

LAWS AND POLICIES REGARDING ONLINE APPLICATION-BASED TRANSPORTATION IN INDONESIA

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ABSTRACT

In the current era of technological development, the development of innovation in the field of transportation is significantly influenced by the presence of online application-based transportation. This application-based transportation is a mode of transportation built to facilitate users in accessing transportation services. The existence of this online transportation service has become a subject of legal debate among law enforcers, especially related to the regulation of two-wheeled vehicles in Law Number 22 of 2009 concerning Road Traffic and Transportation, which does not explicitly recognize online application-based transportation as a legal mode of transportation. This research tries to answer questions about legal arrangements related to online application-based public transportation as well as legal protection and legal relations of online application-based transportation drivers. This research uses normative juridical and empirical juridical approaches by collecting secondary data and primary data, including involving the East Java Provincial Transportation Office and online transportation drivers as resource persons. Data analysis was conducted using a qualitative approach. The results showed that the regulation of online application-based transportation in Indonesia is a form of legal policy or decision made by government officials to address concrete problems faced in terms of legislation, in accordance with Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration. The purpose of the regulation is to fill the legal gap in online application-based transportation so that these activities have a clear legal basis. Meanwhile, legal protection for Go-Jek drivers as partners of PT Go-Jek Indonesia is still not optimal. This is due to the lack of regulation regarding the rights and obligations of the company PT Go-Jek in the agreement with Go-Jek drivers, which focuses more on the rights of the company without adequately regulating the obligations that must be fulfilled by the company PT Go-Jek.

Keywords: regulation, online transportation, driver, legal protection, gojek.

INTRODUCTION

Advances in science and technology also have a significant impact on the transportation sector with the presence of transportation modes supported by online networks

(Vermesan & Friess, 2014). This mode of online transportation uses an application as its main platform, which is designed to make it easier for users to access transportation services. As an application-based transportation service provider, this mode of transportation is run by service providers who operate through an online application that can be downloaded through the Play Store for Android-based devices or the App Store for iOS devices such as iPhones (Nasution et al., 2018). Its use is very simple, only by filling in the personal data requested in the application and agreeing to the terms and conditions set by the application developer of the online transportation service provider, application users can immediately enjoy the services provided.

Advances in information and communication technology have brought great benefits to the lives of Indonesian people. However, it is unfortunate that Indonesia, through the Ministry of Transportation and other relevant agencies, has not issued appropriate regulations to govern the legal aspects related to this development. The delay in making regulations related to the implementation of online transportation also has an impact on slowing national economic growth, as many regions are reluctant to grant operating permits even though these services have developed and provided significant benefits to the community (Prananda & Aidi, 2019). The delay in drafting regulations has also created many social problems between transportation service providers in the real world, so there is no adequate protection in the implementation of online transportation.

Any type of business in Indonesia, including online app-based public transportation, must adhere to the principles laid out in the regulations, both in written terms and in a philosophical view of the business. The majority of Indonesians rely heavily on public transportation to meet their mobility needs, especially as most citizens have limited economic means or do not own private vehicles. This situation presents an opportunity for businesses to provide transportation services to citizens who do not own vehicles or those who seek time efficiency by using public transport.

One transportation service product that is currently popular is online Android application-based land transportation services, such as Gojek and Grab Taxi. Nonetheless, the existence of these online transportation services has caused legal controversy among law enforcers, mainly because the law on the use of two-wheeled vehicles (online applications) does not explicitly regulate this mode of transportation, as stipulated in Law Number 22 Year 2009 on Road Traffic and Transportation. Fundamentally, motorcycles are usually used for local transportation, not for transportation on major roads, as is the case in developed countries. In addition, public transportation requires motor vehicles to undergo safety testing as they are responsible for the safety of passengers, while motorcycle vehicles do not pass such testing.

