business users or workers. However, the contractual terms, whether incorporated into a platform's terms of service or a partnership agreement, are generally drafted unilaterally by the platform, presented on a take-it-or-leave-it basis, and subject to modification at the platform's discretion.

This contractual structure raises a doctrinal question that Indonesian private law has yet to address comprehensively. Article 1338 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, n.d.) establishes that legally concluded agreements are binding upon the parties and have the force of law between them (Kitab Undang-Undang Hukum Perdata, n.d., art. 1338). This provision reflects the classical principle of freedom of contract, traditionally associated with the assumption that contracting parties possess sufficient autonomy to determine and consent to their contractual obligations (Kessler, 1943; Sjahdeini, 1993). The central question examined in this paper is whether this assumption remains defensible when one contracting party, the digital platform, exercises structural power through the design, operation, and governance of a digital system that the other party neither controls nor can meaningfully negotiate.

The scope of this inquiry is more specific than it may initially appear. Clicking an "accept" button or signing a partnership agreement may establish formal contractual consent, provided that the applicable legal requirements are satisfied. Accordingly, this paper does not contend that platform contracts are inherently invalid. Although standardized contractual terms have long been criticized for reducing consent to a procedural formality (Radin, 2013), the challenges associated with digital platforms extend beyond contract formation. Formal consent concerns whether a legally binding agreement has been established, whereas contractual fairness also requires consideration of how contractual powers are exercised throughout the continuing relationship. The distinction between formal consent and meaningful contractual autonomy, understood as the practical ability to understand contractual terms, negotiate conditions, challenge decisions, or withdraw from contractual arrangements, therefore constitutes the analytical foundation of this paper.

Existing Indonesian scholarship has identified several dimensions of this problem, although these issues have rarely been examined through an integrated business law framework. Research on motorcycle ride-hailing regulation has characterized the relationship between drivers and platforms as occupying a legal gray area, particularly regarding the classification of drivers under Article 1(3) of Law No. 13 of 2003 concerning Manpower, which defines a worker or laborer as an individual who performs work in exchange for wages or other remuneration. Despite uncertainty surrounding their employment status, platform drivers remain subject to continuous performance monitoring through mechanisms described as algorithmic labor control (Undang-Undang Nomor 13 Tahun 2003, 2003, art. 1(3); Meytiara,

2024, p. 498). Separately, research on labor protection in Indonesia's informal sector has identified gaps in legal protection, employment guarantees, and social security coverage for individuals working outside formally recognized employment relationships, raising concerns regarding the constitutional commitment to social welfare (Hamid et al., 2022, pp. 528, 533–534). However, neither study systematically examines whether the vulnerabilities experienced by platform drivers are structurally comparable to those affecting MSMEs operating through digital platforms, nor does either study approach these vulnerabilities primarily through the broader perspective of business law. More recent scholarship has examined contractual consent in digital platform agreements under the Indonesian Civil Code (Hayati, 2025) and contractual imbalances in online motorcycle-taxi partnerships (Djamaluddin et al., 2026), while European legal scholarship has proposed fairness standards applicable across relationships involving consumers, business users, and workers (Graef, 2026). Nevertheless, these contributions generally address platform-related vulnerabilities within separate legal categories or regulatory domains. This paper seeks to bridge these perspectives by developing a doctrinally grounded concept of platform-mediated economic dependency, examining contractual fairness beyond the formation of agreements, and proposing differentiated legal protections for two groups with distinct legal statuses.

Against this background, this paper addresses three research questions. First, how does Indonesian law regulate contractual relationships between digital platforms and MSMEs, on the one hand, and digital platform workers, on the other, particularly where structural bargaining asymmetries and economic dependency exist? Second, to what extent does the principle of freedom of contract under Indonesian private law provide an adequate normative foundation for governing these relationships, and how does its adequacy differ between the two groups? Third, drawing on the European Union's Platform-to-Business Regulation, Digital Services Act, and Platform Work Directive as comparative benchmarks, what differentiated legal principles can be developed to strengthen protections for MSMEs and digital platform workers in Indonesia without unnecessarily restricting legitimate contractual freedom and commercial autonomy?

The central argument advanced in this paper is that MSMEs and digital platform workers, despite their distinct legal positions, may experience comparable forms of platform-mediated economic dependency that are not adequately addressed by Indonesia's existing regulatory framework, which remains fragmented across commercial law, consumer protection law, and labor law. A differentiated yet coherent framework of regulated contractual fairness is therefore proposed as a more appropriate normative response than either an unqualified application of freedom of contract or the wholesale extension of employment-based protections to commercial relationships. The structural similarity between these groups arises from the mechanisms through which platforms exercise economic and organizational power rather than from the legal status of the affected parties. The novelty of this paper lies in its integrated examination of two legally distinct groups through a common conceptual framework of platform-mediated economic dependency and its development of a differentiated model of regulated contractual fairness informed by European Union regulatory approaches while remaining grounded in Indonesian contract law and institutional conditions. The following sections examine the doctrinal framework, relevant Indonesian legislation, comparative

European Union regulations, the proposed differentiated protection model, and the study's conclusions.

