

## Juridical Review of The Position of Online Transportation in The Law of The Republic Of Indonesia Number 22 Of 2009 Concerning Road Traffic And Transportation

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### Abstrack

*In Law Number 22 of 2009 concerning Road Traffic and Transportation, what is meant by Traffic is the movement of vehicles and people in the Road Traffic Space. Road Traffic Space is infrastructure intended for the movement of vehicles, people and/or goods in the form of roads and supporting facilities. Transportation is a tool or vehicle that is an important need for society, whether land, sea or air transportation. The purpose of people using means of transportation is to move people or goods more quickly and easily from their place of origin to their destination. The increasing number of road users, especially motorbikes, has resulted in traffic flow becoming congested and difficult to control, especially in big cities in Indonesia. Therefore, the government issued Law Number 22 of 2009 concerning Road Traffic and Transportation. This online-based mode of transportation also leaves problems that raise pros and cons in society. In the Constitutional Court (MK) decision in case Number 41/PUU- The research was conducted using a normative juridical approach. The data collection technique is through primary and secondary legal materials, as well as conditions in the field. The specifications of this research are analytical descriptive. Then the data analysis was carried out in a qualitative juridical manner; in terms of protecting online transportation players, there is no legislation or regulation that specifically addresses the problem of online transportation drivers.*

**Keywords: Legal Protection, Perpetrators, Online Transportation.**

## INTRODUCTION

The development of Indonesian transportation became more advanced when Indonesia began to be controlled by the Dutch colonial government. At this time the means of transportation already used transport machines. The arrival of the Dutch brought modern land transportation equipment. Transportation is the transfer of people or goods from one place to another within a certain time using a vehicle driven by humans, animals or machines. Online transportation is a transportation company that uses applications as a link between users and drivers

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<sup>1</sup> Mega Rahmatullah, "Kedudukan Hukum Transportasi Online Menurut Hukum Pengangkutan Di Indonesia (Studi Di Kota Mataram)", 2018

making bookings easier, apart from that, travel fares can be seen directly on the application. Technological progress is an inevitability that we inevitably have to follow. Online transportation services are transportation services that take advantage of technological

advances. Technology was created to facilitate all daily human activities. Likewise with online transportation services. Online-based transportation was created with the aim of making it easier for someone who wants to travel.

### 1.1 Background

In the Republic of Indonesia Law Regulation Number 22 of 2009 concerning Road Traffic and Transport, Article 143 explains that the criteria for people transport services by road vehicles. Article 143 explains that the criteria for people transport services by public motorized vehicles on routes must have regular, scheduled routes starting from , ends and picks up or drops off passengers at the terminal

Law Number 22 of 2009 does not clearly state and regulate the operation of online-based transportation of people. Therefore, every situation in every case that occurs on the road will be a conflict in itself for drivers as a mode of online transportation and public transportation.

### 1.2 Problem formulation

1. What is the legal status and position of online transportation actors in formal law?
2. What is the legal status and position of online transportation operators according to Law number 22 of 2009 concerning road traffic and transportation?

### Method

In conducting this research the author used a normative juridical approach and data collection techniques were through secondary legal materials and specifications

This research is descriptive analytical in nature. Then data analysis was carried out qualitatively.

## **Research Results and Discussion**

What is the legal status and position of online transportation actors in formal law?

Business development in the trade sector, both trade in goods and services. The emergence of various online buying and selling sites is clear evidence of the influence of the use of application-based technology which is very popular among the public. Currently, onlinebased transportation modes have become popular among Indonesian people, especially in big cities,

their presence is becoming increasingly vibrant, adding to the diversity of conventional transportation modes that have previously existed. Online transportation has become an alternative mode that people want after previously people had to use conventional transportation which caused several problems such as lack of safety and comfort when using public buses which were often no longer suitable for operation and other factors. It can be denied that the existence of online motorcycle taxis exists has benefits around us. They operate using the Gojek company application, Grab, to meet public/consumer demand for public transportation of people and/or goods online. The public also feels very happy and helped by the operation of this online motorcycle taxi, so in view of this reality, it is necessary to guarantee the constitutional rights of the people who use online motorcycle taxis and drivers. Online motorcycle taxi drivers also experience gaps in their employment relationship because they are not considered employees. They do not get rights as workers even though they fight every day with high occupational risks. Drivers also have no bargaining power to determine policy. Drivers feel that policy making is always one-sided and not transparent so that there is no mutually beneficial relationship between the two partnering parties.