Pancasila, as the ideological foundation of the Republic of Indonesia, in its fifth principle of Social Justice for All Indonesian People, includes values that are rooted and sourced from the principle of Belief in One God. Therefore, in this precept, there is a concept of the value of justice that must be reflected in collective and community life,

which means creating prosperity and justice for all citizens while protecting their rights from all forms of injustice, as well as providing proper legal protection. Pancasila, as the philosophical foundation of the Unitary State of the Republic of Indonesia, is the main pillar that inspires the formation of legal regulations. According to Otje Salman and Anthon F Susanto, understanding Pancasila is not only related to broader history. However, such understanding does not only direct the gaze backwards to the history of thought, but more deeply refers to the actions that need to be taken for the future.

In the current era of globalization, the ojek phenomenon that has received great attention is online application-based ojek. In following the development of ojek today, becoming an online ojek has become an attractive job option, promising additional income, and providing work flexibility without time constraints. The existence of online application-based ojek, as a response to public demand for efficient transportation, does not yet have a clear legal basis. Based on a study from Ayunita e al. (2019), many parties involved in the transaction and use of online ojek services still do not have adequate legal protection. Regulations regarding online ojek have not been explicitly explained in legal regulations, so the handling of legal issues that arise usually involves the formation of legal construction. Online ojek has also not been expressly recognized as one of the modes of public transport regulated in Law Number 22 Year 2009 on Road Traffic and Transport.

In situations of consumer rights violations, it is important to conduct a careful analysis to determine who should bear responsibility and the extent to which liability can be imposed on the parties involved. Regulations regarding the liability of business actors are set out in Law No. 08/1999 on Consumer Protection (UUPK), particularly in Articles 19 to 28. This law covers the principles of liability, which include the Liability Based on Fault Principle and the Absolute Liability Principle. Up until now, companies have typically only considered their responsibilities to shareholders and focused on achieving economic indicators in the financial statements. However, there is now an important paradigm shift. Companies must begin to take into account social factors in relation to stakeholders, both inside and outside the company. This concept is supported by the Stakeholders Theory, developed by R. Edward Freeman. This theory defines stakeholders as groups or individuals who have the capacity to influence or be affected by the achievement of corporate goals. In this theory, stakeholders have a relationship and interest in the company based on certain interests. The assumption in Stakeholder Theory is that companies have relationships with various stakeholder groups that can influence and be influenced by company decisions. The theory emphasizes the nature of the relationship between the company and its stakeholders, and states that the interests of all stakeholders have true value without dominance over one another. As such, Stakeholder Theory focuses on managerial decision-making that considers the interests of various parties within the firm.

The success or failure of legal regulation is influenced by elements such as legal substance, legal structure, and community culture. This can be interpreted as an

indication of the success of a law is when the law has achieved legal objectives that seek to safeguard and protect the community in everyday life. For this reason, based on the background explanation, the author will conduct research with the title of legal regulation of online application-based transportation in Indonesia.

METHODS

Normative juridical approach. The normative juridical approach is an approach that relies on literature studies, by reading, referring to, and analyzing legal theories and laws and regulations related to the problems being investigated. On the other hand, the empirical juridical approach involves efforts to understand and clarify issues based on existing reality through conducting interviews with respondents at the research location. This research will involve a search for regulations and literature relevant to the issues being studied. The analysis that will be applied to the legal material found will be descriptive analytical. The research process will be conducted in two stages, first by conducting desk research on secondary data sources, including laws and regulations, such as Law Number 22 of 2009 concerning Road Traffic and Transportation.

RESULTS AND DISCUSSION

1. Regulation of Online Application-Based Public Transportation

The regulation of online application-based public transportation, such as online motorcycle taxi services, has become an important concern in the modern technological era. This phenomenon has changed the way of traveling with passengers to easily book a vehicle through their mobile application. However, along with this development, various issues related to regulation arise. The government needs to take steps to regulate the industry to ensure passenger safety, protect the rights of drivers, and maintain fair competition in the market. According to Mutiarin et al. (2019), these regulations may include license requirements, vehicle safety standards, and other regulations aimed at protecting the public. However, the implementation of regulation has also sparked discussion and debate about the extent to which regulation should be applied, given its impact on innovation, competition, and drivers' income (Putri & Diamantina, 2019). Therefore, regulating online app-based transportation is a complex issue that requires a balance between safety, innovation, and public protection, and is an important topic in law and public policy.