METHOD

This study employed normative legal research using conceptual, statutory, and comparative approaches (Marzuki, 2017). It did not involve empirical data collection; industry statistics and sectoral studies were used solely to contextualize the legal issues examined through doctrinal analysis. The statutory approach examined the Indonesian Civil Code and relevant legislation governing commercial relationships, consumer protection, electronic transactions, transportation, and employment in the platform economy. The conceptual approach drew on contract law doctrine and scholarly literature concerning platform governance, bargaining power asymmetries, and economic dependency. The comparative approach examined the European Union's Platform-to-Business Regulation, Digital Services Act, and Platform Work Directive as functional benchmarks for identifying applicable regulatory principles rather than as instruments for direct legislative transplantation (Zweigert & Kötz, 1998). The analysis distinguished existing Indonesian legal provisions from proposed reforms, which were formulated as de lege ferenda recommendations.

RESULTS AND DISCUSSION

Platform Economy as a Form of Private Economic Governance

A useful starting point is Srnicek's (2017) account of the platform as a business model that positions an intermediary firm between two or more groups of users, extracting value from the data and transactions that pass through infrastructure the firm alone controls (Srnicek, 2017). What distinguishes a platform from a conventional intermediary is not merely its use of technology, but the degree to which it can unilaterally set the rules under which other market participants operate: pricing logic, ranking criteria, access conditions, and the consequences of non-compliance. Khan's (2017) analysis of structural market power in platform contexts makes a related point in the competition law context, namely that a platform's control over the infrastructure on which other businesses depend can confer power that ordinary market competition does not discipline (Khan, 2017). For purposes of this paper, the relevant implication is not competition law in nature but contractual: a platform that controls market or work access functions, in practical effect, as a private regulator of the participants who depend on it, even though the legal form of that relationship remains a bilateral contract.

The platform drafts the rules, interprets them, monitors compliance through data it alone collects, evaluates performance, imposes sanctions, and decides whether a participant retains access. The platform owner is at once rule-maker and market participant (Tang & Yin, 2026), and platform firms exercise governance through privately designed legal and technical arrangements (Cohen, 2019). The party that benefits from a decision thus also makes, applies, and reviews it.

Freedom of Contract Under Indonesian Law

Indonesian contract law, rooted in the Civil Code inherited from the Dutch *Burgerlijk Wetboek*, is organized around the principle of consensualism and the binding force of validly concluded agreements under Article 1338 (Kitab Undang-Undang Hukum Perdata, n.d., art. 1338). The classical justification for this principle rests on the assumption that contracting

parties are capable of protecting their own interests through negotiation, and that the law's role is limited to enforcing whatever bargain the parties reach, subject to requirements of legal capacity, lawful cause, and, more recently, good faith (Kurniawan et al., 2022, p. 133). This assumption functions reasonably well where bargaining power between the parties is roughly comparable, or where a disadvantaged party retains a realistic alternative, another counterparty, another market, or another income source, if it declines the terms offered.

Freedom of contract in Indonesian law has never been unqualified. Article 1320 conditions validity on consent, capacity, a definite object, and a lawful cause (Kitab Undang-Undang Hukum Perdata, n.d., art. 1320); Article 1338(3) requires performance in good faith (Kitab Undang-Undang Hukum Perdata, n.d., art. 1338(3)); and Article 1339 binds the parties also to what the nature of the agreement requires according to fairness, custom, or law (Kitab Undang-Undang Hukum Perdata, n.d., art. 1339). Sjahdeini (1993) argued that freedom of contract must be accompanied by balanced protection of both parties (Sjahdeini, 1993), Budiono (2006) developed the principle of balance (*asas keseimbangan*) (Budiono, 2006), and Hernoko (2010) proposed proportionality, the fair distribution of rights and obligations according to the parties' positions, as the operative principle for commercial contracts (Hernoko, 2010), a position that cautions against treating a business user as a consumer. What remains underdeveloped is the application of this vocabulary to the performance phase of a continuing relationship that one party can reshape unilaterally.

Standard-Form Contracting, Bargaining Asymmetry, and Economic Dependency

Platform relationships depart from that assumption in a specific way. The terms governing an MSME's participation in a marketplace platform, and the terms governing a driver's participation in a ride-hailing platform, are standard-form contracts drafted entirely by the platform and accepted through a click-through or onboarding process that offers no realistic scope for negotiation. Standard-form contracting is not itself novel to platform relationships; Indonesian contract doctrine has long recognized that adhesion contracts (*perjanjian baku*) raise fairness concerns distinct from individually negotiated agreements (Kurniawan & Parameswary, 2014). What platform contracting adds is a further layer of dependency: because the platform may control a dominant or exclusive channel to customers or to work opportunities, exit from the relationship carries a cost to the business user or worker that is not symmetric to whatever cost the platform bears from that party's departure. This asymmetry, described in this paper as platform-mediated economic dependency, is the structural condition that this paper argues formal contractual freedom does not, by itself, adequately address (Cutolo & Kenney, 2021, p. 600).

Platform-mediated economic dependency is not weakness or smallness but a legally significant condition with four dimensions. Access dependency arises because the platform controls access to customers, visibility, transactions, payment infrastructure, or work. Information dependency arises because the platform holds information about ranking, pricing, commissions, evaluation, and account decisions that the participant cannot verify (Iredale, 2026; Rosenblat & Stark, 2016). Exit dependency arises because, although the contract may be terminable at will, exit is costly where customers or work are concentrated on the platform and accumulated ratings and reputation cannot be carried elsewhere (Cutolo & Kenney, 2021); formal freedom to leave is not meaningful freedom to contract. Survey evidence from Austria is consistent with this: business users facing more competing platforms report greater ease of

switching and a greater likelihood of negotiable and favourable terms of use (Peneder et al., 2025). Governance dependency arises because the participant performs within a continuing system of rules made, applied, and enforced by its counterparty.