Application-based technology is currently developing in the business sector in the service sector such as sea, air and land transportation services. An application service provider company is a company that provides application-based services for customers and this form of company focuses more on being a bridge that connects public transportation owners with users who need transportation so that

online application-based public transportation companies are considered illegal because the company is basically an application provider company but its operations are engaged in the field of public transportation. Meanwhile, Public Transportation companies as intended in the consideration of Law Number 22 of 2009 Article 1 number (21) state that the company Public transportation is a legal entity that provides transportation services for people and/or goods using public motorized vehicles. Innovations in the use of Information Technology carried out by online transportation companies, in this case the company involved, namely PT. GOJEK INDONESIA, are visible and can be felt by the public, both users, providers, and also traders. Many parties benefit from the online transportation business. What is unique is that online transportation entrepreneurs who implement a profit sharing system only take a small percentage of the drivers' income and this is different from other business fields where entrepreneurs usually take more profits from the business run by their company. The starting point that is being debated is based on the provisions of Article 1 point 21 of the Law. No. 22 of 2009 concerning Road Traffic and Transportation states: "Public Transportation Companies

are legal entities that provide transportation services for people and/or goods using Public Motorized Vehicles"

Based on the explanation above, public transportation must use public motorized vehicles in the form of public passenger cars and/or public buses. This also emphasizes that other types of vehicles should not be used as public transportation, while online-based companies carry out transportation of people on the road using two-wheeled motorized vehicles which carries a very high risk. From the provisions above, it can be seen that the position of online transportation companies is as working partners of companies transporting people using public transportation not on routes, not as companies that run their business in the transportation sector directly. The working relationship between business actors and online transportation company managers is limited to a cooperative or partnership relationship between the two parties based on the agreement outlined in the cooperation agreement. Online transportation companies do not have the slightest authority to carry out business activities like transportation companies in general, however, if online transportation companies want the same authority as business actors in the transportation sector, they must <sup>1</sup>begin the licensing stages in accordance with those specified in the statutory regulations. .

On the other hand, this online-based mode of transportation also leaves a lot to be desired

The problem has sparked pros and cons in society, those who are against it consider this online-based mode of transportation to be illegal because it does not comply with the provisions of the applicable laws and regulations regarding road traffic and transportation which must have the business permits required as a legal entity company. Law Number 22 of 2009 concerning Road Traffic and Transportation Article 47 paragraph 3 motorized vehicles based on the function of individual motorized vehicles and public motorized vehicles. That motorbikes are not public motorized vehicles used to transport people or goods, in fact motorbikes are used to transport people and/or goods for a fee. Motorbikes do not yet have a legal umbrella, while online taxis are regulated because there is a difference in position in the law (discriminatory treatment), and there is no recognition, guarantee, protection and fair legal certainty for online motorcycle taxi service users (consumers) who cannot use motorcycle taxi services. online, while motor vehicle service users.

Furthermore, what is the legal protection for online transportation actors?

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<sup>1</sup> <https://www.hukumonline.com/klinik/detail/ulasan/lt5790343340ecb/pidana-bagi-pengemudi-ojek-ionline-i-yang-menyebabkan-penumpang-terluka>

Then, looking at it from the perspective of consumer protection and for actors who work in the online transportation sector, according to Law Number 8 of 1999 concerning Consumer Protection, Article 1 Number 5, what is meant by services: "Services are any service in the form of work or achievements provided to the community to be utilized by consumers." Viewed from one side of effectiveness, consumers or users of online transportation services are the ones who benefit because they can facilitate the fulfillment of needs and transactions effectively and efficiently. However, if we look at it from the perspective of legal protection for consumers, problems will arise. Losses in a transaction must be able to determine which party is responsible for the loss. For example, in a food ordering service, the food delivered is no longer fit for consumption. inconvenience felt by consumers using online transportation services. The actions of online transportation drivers who drive unreasonably in the sense that the driver is affected by illness, fatigue, or also because the driver consumes a drink or other substance which can affect his or her performance and ability to drive on public roads, and this online transportation driver can also drive. recklessly in order to pursue a target that has been achieved determined by the online transportation service provider. Things like this can cause accidents on the road and consumers become victims due to the actions of the driver. And an online transportation driver could commit a crime.

The problem that often occurs and is often encountered is that the vehicle registered in the online application is different from the vehicle used by the online transportation driver, so that the vehicle used is below the standards determined by the online transportation service provider. And it is also found that many drivers do not wear the attributes that are required to be worn every time they do work, such as jackets and other attributes that make consumers feel comfortable and safe. that protection for consumers using this online application is very necessary. Article 4 of the consumer protection law states the rights of consumers as follows:

1. The right to comfort, security and safety in consuming goods and/or services.

1. The right to choose goods and/or services and obtain these goods and/or services in accordance with the exchange rate and conditions and guarantees promised.

2. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services.
3. The right to have opinions and complaints heard regarding the goods and/or services used.
4. The right to receive appropriate advocacy, protection and efforts to resolve consumer protection disputes.
5. The right to receive consumer guidance and education.
6. The right to be treated or served correctly and honestly and non-discriminatory.
7. The right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be.

- Article 19 paragraph (1): Business actors are responsible for providing compensation for damage, pollution and/or losses to consumers resulting from consuming goods and/or services produced or traded.

Article 19 paragraph (2), Compensation as referred to in paragraph (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the applicable laws and regulations. . However, at the time this application-based transportation was available, there were no reports regarding losses or complaints from the public regarding using or utilizing this online transportation service. There are several basic consumer rights, namely:

the right to security, the right to information, the right to vote, and the right to be heard. This relates to passengers' rights to be respected by providers of conventional transportation services and online application-based transportation. In this connection, legal protection is needed for consumers using transportation services and other types of transportation. All forms of losses experienced by consumers using services. Online transportation has given rise to long legal issues, especially in relation to the responsibility of companies providing online transportation services towards their consumers. So efforts are needed from companies providing online transportation services and from the government to increase protection and ensure legal certainty for consumers. Apart from that, in terms of consumer comfort and safety, there is also a need for standardization regarding the vehicles used by online transportation drivers.

## CONCLUSION

From all the descriptions above, conclusions can be drawn regarding the problems discussed as follows:

1. Online Transportation is not a public transportation company because it does not have a transportation operation permit based on Article 139 Paragraph 4 of Law No. 22 of 2009 concerning Road Transportation Traffic and only has the status and legal entity of a limited liability company (PT) which operates in the field of providing road transportation services for people and goods, Official public transportation operating company as regulated in the Minister of Transportation Regulation

Number 32 of 2016 concerning the Implementation of Transport of People by Public Motorized Vehicles Not on Routes.

2. The responsibility of the company providing online-based application services when a loss occurs to a consumer is to make compensation together with the company providing the transportation service as long as the things that could harm the consumer are the result of their fault or that of the parties employed by the company. Dispute resolution used in disputes between drivers and consumers uses a non-litigation system, but can also use legal channels that apply in Indonesia if the consumer is not satisfied with the results provided rather than resolving through family means. Consumer Protection in Law Number 8 of 1999 concerning Consumer Protection has guaranteed legal certainty to provide protection to consumers. Consumers can be given compensation, compensation or reimbursement for losses experienced by consumers as a result of using services provided by online transportation service businesses. Consumers who feel they have been harmed and want to obtain legal protection can take the court or out-of-court route. If a consumer chooses a route outside of court, the consumer can report it directly to the consumer dispute resolution body

## SUGGESTION

1. Therefore, there are fundamental problems that are contrary to statutory regulations no. 22 of 2009 concerning traffic and road transportation where in Article 139 Paragraph 4 road transportation services are only for legal entities, while online transportation actors or drivers are only working partners of PT. GOJEK, in this case drivers also use vehicle transportation many motorbikes are seen as less suitable for consumers, therefore in this problem the government provides and makes legal protection regulations for every actor who uses online transportation, starting from consumers and

the drivers, and in terms of recruiting partners must fulfill the applicable terms and conditions to provide a sense of security and comfort for consumers who often use this online transportation service,

2. As transportation with information technology-based applications (online), especially PT. Go-Jek must immediately adapt to existing regulations, namely Law Number 22 of 2009 concerning road traffic and transportation, Government Regulation Number 74 of 2014 concerning road transportation and Minister of Transportation Regulation Number 32 of 2016 concerning the implementation of public transportation by Public motorized vehicles are not on route until the time limit given by the government, so that there will be no more confusion regarding their legality as a company providing public transportation and a company providing information technology-based applications.
3. Transportation service providers must have legal certainty and must clarify whether their agreement uses a labor or partnership agreement, so that their responsibilities become clearer and stricter regarding the permits of companies managing online transportation services in order to create the best service to consumers.
4. Policies from PT. Go-Jek Indonesia, if a loss occurs, should provide full coverage for the losses suffered by consumers and make regulations or add to the contents of the partnership agreement regarding full loss coverage carried out by PT. Go-Jek Indonesia. And also the government should make appropriate and clear laws and regulations regarding the implementation of PT. Go-Jek Indonesia so that it does not cause problems that could harm consumers or Go-Jek drivers themselves.

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