A. Dynamics of Online Application-Based Transportation Regulation

The dynamics of online application-based transportation regulations are a reflection of technological developments and changes in consumer behavior. Online transportation services, such as online ojek, have revolutionized the transportation industry by providing easier, faster, and more convenient access for passengers. However, their

significant impact on the economy and society has sparked debate on how to regulate them. The government must respond quickly to ensure consumer protection, safety, and fair regulation in the industry. In addition, fierce competition between various technology companies vying to dominate the market also affects regulation. To that end, these dynamics reflect the challenge of striking a balance between technological innovation, public protection, and fair market competition in an ever-changing regulatory environment.

B. Regulation of Online Transportation

Regulation of online transportation is the government's effort to regulate and supervise online application-based transportation services, such as online ojek and ride-sharing. This regulation aims to regulate aspects such as passenger safety, service quality, fare regulations, driver rights and obligations, and consumer rights protection. Governments usually design rules, license requirements, and policies to maintain a balance between easy access to transportation services and the protection of the public and public order. These regulations can vary from country to country and often change as the industry and technology evolve. The ultimate goal is to create a safe, fair and sustainable environment for service providers, drivers and passengers.

C. Regulation of Online Transportation Licensing

Regulation of online transportation licensing is a legal framework that regulates the requirements and procedures that must be met by online application-based transportation service providers, such as online motorcycle taxis or ride-sharing services, to obtain the necessary permits or licenses to operate legally. These regulations are usually issued by the local government, which can be the central government or local government, and aim to control and supervise the ride-hailing industry. The requirements for obtaining this license can include various things, such as ensuring the safety of vehicles and drivers, fulfillment of insurance requirements, compliance with tariff rules, and protection of consumer rights. In addition, this regulation can also contain provisions regarding technical requirements, business licensing, and tax payments. By regulating online transportation permits, the government aims to keep passengers safe, promote fair competition, and ensure that online transportation service providers operate in accordance with the standards set by law. In addition, this kind of regulation can also assist the government in tax collection and supervision of the ride-hailing industry.

D. Scheme for Granting Permits for the Operation of Non-Transit Public Transport (Online Transport)

The scheme for granting permits for the operation of off-route human transport, such as online transport, usually involves a number of stages and requirements. The scheme varies from region to region, and is subject to change in line with the development of the online transportation industry and the needs of the community. The aim is to create

a safe, fair and orderly environment for the operation of off-route transport. The following is the general scheme used in granting permits for non-route transportation, including online transportation.

a) Application Submission

A prospective ride-hailing service provider must apply for a permit to an authority, such as a transport authority or relevant department. The application usually includes information about the company, the owner, the vehicles to be used, and other requested documents.

b) Vehicle Inspection

Vehicle inspections are conducted to ensure that the vehicles to be used in the ride-hailing service meet the set safety and hygiene standards. This includes checking the physical condition of the vehicle, completeness of documents, and safety equipment.

c) Driver Screening

Prospective drivers must undergo a check that involves verifying their identity, background, and track record. This aims to ensure that the driver is suitably qualified and does not have a serious criminal record.

d) Insurance Requirements

Parties applying for a license must also usually meet adequate insurance requirements to protect passengers and third parties in case of accidents or other incidents.

e) Fare Setting

Authorities may set rules or guidelines for fare setting to be applied in online transportation services. This aims to protect consumers and prevent unreasonable price increases.

f) Driver Training

Some jurisdictions require ride-hailing providers to provide training to their drivers, including training on ethics, behavior, and conflict handling.

g) Supervision and Monitoring

Once a permit is granted, authorities usually conduct supervision and monitoring of ride-hailing service providers to ensure that they remain compliant with the applicable rules and regulations.