The EU legislature recognized a version of this condition in noting that the increasing dependence of business users, particularly small and medium-sized enterprises, on intermediation services gives providers superior bargaining power (Regulation (EU) 2019/1150, 2019, recital 2). Each dimension marks where an assumption underlying Article 1338 weakens: the existence of a realistic alternative, informed agreement, exit as a remedy, and the stability of agreed terms.

The Conceptual Problem of Platform Power

The doctrinal difficulty is that Indonesian private law has well-developed tools for addressing defects in the formation of consent, mistake, fraud, duress, and, to a lesser extent, unconscionability in standard-form contracts (Hayati, 2025), but comparatively underdeveloped tools for addressing power exercised after a contract has been validly formed, through unilateral variation, algorithmic performance management, or termination without meaningful process. It is this second category, power exercised through ongoing governance rather than through defects at formation, that this paper identifies as platform power, and that motivates the comparative and constructive analysis that follows.

The distinction between formation and governance is the doctrinal core of this paper. Traditional doctrine scrutinizes formation: consent, its vitiation, and the lawfulness of object and cause. Platform relationships require attention to what follows: amendment, fee changes, ranking, evaluation, and deactivation. Articles 1338(3) and 1339 offer a textual basis for scrutinizing performance, but as open standards applied in litigation they do not generate *ex ante* duties of notice, reasons, and review. Indonesian law accepts such scrutiny in one setting, prohibiting standard clauses that subject a consumer to rules amended unilaterally by the business actor during the service (Undang-Undang Nomor 8 Tahun 1999, 1999, art. 18(1)(g)), but that prohibition does not reach business users, since a consumer is defined as a user who does not trade (Undang-Undang Nomor 8 Tahun 1999, 1999, art. 1(2)). The proposition this paper defends follows: contractual fairness should extend from formation to the governance of the relationship where one party exercises continuing infrastructural and algorithmic power over the other.

Two Dimensions of Platform Dependency in Indonesia

MSMEs as Business Users

MSMEs are protected under Indonesian law primarily through Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises, as amended following the enactment of the Job Creation Law and Government Regulation No. 7 of 2021 (Undang-Undang Nomor 20 Tahun 2008, 2008; Peraturan Pemerintah Nomor 7 Tahun 2021, 2021). That framework addresses matters such as business licensing, access to financing, and partnership incentives, and it subjects partnership (*kemitraan*) to supervision by the competition authority (Undang-Undang Nomor 20 Tahun 2008, 2008, arts. 35(1), 36(2)), a function assigned to the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*, KPPU) (Peraturan Pemerintah Nomor 7 Tahun 2021, 2021, art. 119(1); Peraturan Komisi Pengawas Persaingan Usaha Nomor 2 Tahun 2024, 2024), although whether platform-merchant

relationships are *kemitraan* in this sense appears unsettled. It was not designed with platform intermediation in mind and does not regulate the specific practices identified in this paper: unilateral variation of platform fees, non-transparent ranking, or account suspension without stated reasons.

Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems (Peraturan Pemerintah Nomor 80 Tahun 2019, 2019) and Government Regulation No. 71 of 2019 concerning the Operation of Electronic Systems and Transactions (Peraturan Pemerintah Nomor 71 Tahun 2019, 2019) regulate e-commerce more generally, including obligations relating to consumer protection and data handling, but likewise do not impose fairness or transparency obligations running specifically from platforms to their business users; the former instead requires merchants to comply with the platform's terms (Peraturan Pemerintah Nomor 80 Tahun 2019, 2019, art. 20). Law No. 11 of 2008 concerning Electronic Information and Transactions, as amended (Undang-Undang Nomor 11 Tahun 2008, 2008), addresses the validity and evidentiary status of electronic transactions and certain prohibited conduct online, but is not a business-to-business fairness instrument, although its second amendment charges the Government with encouraging a fair digital ecosystem and empowers it to order system adjustments (Undang-Undang Nomor 1 Tahun 2024, 2024, art. 40A(1)–(2)).

The most significant recent change is Minister of Trade Regulation No. 19 of 2026 (Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026; Peraturan Menteri Perdagangan Nomor 31 Tahun 2023, 2023). It requires marketplace, ride-hailing, and certain other platform operators to disclose fees transparently, record agreed fees in a written or electronic agreement, obtain merchants' consent to changes, and answer written objections within fourteen working days, failing which the objection is deemed accepted (Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026, art. 14(1)–(7)). It also requires equal business opportunities for merchants and prohibits misuse of user data (Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026, art. 18(1), (4)(b)). These provisions perform part of the Platform-to-Business Regulation's function, but do not address ranking transparency, reasons for suspension, or independent mediation.

The result is that an MSME whose account is suspended or whose ranking is altered has, outside the fee-related protections of the 2026 regulation, recourse principally to general contract law doctrines that were not designed for this relationship, and to consumer protection provisions under Law No. 8 of 1999 (Undang-Undang Nomor 8 Tahun 1999, 1999, art. 4; Meytiara, 2024, p. 499) that protect the MSME only in its residual capacity as a consumer of the platform's services, not in its primary capacity as a business user dependent on the platform for market access.

Digital Workers and Platform-Mediated Work

Digital workers, most visibly two-wheel ride-hailing and delivery drivers, are governed by a different and equally fragmented set of instruments. Law No. 22 of 2009 concerning Traffic and Road Transport confines the public transport of persons and goods to public motor vehicles, a category that does not include motorcycles, and this gap left two-wheel ride-hailing operating for several years without sector-specific regulation (Undang-Undang Nomor 22 Tahun 2009, 2009; Meytiara, 2024, pp. 499–500). In 2018 the Constitutional Court rejected a petition by online motorcycle-taxi drivers against the provision classifying motor vehicles by function (Undang-Undang Nomor 22 Tahun 2009, 2009, arts. 47(3), 138(3); Putusan

Mahkamah Konstitusi Nomor 41/PUU-XVI/2018, 2018). The Ministry of Transportation subsequently issued Regulation No. 12 of 2019 concerning Safety Protection for Users of Motorcycles Used for Public Interest (Peraturan Menteri Perhubungan Nomor 12 Tahun 2019, 2019; Meytiara, 2024, pp. 499–500), which characterizes the relationship between application companies and drivers as a partnership (*kemitraan*) and reserves to the Minister the guideline for calculating service fees (Peraturan Menteri Perhubungan Nomor 12 Tahun 2019, 2019, arts. 11(5), 15(1)), together with a series of decrees fixing minimum and maximum tariffs and platform commission ceilings (Keputusan Menteri Perhubungan Nomor KP 348 Tahun 2019, 2019; Keputusan Menteri Perhubungan Nomor KP 667 Tahun 2022, 2022; Keputusan Menteri Perhubungan Nomor KP 1001 Tahun 2022, 2022; Meytiara, 2024, p. 500).

Presidential Regulation No. 27 of 2026 on the Protection of Online Transportation Workers has been reported to cap application-company deductions at eight percent and to require social security protection, with the twenty percent ceiling under the 2022 decree to be lowered from 1 July 2026 (Ramadhan, 2026; "Menhub Dudy tegaskan potongan komisi 8 persen ojol berlaku 1 Juli," 2026). A 2025 ministerial circular also addressed a religious holiday bonus for drivers and couriers (Surat Edaran Menteri Ketenagakerjaan Nomor M/3/HK.04.00/III/2025, 2025). These instruments concern fares, deductions, and social protection, not the driver's status; this paper draws no classificatory conclusion from a regulation whose official text could not be verified.

Law No. 13 of 2003 concerning Manpower, as subsequently amended through the Job Creation Law and its successor Law No. 6 of 2023 following constitutional review (Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, 2021; Undang-Undang Nomor 6 Tahun 2023, 2023; Putusan Mahkamah Konstitusi Nomor 54/PUU-XXI/2023, 2023), continues to define an employment relationship as one based on an employment agreement and containing the elements of work, wage, and command (Undang-Undang Nomor 13 Tahun 2003, 2003, art. 1(14)–(15)), a test that platform terms of service are typically drafted to avoid satisfying, regardless of the degree of algorithmic control actually exercised over the worker's performance. That framework is itself in transition: the Constitutional Court has called for a separate manpower law (Putusan Mahkamah Konstitusi Nomor 168/PUU-XXI/2023, 2024), and a bill with a chapter on platform workers was scheduled for plenary approval in October 2026 ("Hasil pertemuan buruh dan DPR," 2026; "RUU Ketenagakerjaan muat bab khusus pekerja platform digital," 2026; "Hasil Pertemuan Buruh dan DPR," 2026).

Legal Classification: An Unresolved Question

Neither Indonesian statute nor, so far as this paper has been able to verify, any binding Indonesian judicial decision has squarely resolved whether platform drivers should be treated as employees, independent contractors, partners under a *sui generis kemitraan* arrangement, or some other category (Izzati & Kwang, 2025). This paper does not resolve that question either, and specifically does not assume that platform drivers are employees. What can be said doctrinally is that the traditional binary of employee versus independent contractor was developed for relationships in which control is exercised through direct human instruction, and that this binary does not map cleanly onto a relationship in which control is exercised through an algorithm that allocates work, evaluates performance, and administers consequences without a human supervisor issuing comparable instructions. Whether Indonesian law should

recognize an intermediate category, informed by comparative developments discussed below, is a question to which this paper returns in proposing its model.

Algorithmic management sharpens the question. Platform work is organized through systems that allocate tasks, adjust prices, and monitor ratings with limited human involvement (Prassl, 2018; Noponen et al., 2024), directing drivers through information asymmetries rather than explicit instruction (Rosenblat & Stark, 2016). Whether this amounts to command (*perintah*) under Article 1(15) is the contested question, but classification cannot turn on the parties' label. Izzati and Kwang (2025) identify three reform paths, a new category, a broader definition of employment, or incremental change (Izzati & Kwang, 2025); the model proposed below can operate under any of them.

The consequence of non-classification is not neutral. Hamid et al. (2022) show that Indonesia's labor statutes contain no official definition of informal-sector workers and regulate formal workers only, leaving those outside a formal employment relationship in a regulatory vacuum as regards legal and social protection (Hamid et al., 2022, pp. 534–536). A driver treated as a partner rather than an employee is, in practical terms, placed in that position, which is why the procedural safeguards proposed below are designed not to depend on the outcome of classification.