E. Legality of Online Transport Operational Permits in relation to Minister of Transportation Regulation No. 108 of 2017 concerning the Implementation of Transportation of Persons by Public Motorized Vehicles Not on a Route

The legality of online transport operational permits is closely related to the Minister of

Transportation Regulation No. 108 of 2017 concerning the Implementation of Transportation of Persons by Public Motor Vehicles Not on a Route. This regulation plays an important role in regulating online transport operations and specifies the requirements that must be met by online transport operators. Basically, the regulation sets up a framework that regulates the operational procedures for transportation of people by public motorized vehicles outside conventional routes. Some of the key points in this regulation relating to online transportation include:

- a) **License Requirements:** These regulations usually require ride-hailing operators to obtain the appropriate permit or license from the transport authority or local government.
- b) **Safety Standards:** These regulations set safety standards that must be adhered to by vehicles and drivers used in ride-hailing services.
- c) **Insurance Requirements:** These regulations often require ride-hailing operators to have adequate insurance to protect passengers and third parties in case of accidents or other incidents.
- d) **Fare Setting:** Some regulations may include guidelines on fare setting and restrictions on fare increases, which aim to protect consumers from unreasonable price increases.
- e) **Driver Qualifications and Vetting:** These regulations may specify requirements regarding driver qualifications and checks to be conducted on drivers, including background and track records.
- f) **Supervision and Monitoring:** Transport authorities usually conduct supervision and monitoring of ride-hailing providers to ensure compliance with the regulations.

The legality of online transport operating permits depends on the extent to which online transport operators comply with these regulations (Gultom & Budhianti, 2022). In many cases, operators must meet stringent requirements to obtain their operational permits and run their services legally in accordance with applicable laws. As such, the government and transportation authorities have an important role in regulating and overseeing the legality of ride-hailing operations (Selina & Darma, 2021).

2. Legal Protection for Drivers of Online Application-Based Transportation

A. Legal Protection by the State

Legal protection by the state is an important foundation in safeguarding the welfare of society and implementing the principles of the rule of law. The government has the primary responsibility to ensure that the rights of citizens are respected and protected. This includes the guarantee of human rights, protection against criminal acts, fair regulation of business, and oversight of the environment and public health. Consumer

protection, intellectual property rights, and social rights are also part of the government's role in protecting society. The judicial system and law enforcement officials are important tools in enforcing the law and ensuring that violations of the law are dealt with fairly. The protection of the law by the state is the underlying basis of social justice, order and security, which is vital in maintaining the balance between individual rights and the interests of the wider society.

B. Online Application-Based Transportation Drivers Based on Law Number 13 of 2003 concerning Manpower

The legal status of online application-based transportation drivers, often referred to as service provider partners, is a complex issue relating to Law Number 13 of 2003 concerning Manpower in Indonesia. The main question is whether these drivers can be considered as workers with employment relationships governed by the labor law, or whether they are more appropriately considered as business partners. This legal status has a major impact on the rights and obligations of the drivers. If considered as workers, they have rights such as social protection, the right not to be discriminated against, and safe working conditions. However, if considered as business partners, they have a greater degree of autonomy but also do not get the same protection. This is a relevant legal debate in the modern world of work, especially in the online app-based transportation sector where the role of drivers is often different from traditional workers. Clarity on the legal status of these drivers is crucial in determining the rights and protections that apply to them in accordance with Indonesian regulations.

C. Legal Protection of Workers

Legal protection of workers is an important pillar for maintaining fairness in the work environment. This involves various aspects, ranging from basic worker rights such as decent wages and regular working hours, to health and safety protection in the workplace. Legal protection also includes human rights, such as the right not to be discriminated against based on personal characteristics, such as race, religion, gender or age. Workers also have the right to organize in trade unions or similar organizations to protect their interests and bargain with employers. In addition, termination of employment must be carried out in accordance with applicable laws and procedures, so that workers have protection from unfair dismissal. This legal protection provides a sense of justice and welfare for workers, creates a balanced working relationship between workers and employers, and maintains the principles of human rights in the world of work.