Shared Structural Vulnerabilities and Legal Differences

Notwithstanding their different legal status, MSMEs and digital workers on Indonesian platforms are exposed to a materially similar set of governance mechanisms (Izzati & Kwang, 2025). Both depend on the platform for access, to markets in the case of MSMEs, and to work in the case of drivers. Both are subject to ranking or performance-scoring systems administered by the platform's algorithm. Both may face suspension or deactivation with limited advance notice and limited stated justification. Both experience an information asymmetry regarding how the algorithm that governs ranking, allocation, or pricing actually operates. The legal regime applicable to each group differs sharply: MSMEs are governed principally by commercial, consumer-protection, and electronic-transaction law, while digital workers are governed, or more precisely are excluded from, the framework of labor law. This paper's claim is not that these two legal regimes should be merged, but that the shared structural condition, platform-mediated economic dependency, is currently addressed by neither regime in a targeted way, and that this is the specific regulatory gap Indonesian law exhibits.

Legal status nonetheless differs: MSMEs are business users in a commercial relationship governed by commercial, electronic commerce, consumer, competition, and MSME law, whereas drivers are participants whose classification is contested and whose concerns center on work, income, and algorithmic management. The similarity lies in the structural mechanism of platform power, not in legal status.

It follows that similar dependency does not justify identical remedies, since an MSME's commercial autonomy deserves respect (Hernoko, 2010); that nothing supports extending labor law to MSMEs; and that nothing presupposes that drivers are employees.

Comparative Perspective: European Union Platform Regulation

The Platform-to-Business Regulation

Regulation (EU) 2019/1150 (2019) addresses fairness and transparency in the relationship between online intermediation platforms and their business users. The problem it

addresses is the one identified above: business users' dependence on intermediation services and the superior bargaining power that dependence confers on providers. Platforms must state their terms in plain and intelligible language and give at least fifteen days' notice of proposed changes (Regulation (EU) 2019/1150, 2019, art. 3(1)(a), (2)); give reasons when restricting or suspending a business user, and thirty days' notice with reasons before terminating the whole service (Regulation (EU) 2019/1150, 2019, art. 4(1)–(2)); disclose the main ranking parameters, including any possibility of influencing ranking through remuneration (Regulation (EU) 2019/1150, 2019, art. 5(1), (3)); describe differentiated treatment of their own offerings and business users' access to data (Regulation (EU) 2019/1150, 2019, arts. 7(1), 9(1)); and provide internal complaint handling and identify mediators, obligations from which small-enterprise providers are exempt (Regulation (EU) 2019/1150, 2019, arts. 11(1), (5), 12(1), (7)). The Regulation has applied since 12 July 2020 (Regulation (EU) 2019/1150, 2019, art. 19(2)).

The Regulation's underlying function is to convert practices that would otherwise be treated as purely private contractual matters into subjects of mandatory procedural regulation, without directly setting the substantive terms of the contract; the platform remains free to set its commission rate, but must disclose and provide reasoned notice of changes to it. This is the closest EU analogue to the MSME-side problem identified above. Indonesian law now performs part of this function through the 2026 trade regulation (Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026, art. 14), but has no counterpart to the Regulation's ranking, reason-giving, and mediation components.

The Digital Services Act

Regulation (EU) 2022/2065 (2022) operates at a broader level, imposing due diligence, transparency, and accountability obligations on providers of intermediary services generally, including obligations relating to algorithmic transparency, recommender-system parameters, and internal complaint mechanisms, with more extensive obligations imposed on very large online platforms (Codagnone & Weigl, 2023, p. 18). Its principal concerns are illegal content, systemic risks arising from large services, and accountability to regulators and users (Regulation (EU) 2022/2065, 2022, arts. 33(1), 34(1)). Its relevance here is narrower than that of the Platform-to-Business Regulation: it is not a business-user protection instrument and is expressly without prejudice to that Regulation (Regulation (EU) 2022/2065, 2022, art. 2(4)(e)).

Three elements are nonetheless instructive. Providers must describe in their terms the content-moderation tools they use, including algorithmic decision-making and human review (Regulation (EU) 2022/2065, 2022, art. 14(1)). Hosting providers must give affected recipients reasons for restrictions such as account suspension, including information on the use of automated means, and online platforms must offer internal complaint handling not decided solely by automated means, as well as certified out-of-court dispute settlement (Regulation (EU) 2022/2065, 2022, arts. 17(1), (3)(c), 20(1), (6), 21(1)). Online platforms must also disclose the main parameters of their recommender systems (Regulation (EU) 2022/2065, 2022, art. 27(1)). These provisions supply a procedural template for reason-giving, review, and algorithmic transparency that Indonesian electronic-transaction law does not yet require.

The Platform Work Directive

Directive (EU) 2024/2831 (2024) addresses the employment status and working conditions of persons performing platform work. Its central mechanism is a rebuttable presumption that the contractual relationship between a digital labour platform and a person

performing platform work is an employment relationship where facts indicating direction and control are found, with the burden placed on the platform to prove otherwise; the Directive describes the presumption as a procedural facilitation for the benefit of persons performing platform work (Directive (EU) 2024/2831, 2024, art. 5(1)–(2)). It is accompanied by obligations concerning human oversight of automated monitoring and decision-making systems and protection against adverse treatment for exercising rights under the Directive (Directive (EU) 2024/2831, 2024).

Its chapter on algorithmic management limits the processing of personal data by automated systems, requires transparency about automated monitoring and decision-making, mandates human oversight, and grants rights to an explanation and to human review (Directive (EU) 2024/2831, 2024, arts. 7, 9, 10, 11(1)). Any decision to restrict, suspend, or terminate a person's account or contractual relationship must be taken by a human being (Directive (EU) 2024/2831, 2024, art. 10(5)). Significantly, these protections extend to persons performing platform work who have no employment contract or relationship (Directive (EU) 2024/2831, 2024, art. 1(2), recitals 29, 54). The Directive thus separates two questions that Indonesian debate tends to merge: classification, and the safeguards governing algorithmic control whatever the classification.

Two qualifications are necessary before this instrument is used comparatively. First, the Directive entered into force on 1 December 2024 and must be transposed by 2 December 2026; its operative effect therefore depends on national implementation, and it should be treated as an emerging comparative benchmark rather than as settled operative law (Directive (EU) 2024/2831, 2024). Second, the Directive answers a different question from the one this paper poses for MSMEs: it is designed to correct misclassification within an employment paradigm, whereas the problem this paper identifies for MSMEs is not misclassification but the absence of any procedural fairness obligation within a relationship that both sides accept is commercial, not employment, in character. Its relevance is accordingly confined to the worker side of the analysis.

Functional Comparison and the Limits of Transplantation

A functional comparison, asking what problem each EU mechanism solves rather than whether Indonesia has a formally identical instrument (Zweigert & Kötz, 1998), shows two distinct gaps. On the MSME side, Indonesian law addresses fees but lacks the Platform-to-Business Regulation's ranking-disclosure, reason-giving, and internal-redress requirements, so that private governance decisions are made procedurally accountable only in part. On the digital worker side, Indonesian law lacks any mechanism comparable to the Platform Work Directive's rebuttable presumption, which shifts the practical burden of proving the true character of the relationship onto the party that designed it, and lacks its classification-independent algorithmic safeguards. Table 1 summarizes the comparison.

Table 1. Functional Comparison of Indonesian Law and EU Platform Regulation

Problem	Indonesia (October 2026)	EU Mechanism	Proposed Direction
Fees and standard terms	Contract law; Permendag 19/2026, art. 14	P2B arts. 3, 9	Transparency of all material terms
Unilateral variation	Fee consent and objection (art. 14(4)–(7)); none for drivers	P2B art. 3(2)	Advance notice for both groups
Ranking opacity	No disclosure duty	P2B art. 5; DSA art. 27	Disclosure of main parameters
Suspension and deactivation	No reason-giving duty	P2B art. 4; DSA arts. 17, 20; PWD art. 10(5)	Reasons, review, human decision
Algorithmic management	Fragmented instruments	PWD arts. 7, 9–11	Transparency and human review
Classification	UU 13/2003, art. 1(15); kemitraan (PM 12/2019, art. 15(1)); bill pending	PWD art. 5	Further development; no presumption assumed

Abbreviations: P2B, Regulation (EU) 2019/1150; DSA, Regulation (EU) 2022/2065; PWD, Directive (EU) 2024/2831. Sources as cited in the text.

Legal transplantation theory cautions against assuming that a rule which functions well in one legal and institutional setting will perform the same function once transplanted (Watson, 1993). Kahn-Freund (1974) tied a rule's transferability to its connection with the political and institutional structure of its system of origin (Kahn-Freund, 1974), and Legrand (1997) contended that rules cannot be transplanted at all because their meaning is embedded in legal culture (Legrand, 1997). This paper takes a more modest position. The inquiry is not whether an EU rule exists and should be copied, but whether it performs a regulatory function under particular institutional conditions, whether Indonesia needs that function, and which Indonesian institution can perform it.

Both EU instruments presuppose institutional capacity, specialized platform regulators, an established mediation infrastructure, and, for the Directive, a labor inspectorate accustomed to algorithmic evidence (Nowik, 2025), that Indonesia would need to build rather than assume. Indonesia's existing institutions are each partial. KPPU's mandate is directed at competition and the supervision of partnerships, and its reach over discrimination or abuse of dominance depends on competitive effects and market-share thresholds rather than on the fairness of an individual relationship (Undang-Undang Nomor 5 Tahun 1999, 1999, arts. 19(d), 25, 35–36; Peraturan Pemerintah Nomor 7 Tahun 2021, 2021, art. 119(1)). The trade, transportation, and manpower ministries each regulate one segment, and the Government holds a general digital mandate (Undang-Undang Nomor 1 Tahun 2024, 2024, art. 40A; Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026; Peraturan Menteri Perhubungan Nomor 12 Tahun 2019, 2019, art. 15(1)). This paper has identified no forum designated to resolve platform disputes with individual merchants or drivers at low cost. The comparison is therefore used to identify missing functions, not to recommend transplanting either instrument's text.

Toward a Differentiated Conception of Regulated Contractual Fairness

This paper draws on, and applies in narrower form, a concept of regulated contractual fairness developed elsewhere in the author's ongoing doctoral research (Arbani, 2026). Regulated contractual fairness, as applied here, does not displace freedom of contract as the general rule governing commercial relationships. It instead identifies platform-mediated

economic dependency as a bounded exception, analogous to the way Indonesian and comparative law already treat standard-form consumer contracts and, in the labor context, employment relationships, as categories in which the state imposes procedural safeguards precisely because the ordinary assumption of comparable bargaining power does not hold.