D. Legal Relationship Between Online-Based Transportation Drivers and Application Companies

The legal relationship between online-based transportation drivers and application companies is a complexity related to aspects of labor law and business. The fundamental question in this relationship is whether drivers are considered independent business partners or workers employed by the app company. If they are considered as partners,

the relationship emphasizes more on a business partnership where drivers have greater autonomy in running their services. However, if considered as workers, they have rights and protections governed by labor laws, such as the right to wages, social security, and protection from unfair dismissal. The contract between the driver and the app company is often the main guide in determining the rights and obligations of each party. Compensation, payment, and how revenue from the service is shared are often key concerns in this relationship. Social protection is also an important issue, especially for drivers who are considered workers, with rights to health insurance and pension protection. The government also regulates this relationship through regulations, including vehicle requirements, safety requirements, and other rules. Termination of the relationship between the driver and the app company also needs to comply with applicable legal procedures.

CONCLUSION

Based on the results of the research conducted by the author and the discussion of the issues described, the following conclusions can be obtained:

- a. The regulation of online application-based transportation in Indonesia can be considered as a legal action or decision enforced by government officials to address concrete problems faced by the government. This is related to the provisions in Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration, which gives authority to government officials to fill the legal vacuum on online application-based transportation, so that this activity can have a strong legal basis.
- b. Legal protection of Go-Jek drivers as partners of PT Go-Jek Indonesia still has room for improvement, considering that in the agreement between PT Go-Jek Indonesia and Go-Jek drivers, only most of the rights owned by PT Go-Jek Indonesia are regulated, while the obligations of PT Go-Jek companies have not been fully regulated. In addition, PT Go-Jek Indonesia also includes an exoneration clause in the partnership agreement, which should not be included in the agreement because it contains provisions exempting the company from liability to drivers related to losses and the right to sue the company for the partnership relationship. Therefore, PT Go-Jek Indonesia should be more responsible for the drivers in this case.
- c. The form of legal relationship arising from the agreement between Go-Jek drivers and PT Go-Jek Indonesia is a type of partnership agreement that can be categorized as an agreement that does not yet have a special name. This partnership agreement follows the profit-sharing pattern as stipulated in Law No. 20/2008 on MSMEs. This agreement is prepared in writing and implemented in the form of an electronic contract, in accordance with the provisions of Law No. 11 of 2008 on Electronic Information and Transactions.
- d. Although the legal relationship between the two parties is not officially considered an

employment relationship based on several elements of an employment relationship that are not fulfilled, in practice, this relationship often creates the impression of an employment relationship. This partnership agreement is not subject to the provisions of Law No. 13 Year 2003 on Labor. If we look in more detail at Article 40 paragraph (1) of Law No. 13 of 2003 Concerning Manpower, there is actually an opportunity to create employment opportunities outside of employment relationships. The article states that the expansion of employment opportunities outside employment relationships can occur through the creation of productive and sustainable activities by utilizing natural resources, human resources, and appropriate technology. This article also explains that the expansion of employment opportunities can be carried out through the establishment and guidance of independent workers, the application of labor-intensive systems, the application of appropriate technology, and the utilization of voluntary labor or other patterns that encourage the expansion of employment opportunities.

Suggestions that the author would like to convey in this research include the following:

- a. Increasing the Bargaining Position of Drivers in relation to online transportation application companies can be done by forming trade unions in accordance with applicable regulations.
- b. The government must continue to oversee the implementation of the regulations issued to ensure that the rules are followed by all parties involved in the online transportation industry.
- c. The owners of online transportation applications should pay more attention to social protection for online application-based public transportation drivers, such as drivers.

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