More precisely, regulated contractual fairness refers to a legal framework in which freedom of contract remains the general rule, but certain procedurally mandatory safeguards apply where structural dependency and continuing unilateral governance materially weaken the practical capacity of one party to negotiate, understand, contest, or exit contractual arrangements. Its trigger is a structural condition rather than a personal status; its content is procedural rather than substantive, requiring transparency, notice, reasons, and contestability without fixing prices or outcomes; and its intensity is proportional to the dependency actually present. It belongs to a tradition treating contract law as one technique for regulating markets rather than a closed system of private ordering (Collins, 1999). It is related to, but distinct from, a recent European proposal for a single fairness standard modeled on good commercial practice and applied proportionally to consumers, business users, and workers (Graef, 2026); the present concept is anchored in Indonesian contract doctrine and insists on differentiated implementation.

The concept is also distinct from the doctrines it borders. Defects of consent and unconscionability examine formation and operate through avoidance after the event, whereas the concept addresses the continuing exercise of power during performance. Consumer protection is status-based and, in Indonesia, confined to users who do not trade (Undang-Undang Nomor 8 Tahun 1999, 1999) employment protection presupposes an employment relationship defined by work, wage, and command (Undang-Undang Nomor 13 Tahun 2003, 2003) and competition law asks whether conduct harms competition, often subject to dominance thresholds, rather than whether a relationship is governed fairly (Undang-Undang Nomor 5 Tahun 1999, 1999). Good faith is an open standard applied after the event; the concept specifies the procedural content good faith leaves indeterminate. It therefore operates as a bridge between these doctrines, retaining freedom of contract as the baseline, rather than as a replacement for any of them.

Common Principles

The model has two layers. The first consists of common procedural principles applicable, in appropriately adapted form, to both groups, because both groups experience the same structural mechanism of platform governance even though their legal status differs (Adams-Prassl et al., 2023; Bostoen, 2018). First, transparency: the criteria governing ranking, evaluation, pricing, commissions, or work allocation, together with the material contractual rules, should be disclosed in terms a business user or worker can reasonably act upon. Second, advance notice should be given of unilateral changes materially affecting income or continued participation, including fees, commissions, and access rules. Third, reason-giving: a decision to suspend or deactivate an account, or another materially adverse decision, should be accompanied by a stated ground capable of being contested. Fourth, contestability: an internal complaint and review process, and mediation or another accessible mechanism, should be available so that litigation is not the only remedy.

Each principle corresponds to a function already performed in EU law (Regulation (EU) 2019/1150, 2019; Regulation (EU) 2022/2065, 2022; Directive (EU) 2024/2831, 2024) and

answers a dimension of dependency identified above: transparency answers information dependency, notice and reason-giving answer governance dependency, and contestability mitigates access and exit dependency by offering a remedy short of departure. In EU law, such sectoral explanation duties have been read as expressions of a broader constitutional duty to state reasons (Fink & Demková, 2026), which suggests that reason-giving is a structural feature of accountable decision-making rather than a regulatory detail. Common principles do not require identical remedies. The second layer, differentiated legal implementation, carries each principle into the regime appropriate to each group.

Differentiated Implementation for MSMEs

For MSMEs, these principles are most naturally implemented through business law and consumer-protection style mechanisms modeled functionally, not textually, on the Platform-to-Business Regulation: mandatory disclosure of ranking parameters, minimum notice periods for fee or term changes, and access to a low-cost mediation channel. The 2026 trade regulation provides a starting point (Peraturan Menteri Perdagangan Nomor 19 Tahun 2026, 2026). A coherent business-user framework would extend its duties from fees to all material terms, add disclosure of the main ranking parameters, require reasons and a minimum notice period before suspension or termination, and establish internal complaint handling, with a proportionate exemption for small platforms comparable to the EU model (Regulation (EU) 2019/1150, 2019).

Two limits follow from the commercial character of the relationship. First, the framework should regulate the disclosure and variation of commissions, not their level, because relationships between business actors call for proportionality rather than protective equalization (Hernoko, 2010). Second, institutional design should rely on existing bodies. Mediation could be administered by KPPU acting within an expanded mandate, or by a platform ombudsman function attached to the ministries responsible for MSMEs, trade, and digital affairs. Any KPPU role would require legislative or regulatory action, since its current mandate covers competition and partnership supervision, not the mediation of individual contractual disputes (Peraturan Pemerintah Nomor 7 Tahun 2021, 2021; Undang-Undang Nomor 5 Tahun 1999, 1999). This paper does not recommend a new stand-alone authority absent a clearer showing that existing institutions cannot absorb this function.

Differentiated Implementation for Digital Workers

For digital workers, the same four principles require different institutional carriers because the governing legal question, whether an employment relationship exists, is prior to any fairness inquiry. Rather than adopting the EU's rebuttable presumption wholesale, a more cautious first step consistent with Indonesia's normative-doctrinal starting point would be to require platforms to disclose the specific criteria by which algorithmic performance evaluation, deactivation, and remuneration are determined, coupled with a reasoned-notice requirement before deactivation, without resolving the underlying employment-status question. This narrower step avoids prejudging the classification question this paper has deliberately left open above, while still addressing the transparency and process deficits that research on the sector has already documented (Noponen et al., 2024).

The Platform Work Directive supports this sequencing by applying its algorithmic-management safeguards regardless of employment status (Directive (EU) 2024/2831, 2024). An Indonesian framework could therefore require, independently of classification,

transparency about automated systems, explanations of consequential decisions, human review, and human decision on deactivation after the driver has been heard. Classification would remain a separate inquiry under the test of work, wage, and command, applied to the actual conduct of the relationship rather than its label; where that test is met, labor law already applies. Classification alone is nonetheless not a sufficient safeguard: research on Germany, where many platform workers are classified as employees, found that sub-contracting and other platform practices undermined employment rights in practice (Ferrari et al., 2024). Hamid et al. (2022) likewise describe labor law as capable of serving as a broad and inclusive mechanism for capturing work arrangements outside formal employment (Hamid et al., 2022). Whether to adopt an intermediate category or a presumption of employment is a legislative choice that the pending bill may address ("RUU Ketenagakerjaan muat bab khusus pekerja platform digital," 2026); the model neither assumes nor depends on it.

Institutional and Constitutional Grounding

The differentiated model proposed here finds constitutional support in Article 27(2) of the 1945 Constitution, which recognizes every citizen's right to work and to a livelihood befitting human dignity (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945), read together with Indonesia's ratification of the International Covenant on Economic, Social and Cultural Rights (Undang-Undang Nomor 11 Tahun 2005, 2005; UN Committee on Economic, Social and Cultural Rights, 2006). The argument must be stated with care. The Constitution does not require the state to regulate every platform contract. Its recognition of the right to work and to a livelihood befitting human dignity does, however, provide normative support for ensuring that digital economic participation is not governed exclusively through formally private contractual mechanisms where structural dependency substantially affects meaningful participation, a reading consistent with scholarship that links Article 27(2) to the protection of workers outside formal employment (Hamid et al., 2022, p. 533).

The constitutional grounding differs between the groups. For drivers, Article 27(2) is reinforced by Article 28D(2), which guarantees everyone the right to work and to fair and proper remuneration and treatment in an employment relationship (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945), although its reach depends on classification; by Article 34(2), which requires the state to develop a social security system for all the people (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945; Hamid et al., 2022); and by the Covenant as interpreted by the Committee on Economic, Social and Cultural Rights, which reads the right to work as encompassing all forms of work, whether independent or dependent wage-paid work (UN Committee on Economic, Social and Cultural Rights, 2006), and the right to just and favourable conditions of work as extending to self-employed and informal-sector workers (UN Committee on Economic, Social and Cultural Rights, 2016). For MSMEs, the grounding lies in the constitutional design of the economy: Article 33(4) requires the national economy to be organized on the basis of economic democracy, including efficiency with justice and balance in national economic progress (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945), which supports fair conditions of participation for smaller business actors without treating them as consumers or employees.

These provisions make economic participation, whether as a business owner or as a worker, a constitutional and treaty concern without requiring that MSMEs and digital workers

be treated as legally identical. Institutionally, the common principles are allocated to existing carriers, the trade, MSME, and competition framework for business users and the labor and transportation framework for drivers, so that each principle is enforced by the institution whose mandate matches the legal status of the protected party.

CONCLUSION

This paper concludes that the principle of freedom of contract under Article 1338 of the Indonesian Civil Code, while remaining an appropriate general foundation for commercial relationships, does not adequately address the structural economic dependency that micro, small, and medium-sized enterprises (MSMEs) and digital platform workers may experience within platform-governed relationships. The principal regulatory deficiency concerns not merely contract formation but also the governance of ongoing contractual relationships, as consent provided during platform onboarding does not necessarily ensure procedural fairness in the subsequent exercise of unilateral contractual powers. Indonesian law currently addresses these groups through distinct and potentially incomplete regulatory frameworks, including commercial law, consumer protection law, and electronic transaction law applicable to MSMEs, supplemented by fee-related obligations introduced in 2026, and labor law provisions whose applicability to digital platform workers, particularly ride-hailing drivers, remains contested. A functional comparison with the European Union's Platform-to-Business Regulation, Digital Services Act, and Platform Work Directive identifies regulatory mechanisms concerning transparency, disclosure, reasoned notification, and procedural redress that could inform Indonesian legal reform without requiring the wholesale transplantation of European legislation or its employment-status presumption. Accordingly, the proposed differentiated framework of regulated contractual fairness establishes common procedural principles of transparency, advance notice, reason-giving, and access to mechanisms for challenging platform decisions, implemented through group-specific safeguards that recognize the distinct legal status of MSMEs and digital platform workers while addressing their shared exposure to structural imbalances in platform power. Policymakers should consider extending the scope of Indonesia's 2026 trade-related regulatory requirements beyond platform fees to encompass material contractual terms, ranking transparency, reasoned account suspension, and internal complaint-handling mechanisms for business users. For digital platform workers, particularly drivers, classification-independent safeguards concerning algorithmic transparency, explanations of consequential automated decisions, and meaningful human review should be considered within the existing institutional frameworks governing trade, competition, labor, and transportation. Because this study employed a doctrinal approach, and its assessment of the regulatory position of platform drivers remains provisional pending verification of the relevant 2026 Presidential Regulation and proposed manpower legislation, further doctrinal and empirical research is necessary to determine whether these safeguards can be implemented effectively through Indonesia's existing institutional structures or require additional regulatory and administrative capacity.

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The authors declare that this research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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All authors contributed to the preparation and writing of this article.

GENERATIVE AI STATEMENT

In the preparation of this manuscript, the authors utilized Artificial Intelligence (AI) solely for the purposes of improving grammar and checking language usage.

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